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**Veto Message: Governor Washburn
1869 (H.104)**

An act relating to ditches and water courses.

STATE OF VERMONT
Executive Department.
Montpelier, Vt., Nov. 16, 1869.

A message from his Excellency, the Governor, by Mr. Marsh,
Secretary of Civil and Military Affairs, as follows:

Mr. SPEAKER: I am directed by the Governor to return herewith to
the House of Representatives, House bill No. 104, entitled "An act
relating to ditches and water courses," without his approval and
with his objections thereto in writing as follows

The Speaker of the House of Representatives:

SIR: I return herewith to the House of Representatives, without
my approval, a bill originating in the House, entitled " An act
relating to ditches and water courses."

It is well settled, that private property can not be taken for any
other than a public use, either with or without compensation, and
that it can not be taken even for such public use, without such
compensation is actually secured to the owner before it is taken
and appropriated to such use.

This bill provides, that when it is for the interest of individuals,
owning adjoining lands, to open a ditch or water course for the
purpose of draining such lands, they shall bear jointly the expense
of opening such ditch or water course, and if they can not agree
upon what is the fair proportion of the expense to be borne by
each, the selectmen of the town shall decide between them. By
section six it provides, that if it is necessary to extend such ditch
or water course across the land of a third person, and the

selectmen shall decide that said third person will not be benefited thereby, then that the parties to be benefited thereby may construct such ditch or water course across the land of said third person at their own expense, "without being trespassers therefor." And by subsequent sections it is provided, that if such person shall claim damages therefor, he may apply to the selectmen to appraise them, and may appeal from their decision.

It thus directly authorizes the taking of the land of such third person for the purpose of the ditch or water course, without his consent, and without securing to him any compensation before his land is entered upon for that purpose.

And the bill does not even profess thus to take his property, or create an easement upon his land for a *public* use. By the first section it is declared in terms to be for the *private* use of the parties who are to be benefited by the ditch or water course. It is thus in conflict with the second article of the Bill of Rights in the Constitution of this State, and at variance with well established rules of constitutional law.

And it is equally at variance with the requirements of the Constitution in not requiring compensation to be made to the party whose land is taken without his consent, previous to its being taken. And in this respect it is also at variance with the uniform requirements of the Statute law of this State in reference to the taking of land for highways, railroads, school houses and cemeteries, and the taking for public use of the franchise of a turnpike or toll bridge company.

I therefore respectfully return the bill to the House of Representatives for their further consideration.

PETER T. WASHBURN,
Governor

Governor's Veto Sustained
H.104 1869

The Governor's veto was sustained in the House:

Yeas 0 Nays 206

Sources: *Journal of the House*, November 16, 1869 (pages 250-252)