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90-25 TO DECLARE A PORTION OF BOSTON INNER HARBOR
AND FORT POINT CHANNEL NONNAVIGABLE

GOVERNMENT

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HEARING
BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION
AND AERONAUTICS
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
NINETIETH CONGRESS

SECOND SESSION

ON

H.R. 14681

A BILL TO DECLARE A PORTION OF BOSTON INNER
HARBOR AND FORT POINT CHANNEL NONNAVIGABLE

FEBRUARY 27, 1968

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TO DECLARE A PORTION OF BOSTON INNER HARBOR AND FORT POINT CHANNEL NONNAVIGABLE

TUESDAY, FEBRUARY 27, 1968

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2218, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The subcommittee will be in order.

Today the Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce Committee will conduct a hearing on H.R. 14681, a bill to declare a portion of the Boston Inner Harbor and Fort Point Channel nonnavigable.

(The bill, H.R. 14681, follows:)

[H. R. 14681, 90th Cong., 2d sess.]

A BILL To declare a portion of Boston Inner Harbor and Fort Point Channel nonnavigable

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That that portion of Boston Inner Harbor and Fort Point Channel, in Suffolk County, Commonwealth of Massachusetts, lying between the south line of Northern Avenue, extended eastwardly, the United States combined bulkhead and pierhead line as it existed on November 1, 1966, and the north line of Hanover Street, extended easterly, is hereby declared to be not a navigable water of the United States within the meaning of the Constitution and the laws of the United States.

Mr. FRIEDEL. I understand that this proposed legislation has local support and involves no burden on the Federal Treasury. At this time, we will hear from Col. Richard L. Seidel, Assistant Director of Civil Works for the Atlantic Divisions, Corps of Engineers, Department of Army.

Colonel Seidel.

Colonel SEIDEL. Thank you, Mr. Chairman.

**STATEMENT OF COL. RICHARD L. SEIDEL, ASSISTANT DIRECTOR
OF CIVIL WORKS FOR ATLANTIC DIVISIONS, CORPS OF ENGI-
NEERS, DEPARTMENT OF THE ARMY; ACCOMPANIED BY LESTER
EDELMAN, ASSISTANT TO THE GENERAL COUNSEL, CIVIL
FUNCTIONS, CORPS OF ENGINEERS**

Mr. Chairman, members of the committee, my name is Col. Richard L. Seidel; I am the Assistant Director of Civil Works for the Atlantic Divisions, Office, Chief of Engineers. Accompanying me this morning is Mr. Lester Edelman, Assistant to the General Counsel for Civil Functions, Office, Chief of Engineers.

My testimony concerns H.R. 14681. This bill would declare the portion of Boston Inner Harbor and Fort Point Channel in Suffolk County, Mass., lying between the south line of Northern Avenue, extended eastwardly, the United States combined bulkhead and pierhead line as it existed on November 1, 1966, and the north line of Hanover Street, extended easterly, a nonnavigable waterway of the United States within the meaning of the Constitution and laws of the United States.

The area so described in the bill involves certain tidelands along the Atlantic Avenue and Commercial Street waterfront in the city of Boston. We understand that the area is part "F" of an urban renewal project involving the Federal Housing Administration and the city of Boston.

H.R. 14681 would eliminate the future possibility, however remote, that present bulkhead lines established by the Department of the Army might be moved shoreward or that the paramount navigation servitude of the United States might otherwise be exercised requiring the removal of buildings or other structures without compensation.

The Legislature of the Commonwealth of Massachusetts enacted legislation in 1964 which provides for the issuance by the Department of Public Works of irrevocable licenses for filling and erection of structures and it is our understanding that four such licenses in the area described by H.R. 14681 have been issued.

A 35-foot federally authorized channel adjoins the tidelands, but will not be affected by development of the area shoreward of the combined bulkhead and pierhead line. The area is generally deteriorated and there is little marine activity at the present time.

An aquarium to be opened to the public is presently nearly completed in the area.

In view of the fact that the subject area is shoreward of the bulkhead and pierhead line, the rights of all parties, private, city, and State having been considered and resolved by State action, and there appearing to be no adverse effects on general navigation, the Department of the Army has no objection to H.R. 14681 but offers the following comments:

Since the *Daniel Ball* decision, 77 U.S. 557 (1870), it has been clear that what constitutes navigable waters of the United States is an issue of fact to be determined judicially, not legislatively, insofar as it may affect the admiralty and maritime jurisdiction of the courts under article III, section 2 of the Constitution.

However, there is no question but that the Congress may, in the exercise of its commerce power, article I, section 8, declare navigable water nonnavigable for the purpose of excluding it from the coverage of other congressional enactments.

Since the purpose of the bill may be fully achieved by declaring these waters nonnavigable, "within the meaning of the laws of the United States," it is suggested that the bill be amended to avoid the constitutional law question.

This can be accomplished by deleting the words "The Constitution and" on line 10 of the bill.

This Department further notes that, although in the past Congress has on various occasions declared upper reaches of streams or remote areas to be nonnavigable waters of the United States, only once has the Congress declared a portion of a factually navigable river to be nonnavigable.

Section 307 of the River and Harbor Act of 1965 declared a portion of the East River in New York City to be not a navigable water of the United States. Should H.R. 14681 be enacted it would constitute the second such instance.

Due to the shortness of time, the views of the Bureau of the Budget have not been obtained on this report at this time.

Mr. Chairman, this completes my statement.

Mr. FRIEDEL. Have you had any opposition whatsoever or heard of any opposition?

Colonel SEIDEL. We have had no opposition recorded through our New England office—to the knowledge of our New England division engineer, sir. We used him as our contact agency in the area, and we have no knowledge of any opposition.

Mr. FRIEDEL. Do we have any letters? I am going to ask the staff here. Do we have any letters from anyone in Boston in favor of this legislation?

Mr. GUTHRIE. No, sir. To my knowledge, there is nothing in the file at this time.

Mr. FRIEDEL. I see. Mr. Devine.

Mr. DEVINE. Mr. Chairman, I might suggest that it would be well for us to have the very letters you made inquiry about. If we have letters from the mayor or city manager of Boston, whatever they have there, or from the Planning Commission.

Mr. FRIEDEL. It is redevelopment.

Mr. DEVINE. And any affected property owners, either stressing that they are in favor or opposed to this, so that we have something to go on, other than the mere statement that there has been no opposition. How highly publicized has this plan been?

You showed us a spread from a newspaper. It shows a nice colored picture, but it does not show what it is going to do by the declaration. What is the real purpose of this? To clear title?

Colonel SEIDEL. We think that is the real purpose, yes, sir.

Mr. DEVINE. And who is requesting it?

I don't mean who is the author of the bill, but who wants this done? What group or groups of persons?

Colonel SEIDEL. Well—

Mr. EDELMAN. It is our understanding on this—

Mr. FRIEDEL. This is Mr. Lester Edelman.

Colonel SEIDEL. Yes.

Mr. EDELMAN. We have not made contact with either the urban renewal sponsors or the Federal Housing Administration. Our division engineer talked to the people who were handling the project for the development site, to find out the nature of the project.

It is our understanding, based on this information, that, in order to get a loan from the financing company, they must show a clear title.

Mr. DEVINE. Who has to get a loan from the finance company?

Mr. EDELMAN. In order to get financing for these projects, they must have a clear title.

Mr. DEVINE. For whom to get financing?

Mr. EDELMAN. The development authority.

Mr. DEVINE. I see.

Mr. EDELMAN. The question of clear title is a problem we have had around the country over the years, sir. The developers of the tide-lands can fill, and they can erect structures, subject to the naviga-

tional servitude; that is, the paramount right of the United States to exercise the navigational servitude and to compel renewal without having to pay compensation.

This means that if in the future a navigation project were desirable or necessary that the limited States could order anyone within these lines, these bulkhead lines, as stated here, to move the structures out at no cost to the Government.

Now, it is quite unlikely—we have been saying this over and over again to these title companies—it is quite unlikely this would ever happen.

It is inconceivable to me that the Congress would authorize a project where they would move half a dozen office buildings or apartment buildings out of the way, with no compensation to the owners.

It is just inconceivable, but nevertheless, as far as the title companies are concerned, they consider it a major problem and they do reserve in any title guarantee that they give the exercise of the navigational servitude by the Federal Government.

This, of course, then puts a cloud on the title.

Mr. DEVINE. Would it be accurate to say that the proposed developers are the sponsors of this legislation, or the supporters of it, primarily?

Mr. EDELMAN. I would assume that is probable.

Mr. DEVINE. We may have to answer these questions I am asking you on the floor. That is why I am pursuing this. Now, the speaker is the author of this bill, and he, being a resident of Boston, was contacted by someone. Could you tell me who called on the Corps of Engineers to testify on behalf of this bill, what group or groups?

Mr. EDELMAN. We are not testifying on behalf of this bill, sir. We have been asked by the committee to give our views.

Mr. DEVINE. You have been invited by this subcommittee to give your views.

Mr. EDELMAN. That is right.

Colonel SEIDEL. Yes, sir.

Mr. DEVINE. Were you aware of the existence of this thing, prior to the request to appear?

Colonel SEIDEL. I would have to ask Mr. Edelman, sir. I was not.

Mr. EDELMAN. Well the first indication of this bill that I had, as legislative counsel for the corps, was when the bill was introduced. I understand, however, that, prior to the introduction of the bill, that this matter had been discussed, maybe last September, back in our Division Engineer office, with some local representation, and I assume, again, that the representation was by the law firm representing the developers.

Mr. DEVINE. To determine whether the Corps had any objection to the legislation?

Mr. EDELMAN. That is right. Whether there were any navigation problems in this.

Mr. DEVINE. And you find none?

Mr. EDELMAN. We found none.

Mr. DEVINE. And you don't anticipate any?

Mr. EDELMAN. That is right, sir.

Colonel SEIDEL. That is right, sir.

Mr. FRIEDEL. Do you have the date of that newspaper article, and the name of the paper that had the article?

Mr. EDELMAN. Yes, February 11, 1968, and it is supplement to the Boston Sunday Herald-Traveler.

Mr. DEVINE. Is that a newspaper of wide distribution in the Boston area?

Mr. EDELMAN. Yes, sir.

Mr. FRIEDEL. Well, I imagine that article in the press would bring out some opposition, if there were any. I mean, I don't know of any, but that being circulated, we should have heard something. Have you heard of any?

Mr. GUTHRIE. No, sir; I have not heard of any objection.

Mr. DEVINE. I would suggest, Mr. Chairman, that we do get a letter from the city fathers of Boston to get an attitude one way or another, either in support or neutral, or in opposition to it, so we can answer these questions.

Mr. FRIEDEL. Well, we ought to contact the urban renewal project who has that, and have their feeling on it, the chamber of commerce.

Mr. DEVINE. And the mayor.

Mr. FRIEDEL. And the mayor.

Mr. EDELMAN. Perhaps I might read a portion of a teletype that was sent to us by our division office the other day. It might clear up who some of the parties involved in this development are. It states: "The area is part of an urban renewal project under a loan and grant agreement between the Federal Government through FHA and the City of Boston, according to James White, attorney for Boston Waterfront Association, and affiliate of the Dreyfus company, a real estate developer."

These are the parties that seem to be involved.

Mr. DEVINE. Yes, the real estate developer. We find them lurking in the background frequently, in legislation.

Mr. FRIEDEL. All right, any other questions?

Well, thank you very much.

Colonel SEIDEL. Thank you, Mr. Chairman.

Mr. FRIEDEL. Thank you, gentlemen. Our meeting is adjourned. (The following letters were submitted for the record:)

OFFICE OF THE MAYOR,
Boston, Mass.

HON. JOHN W. McCORMACK,
House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: I would like to add my personal support to the proposal that Congress declare nonnavigable the Atlantic Avenue Waterfront in Boston's inner harbor. Such a declaration would remove a legal obstacle to private development in that area and accordingly would be of general benefit to the Waterfront Urban Renewal Project area and to the city.

We appreciate your cooperation in this matter.

Sincerely yours,

KEVIN H. WHITE, Mayor.

BOSTON REDEVELOPMENT AUTHORITY,
Boston, Mass., October 20, 1967.

EDWARD J. McCORMACK, Jr.,
Boston, Mass.

DEAR EDDIE: I have looked into the questions you raised with me regarding the proposed legislation affecting the downtown waterfront area to have the waters inside the harbor line classified as nonnavigable.

This legislation, if adopted by the Congress, would be of general benefit to the project area.

Very truly yours,

FRANCIS X. CUDDY,
Development Administrator.

MASSACHUSETTS PORT AUTHORITY,
Boston, Mass., February 28, 1968.

EDWARD J. McCORMACK, Jr.,
Boston, Mass.

DEAR MR. McCORMACK: Confirming our phone conversation of this noon, the Massachusetts Port Authority is in accord with bill H.R. 14681 which provides for the removal from navigable waters that portion of the Boston Inner Harbor starting from the Fort Point Channel at the northern point of Northern Avenue and running northeastwardly to a point along Atlantic Avenue where it is intersected by Hanover Street.

Very truly yours,

THOMAS T. SOULES,
Director, Port of Boston.

GREATER BOSTON CHAMBER OF COMMERCE,
Boston, Mass., March 5, 1968.

Re H.R. 14681.

DR. MARTIN SWEIG,
House of Representatives,
Washington, D.C.

DEAR DR. SWEIG: Please be advised that the Boston Chamber of Commerce endorses and urges the passage of bill H.R. 14681. The passage of this bill will encourage continued urban renewal along the waterfront in the City of Boston in accordance with the Urban Renewal Plan for that area, which this organization has continually supported and wishes to see carried through to a successful conclusion.

Very truly yours,

BERNARD J. O'KEEFE, President.

(Whereupon, at 10:33 a.m., the subcommittee adjourned.)

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