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LAW OF MARYLAND

Passed at December Session, 1828.
An Act incorporating the Annapolis and Potomac Canal Company.

WHEREAS a navigable canal, connecting the city of Annapolis with the Chesapeake and Ohio Canal, either through the District of Columbia, or by any other route which may be selected by the company hereinafter incorporated, to be fed through its course by all such streams of water or rivers, or by the waters of the Chesapeake and Ohio Canal, if in the opinion of the president, directors and stockholders of the Chesapeake and Ohio Canal Company, after examination, it will not injure or impede the navigation of said canal, as may be beneficially drawn thereto by feeders, dams, or in any other practicable mode, will be a work of great profit and advantage to the people of this state, and of the Union, by opening a more direct and expeditious communication between the Chesapeake and Ohio Canal, and the Chesapeake Bay, than the circuitous and difficult navigation of the Potomac river; therefore,

Sec. 1. *Be it enacted by the General Assembly of Maryland,* That so soon as the President of the United States shall assent to the provisions of this act, in the manner required by the twenty first section of the act incorporating the Chesapeake and Ohio Canal Company, there shall be appointed, by the executive of this state, nine commissioners, of whom three shall be residents of the city of Annapolis, or Anne-Arundel county; three shall be residents of the city of Baltimore; and three shall be residents in the town of Bladensburg; and the president of the United States shall also appoint three commissioners who shall be residents of the city of Washington or Georgetown, any one of whom shall be competent to act for the place for which he shall have been appointed, who shall cause books to be opened at such times and places, as they shall think proper, within the limits of the cities and towns for which they shall have been appointed, for receiving subscriptions to the capital stock of the company hereinafter incorporated, which subscriptions may be made either in person, or by power of attorney, and notice shall be given in such manner as a majority of those who consent to act shall deem advisable, of the time, place of opening the books.

Sec. 2. *And be it enacted,* That the said commissioners shall cause the books to be kept open at least forty days, and within twenty days after the expiration thereof shall call a general meeting of the subscribers at the city of Annapolis, of which meeting notice shall be given by a majority of the commissioners aforesaid, in at least four newspapers printed in Annapolis, Washington, Baltimore and Philadelphia, at least twenty days next before the said meeting; and such meeting shall and may be continued from day to day until the business is finished; and the commissioners, at the time and place aforesaid, shall meet before such subscribers as shall meet according to the said notice, the books containing the state of said subscriptions; and if one third of the capital stock of six hundred thousand dollars shall appear not to have been subscribed, then the said commissioners, or a majority of them, at the said meeting, are empowered to take and receive subscriptions to make up such deficiency, and may continue to take and receive such subscriptions for the term of twelve months thereafter; and a just and true list of all the subscribers, with the sum subscribed by each, shall be made out and returned by the said commissioners, or a majority of them, under their hands, to the governor and council of this state, to be carefully preserved; and in case more than six hundred thousand dollars shall be subscribed, then the sum subscribed shall be reduced to that amount by the said commissioners, or a majority of them, by beginning at, and striking off, a share from the largest subscription or subscriptions, and continuing to strike off a share from all subscriptions until the largest, and above one share, until the same is reduced to the capital aforesaid, or until a share is taken from all subscriptions above one share, and lots shall be drawn between subscribers of equal sums, to determine the number of shares which each subscriber shall be allowed to hold, on a lot to be made out for striking out as aforesaid; and if the sum subscribed still exceeds the capital

aforsaid, then to strike off by the same rule, until the sum subscribed is reduced to the capital aforesaid, or all the subscriptions reduced to one share respectively; and if there shall be an excess, then lots shall be drawn to determine the subscribers who are to be excluded, to reduce the subscription to the capital aforesaid, which striking off shall be certified on the list aforesaid; and the said capital stock of the company hereby incorporated, shall consist of six hundred thousand shares, divided into six thousand shares of one hundred each, of which every person subscribing *make take and subscribe for one or more whole shares, and such subscriptions shall be paid and discharged in legal currency of the United States; Provided,* that unless one third of the said capital shall be subscribed as aforesaid, all subscriptions made in consequence of this act, shall be void; and in case one third and less than the whole capital shall be subscribed as aforesaid, then the said commissioners, or a majority of them, are hereby empowered and directed to take and receive the subscriptions, which shall first be offered in whole shares as aforesaid, until the deficiency shall be made up; a certificate of which additional subscription shall be made under the hands of the said commissioners, or a majority of them, for the time being, and returned as aforesaid.

Sec. 3. *And be it enacted,* That when one third or a greater part of the said capital stock shall have been subscribed in manner aforesaid, the subscribers, their heirs and assigns, or legal representatives, shall be, and are hereby declared to be incorporated into a company by the name of the Annapolis and Potomac Canal Company, and may sue and be sued as such, shall have perpetual succession, and a common seal; and the estates, rights and interests, of said company, shall be adjudged and taken in law to be real estates; and it shall thereupon be the duty of the said commissioners, or a majority of them, to call a general meeting of the said subscribers at such time and place as a majority of them shall appoint, after advertising the same in such public prints as they, or a majority of them, shall think proper; and such of the said subscribers as shall be present at the said meeting, or a majority of them, are hereby empowered and required to elect a president, and six directors, for conducting said undertaking, and managing all the said company's business and concerns, for and during such time, not exceeding three years, as the said subscribers, or a majority of them, shall think fit; and in counting the votes of all general meetings of the said company, each member shall be allowed one vote for every share, as far as ten shares, and one vote for every five shares above ten, by him or her held at the time in the stock of the said company; and any proprietor, by writing under his or her hand, executed before two witnesses, may depose any other member or proprietor to vote and act as proxy for him or her at any general meeting; *Provided,* also, that no director of said company shall, under any circumstances, be allowed to vote on any stock but his own.

Sec. 4. *And be it enacted,* That the said president and directors, and their successors, or a majority of them assembled, shall have full power and authority to appoint, and at their pleasure to dismiss, such engineer or engineers, and agent or agents, as they may deem expedient, and to fix their compensation, and to agree with any person or persons on behalf of the said company, to cut canals, erect dams, open feeders, construct locks, and perform such other works as they shall judge necessary or expedient for completing the canal hereinafter mentioned and described; and out of the money arising from the subscriptions and tolls and other aids hereinafter given, to pay for the same, and to repair and keep in order said canals, locks, and other works, necessary thereto, and to defray all incidental charges, and also to appoint a treasurer, clerk, and other officers, toll-gatherers, managers and servants, as they shall judge requisite, and to agree for and settle their respective wages and allowances, and to settle, pass, and sign their accounts, and also to make and establish rules of proceeding, and to transact all other business and concerns of the said company, in and during the intervals be-

tween the general meetings of the same; and they shall be allowed, as a compensation for their trouble therein, such sums of money as shall, by a general meeting of the stockholders, be determined; *Provided,* always, that the treasurer shall give bond in such penalty, and with such security, as the said president and directors, or a majority of them, shall direct, for the true and faithful discharge of the trust reposed in him, and that the allowance to be made him for his service shall not exceed three dollars in the hundred, for the disbursements by him made, and that no officer in the settling or passing of his own account.

Sec. 5. *And be it enacted,* That on all subscriptions there shall be paid, at the time of subscription, on each share, one dollar, and thereafter, when the company shall be formed, the stock subscribed shall be paid in such instalments, and at such time, as the president and directors shall, from time to time require, as the work advances; *Provided,* that not more than one third part shall be demanded within any year from the commencement of the work, nor any payment demanded until at least sixty days public notice thereof shall have been given in such public newspaper as the said president and directors shall direct such notice to be published in; and whenever any subscriber shall fail to pay any instalment called for by the company, it shall and may be lawful for the company, upon motion to be made in any court of record, after ten days notice, to obtain judgment against the subscriber so failing to pay; or the said company may, at their option, after sixty days notice in such public newspaper printed within the city of Annapolis, the District of Columbia, and the city of Philadelphia, as they may judge proper, sell the stock of such subscriber, and if the proceeds of any such sale shall exceed the sum demanded, the surplus, after paying the expenses of such sale, shall be paid to the subscriber so failing, or his representatives, and the purchaser at such sale shall become a stockholder, and be subject to the same rules and regulations, and entitled to the same privileges, rights and emoluments, as original subscribers under this act.

Sec. 6. *And,* to continue the succession of the said president and directors, and to keep up the said number, *Be it enacted,* That from time to time, upon the expiration of said term for which the said president and directors were appointed, the proprietors of the said company, at the next general meeting, shall either continue the said president and directors, or any of them, or choose others in their stead, and until such choice be made, the president and directors, for the time being, shall continue in office; and in case of the death, removal, resignation, or incapacity, of the president or any of the said directors, any and shall, in manner aforesaid, elect any other person or persons to be president and directors in the room of him or them so dying, removing or resigning, and may, at any of their general meetings, remove the president, or any of the directors, and appoint others for and during the remainder of the term for which such person or persons were at first to have acted.

Sec. 7. *And be it enacted,* That every president and director, before he acts as such, shall take an oath, or affirmation, for the due execution of his office.

Sec. 8. *And be it enacted,* That the presence of the stockholders having a major part of the stock at least, shall be necessary to constitute a general meeting of the stockholders, which shall be held at such convenient town or place, as shall be from time to time appointed by the said general meetings; but if a sufficient number shall not attend on that day, the stockholders who do attend, may adjourn from time to time, until the stockholders holding the major part of the stock do attend, and the business of the company is finished, to which meeting the president and directors shall make report, and render distinct accounts of all their proceedings, and on finding them fairly and justly stated, the stockholders then present, or a majority of them, shall give a certificate thereof, a duplicate of which shall be entered on the company's books; and at such yearly general meeting, after leaving in the

hand of the treasurer such sums as the stockholders, or a majority of them, shall judge necessary for repairs and contingent charges, an equal dividend of all the net profits arising from the tolls hereby granted, shall be ordered and made to and among all the stockholders of said company, in proportion to their several shares, subject to the provisions and enactments hereinafter declared; and upon any emergency, in the interval between said yearly meetings, the said president, or a majority of said directors, may appoint a general meeting of the stockholders of the company, at any convenient town or place, giving at least one month previous notice in at least four newspapers in the city of Annapolis, Baltimore, Washington and Philadelphia, which meeting may be adjourned and continued as aforesaid; and in case the stockholders, or a majority of them, in any general meeting aforesaid, shall deem it expedient to order a semi-annual, rather than a yearly dividend, as aforesaid, then in like manner, with like notice and under like restrictions, there shall be a semi-annual or yearly dividend of net profits declared and paid.

Sec. 9. *And be it enacted,* That for and in consideration of the expense the said stockholders will be at, not only in cutting the said canal, erecting locks and dams, providing aqueducts, feeders and other works, and improving and keeping the same in repair, the said canal, and all other works aforesaid, or such as may be hereafter required to improve the navigation thereof, at any time hereafter, with all their profits, subject to the limitations herein provided, and to none other, shall be and the same are hereby vested in the said stockholders, their heirs and assigns, for ever, as tenants in common, in proportion to their respective shares, and subject to the same tax as other incorporated companies in this state; and that it shall and may be lawful for the said president and directors, at all times, for ever hereafter, to demand and receive, at such places as shall be hereafter appointed by the president and directors as aforesaid, tolls for the passage of vessels, boats, rafts, produce, and all other articles, at such rates as the said president and directors may hereafter allow and establish according to the provisions of this act.

Sec. 10. *And be it enacted,* That if any of the commissioners hereby required to be appointed, shall die, resign, or refuse to act, the vacancy occasioned thereby shall be filled by the same authority by which the original appointment was made, and the person or persons appointed to fill such vacancy, shall have all the power and authority which was vested in the commissioner or commissioners, whose place he or they were appointed to fill; and when any part of the canal aforesaid shall have been completed according to the true intent and meaning of this act, the president and directors of the company hereby created, shall have power, and it shall be their duty to ordain and establish a rate of tolls, to be paid upon boats, vessels, rafts, or other property, passing on the part of the canal so completed, and from time to time, as part or parts shall be completed, and thereafter until the entire canal shall have been finished according to the true intent and meaning of this act, for the collection of which tolls, the president and directors shall have power to establish so many toll-houses, and at their pleasure to appoint and remove so many collectors, at such places, as from time to time they may judge expedient; and the said president and directors shall have full power and authority, subject to the direction and control of a majority in interest of the stockholders represented in general meeting, to regulate and fix a tariff of tolls not exceeding an average of two cents per ton per mile, and so adjust the said tolls in relation to the burthen or capacity of the boats, and the dimensions of the rafts passing the locks of the said canal, as to promote economy of water and time in the navigation thereof.

Sec. 11. *And be it enacted,* That the president and directors shall annually, or semi-annually, declare and make such dividend of the net profits from the tolls to be received according to the provisions of this act, and from the other resources of the company, as they shall deem advisable, after deducting therefrom the neces-

sary current, and the probable contingent expenses, to be divided among the proprietors of the stock of the said company, in proportion to their respective shares.

Sec. 12. *And be it enacted,* That the said canal, and the works to be erected thereon in virtue of this act, when completed, shall for ever thereafter be esteemed and taken to be navigable, as a public highway, free for the transportation of all goods, commodities and produce whatever, on payment of the tolls to be imposed as provided by this act, and no other toll or tax whatever, for the use of the said canal, and the works thereon erected, shall at any time hereafter be imposed, but by the consent of the legislature of Maryland.

Sec. 13. *And,* whereas it is necessary for the making of the said canal, locks, dams, feeders, ponds, and other works, that a provision should be made for the condemning a quantity of land for the purpose, *Be it enacted,* That it shall and may be lawful for the said president and directors, or a majority of them, to agree with the owners of any land, through which the said canal is intended to pass, for the purchase or use and occupation thereof, and in case of disagreement, or in case the owner thereof shall be a *feme covert*, under age, or *non compos mentis*, or out of the state or county, on application to a justice of the county in which such land shall be, the said justice of the peace shall issue his warrant, under his hand, to the sheriff of the county, to summon a jury of twenty inhabitants of said county, not related to the parties, nor in any manner interested, to meet on the land to be valued, at a day to be expressed in the warrant, not less than ten nor more than twenty days thereafter, and the sheriff, upon receiving the said warrant, shall forthwith summon the said jury, and when met, shall administer an oath or affirmation, to every jurymen who shall appear, not being less than twelve in number, that he will faithfully, justly and impartially, value the land, and all damages the owner shall sustain by cutting the canal through such land, or the partial or temporary appropriation, use or occupation, of such land, according to the best of his skill and judgment, and that in such valuation he will not spare any person for favour or affection, nor any person grieve through malice, hatred or ill-will; and the injunction thereupon taken shall be signed by the sheriff, and some twelve or more of the jury, and returned by the sheriff to the clerk of his county, and unless good cause be shown against said injunction, it shall be affirmed by the court, and recorded; but if the said injunction should be set aside, or if, from any cause, no injunction should be returned to such court within a reasonable time, the said court may, at its discretion, as often as it may be necessary, direct another injunction to be taken in the manner aforesaid; and upon every such valuation, the jury is hereby directed to describe and ascertain the bounds of the land by them valued, and the quality and duration of the interest and estate in the same required by the said company for its use, and their valuation shall be conclusive on all persons, and shall be paid for by the president and directors to the owners of the land or his legal representatives, and on payment thereof the said company shall be seized of such land as of an absolute estate in perpetuity, or with such less quantity and duration of interest and estate in the same, or subject to such partial or temporary appropriation, use or occupation, as shall be required and described as aforesaid, as if conveyed by the owner of them; and whenever, in the construction of the said canal, or any of the works thereof, locks, dams, ponds, feeders, tunnels, aqueducts, culverts, bridges, or works of any other description whatsoever, appertaining thereto, it shall be necessary to use earth, timber, gravel or stone, or any other material to be found on any of the lands adjacent or near thereto, and the said president and directors, or their agent, cannot procure the same for the works aforesaid by private contract of the proprietor or owner on reasonable terms, or in case the owner should be a *feme covert* or *non compos mentis*, under age, or out of the county or state, the same proceedings in all respects shall be had as in the case

before mentioned of cases in which condemnation of land required for the canal, or the works appertaining thereto.

Sec. 14. *And be it enacted,* That it shall be the duty of the company hereby incorporated, to cut, make and construct the said canal, with good and sufficient locks, on the most approved plans for expedition in the use thereof, and with the width of not less than forty feet at the surface of the water therein, or of twenty-eight feet at the bottom thereof, unless the quantity of the soil shall require a narrower base, of sufficient slope to preserve the banks from sliding down, and sufficient to admit, at all seasons, the navigation of boats and rafts, with a depth of four feet water at least; and whenever waters shall be essential to the security of the said canal, and in no other situation along the same, the waste water of the said canal may be from time to time, sold or disposed of by the said company, for the purpose of supplying such works and machinery as require a waterpower; and along one side at least of the said canal, and such aqueducts as it may render necessary, there shall be provided throughout its whole extent a towing path of sufficient breadth to apply the power of horses to the navigation thereof.

Sec. 15. *And be it enacted,* That it shall and may be lawful for any of the said stockholders to transfer his or her shares, by deed, executed before two witnesses, and registered, after proof of the execution thereof, on the company's books, and not otherwise, except by devise, which devise shall be also exhibited to the president and directors, and registered in the company's books before the devise or devisees shall be entitled to draw any part of the profits from the said tolls or dividends; *Provided,* that no transfer whatsoever shall be made, except for one or more share or shares and not for part of such share or shares, and that no share or shares shall, at any time, be sold, conveyed, or held in trust, for the use and benefit, or in the name of another, whereby the said president and directors, or stockholders of said company, or any of them, shall or may be challenged or made to answer concerning any such trust; but that every person appearing as aforesaid, to be a stockholder, shall, as to others of the said company, be to every intent taken absolutely as such; but as between any trustee and the person for whose benefit any trust shall be created, the common remedy may be pursued.

Sec. 16. *And be it enacted,* That if the said capital, and the other aids already granted by this act, shall prove insufficient, it shall and may be lawful for the said company, from time to time, to increase the said capital, by the addition of so many whole shares as shall be judged necessary by the said stockholders, or a majority of them present at any general meeting of the said company, and the said president and directors, or a majority of them, are hereby empowered and required, after giving at least two months previous notice thereof, in at least four of the newspapers of the city of Annapolis, Washington and Baltimore, to open books in the before mentioned cities for receiving and entering additional subscriptions, in which the stockholders of the said company, for the time being, shall, and are hereby declared to have the preference, of all others, for the first thirty days after the said books shall be opened, as aforesaid, of taking and subscribing for so many whole shares as any of them shall choose, and the said president and directors are hereby required to observe, in all other respects, the same rules therein, as are by this act prescribed, for receiving and adjusting the first subscriptions, in like manner to return under the hands of any three or more of them, an exact list of all such additional subscriptions, with the sums subscribed, to the public authorities as aforesaid, and by them preserved as aforesaid; and all such stockholders of such additional shares shall and are hereby declared to be from thence forward incorporated into this company.

Sec. 17. *And be it enacted,* That whenever it shall become necessary to subject the lands of any individuals to the purposes provided for in this act, and their consent cannot be