

## CHAPTER LXVI.

[H. B. No. 208.]

## PROVIDING FOR THE ESTABLISHMENT OF DITCHES.

AN ACT providing for the establishment and construction of ditches for drainage purposes.

*Be it enacted by the Legislature of the State of Washington :*

REQUIREMENTS. SECTION 1. Whenever one or more persons whose land will be benefited thereby shall desire to have a ditch, drain or water course located, constructed, straightened, widened, altered or deepened, and they shall not desire to be incorporated as a drainage district, or there shall not be a sufficient number to be benefited by such ditch to form such a drainage district, proceedings for the construction of such ditch or drain shall be as provided for in this act.

DEFINITION. SEC. 2. The word "ditch" as used in this act shall be held to include a drain or water course. The petition for any such improvement shall be held to include any side, lateral, spur or branch ditch, drain or water course necessary to secure the object of the improvement whether the same is mentioned therein or not. BUT NO IMPROVEMENT SHALL BE LOCATED UNLESS A SUFFICIENT OUTLET IS PROVIDED.

APPORTIONMENT. SEC. 3. When the improvements will drain the whole or a part of any public or corporate road or railroad or will so benefit such road that the traveled track or roadbed thereof will be improved by its construction, there shall be apportioned to the county, if the road is a state, county or free turnpike road, or to the corporation if a corporate road or railroad, a proper share of the costs and expense thereof as hereinafter provided.

APPLICATION. SEC. 4. Application for any such improvement shall be made to the commissioners of the county, signed by one or more owners of lots or lands which will be benefited thereby.

SEC. 5. The petition shall be filed with the clerk of the board of county commissioners and shall set forth

the necessity of the improvement, and describe the route and termini thereof, and there shall be filed therewith a bond, payable to the county, with at least two good and sufficient sureties, in not less than two hundred dollars, conditioned for the payment of all costs if the prayer of the petition be not granted, or dismissed for any cause by the board of county commissioners.

Filing petition.

Sureties.

SEC. 6. If the bond be approved by the board of county commissioners, the clerk of the board shall deliver a copy of said petition to the county surveyor, who shall at once proceed to view the line of the proposed improvement and determine by actual view of the premises along and adjacent thereto whether the improvement is necessary, or will be conducive to public health, convenience or welfare, or whether the line described is the best route, and he shall report his findings in writing to the board of county commissioners, and the clerk shall enter said report upon the journal of the board.

Bond.

Report of surveyor.

SEC. 7. If the report of the county surveyor shall be against the improvement, upon the adoption of the report by the board the petition shall be dismissed at the cost of the petitioners and they shall cause an itemized bill of all the costs to be made up by the clerk for their examination and approval, which shall include the per diem of the county surveyor, together with all other costs necessarily made, except the fees of the clerk and the compensation of the county commissioners.

What report shall contain.

SEC. 8. If the report of the county surveyor shall be for said improvement, the commissioners shall cause to be entered on their journal an order directing the county surveyor to go upon the line described in the petition, or as changed by them, and survey and level the same and set a stake at every hundred feet, numbering down stream; note the intersection of lines and boundaries of lands, township and county lines, land marks and road crossings, and make a report, profile and plat of the same.

Order directing surveyor.

Return of  
schedule.

SEC. 9. The commissioners shall also by their order direct the county surveyor to make and return a schedule of all the lots and lands and public or corporate roads or railroads that will be benefited by the improvement, and shall make an estimate of the total number of acres to be improved by the construction of said ditch, and the specification of the manner in which the improvement is to be made and completed, the damages that will accrue to each piece of land by reason of said improvement, the number of flood gates, waterways, farm crossings and bridges necessary, including kind and dimensions thereof, and of all county and district lines and railroad crossings.

Plat.

SEC. 10. The plat provided for in section 8 of this act shall be drawn upon a scale sufficiently large to represent all the meanderings of the proposed improvement, and shall distinctly show the boundaries of each lot or tract of land, and of each road or railroad to be benefited thereby, the name of the owner of each lot or tract of land, as the same appears upon the records of the county, the authority or company having in charge or owning or controlling each public or corporate road or railroad, the distance in feet through each tract or parcel of land, together with such other matters as the county surveyor shall deem material. The

Profile.

profile shall show the surface, the grade line and the gradient fixed, and the county surveyor shall make and file with his report an itemized bill of the costs made in the proper discharge of his duties under this and the previous sections and shall report the same to the clerk of the board of county commissioners within ten days after the completion of the survey and level.

Report.

Hearing.

SEC. 11. Upon the filing of the report of the county surveyor the board of county commissioners shall immediately fix a day for the hearing of such report, and shall direct the sheriff of the county to notify each person affected or to be affected by such improvement, of the day set for hearing by serving a written notice upon such persons, if they can be found in the county, and if they cannot be found in the county, then by

Sheriff to give  
notice.

leaving said notice at their residence, if known, and if not known then the clerk of the board shall publish Publication. such notice for two successive issues in the official newspaper of the county, which said notice shall describe the route of the ditch.

SEC. 12. On the day set for hearing such report the board of county commissioners shall meet at their Meeting. office and shall first ascertain if the notice required by the preceding section has been duly given. If they find that due notice has been given they shall proceed Findings. to the hearing of the report of the county surveyor. If at the hearing of the report it shall appear that all the provisions of this law have been observed, and that the damages estimated in the said report have been accepted in writing by all the parties, or if any one shall object to the damages allowed by the county surveyor and shall submit such claim for damages as he shall think just and the board shall have allowed such claim for damages and the amount of damages having been Construction. fully determined, then the board shall proceed with the construction of the ditch as hereinafter set forth.

SEC. 13. Upon the settlement of claims for damages the clerk of the board shall draw his warrant upon the Settlement. treasurer for the amount of damages settled upon.

SEC. 14. If at such hearing as provided for in section 12 of this act, it shall appear to the board that any one Claims for damages. affected by the ditch has not signified his acceptance of the report of the county surveyor as to damages, or if the board shall deem the claim of any one for damages excessive they shall direct the county attorney to at once institute proceedings in the superior court of the county in which said ditch is located for the determination of the damages any one may have sustained, and for the approval of the report of the county surveyor as to damages, and shall direct the clerk of Certified copy. the board to furnish the attorney with a certified copy of all the proceedings had in such matters.

SEC. 15. The trial shall be by jury, unless waived by the parties, and the proceedings shall be the same as Trial. provided for the trial of other civil cases.

Jury. SEC. 16. The jury shall find and return a verdict determining the following matters: Whether the amount of damages allowed by the county surveyor is just, and if they deem it not just they shall allow such damages as they deem just: *Provided*, That the jury shall take into consideration the benefit that said ditch will be to the land through which it runs or drains, in awarding damages.

Proviso.

Damages paid by county treasurer. SEC. 17. Upon the return of the verdict the same shall be recorded and a certified copy of the verdict and the order of the court shall be transmitted to the clerk of the board of county commissioners, whereupon the board shall order the treasurer to pay into court the amount of damages obtained in such trial, from any moneys he shall have on hand under control of the commissioners.

Appointment of supervisor. SEC. 18. Upon the determination of all the damages and the payment thereof, the board of county commissioners shall proceed to appoint a ditch supervisor, who shall be a resident of said drainage district, and who shall hold office for one year, or until a successor is appointed, and who shall give bonds to be fixed and approved by the county commissioners. The said supervisor shall thereupon begin the construction of said ditch at the outlet of the same, and shall construct said ditch under the direction of the county surveyor who located the same.

Construction to be commenced.

Employees. SEC. 19. The supervisor shall employ such number of men as shall be necessary to successfully carry on the work of such construction, and shall give preference in such employment to the persons owning the land to be benefited by the improvement.

Compensation. SEC. 20. The compensation of the ditch supervisor and the men employed upon the improvement shall be fixed by the board of county commissioners, and shall be paid for by warrants upon the county treasurer drawn upon the reports sworn to by the supervisor in charge of such work, which said warrants shall not draw interest until the assessments hereinafter provided shall become delinquent.

SEC. 21. When the improvement is fully completed and accepted by the county surveyor and the board of county commissioners, the clerk shall make a statement of the total costs of the construction of the ditch, including the cost of location and survey, costs of proceedings in court, the supervision of the county surveyor, damages paid and the cost of the work of construction, and shall present the same to the board of county commissioners for examination.

Completion  
and statement  
of costs.

SEC. 22. If the board find the statement of the costs correct they shall immediately order the county surveyor to apportion such costs to the lands benefited, and direct the county surveyor to report such apportionment to the board as soon as the same shall be completed, whereupon the notice of the filing of such apportionment and the time for the hearing of the same shall be given to all parties in the same manner as notice is required to be given in section 11 of this act, and at said hearing any party interested may file in writing any objections of any character to said apportionment, and the board may modify, re-apportion or change in any way said report, but when all the apportionments shall appear fair and just and equitable the board shall enter an order confirming the same and all the proceedings leading up to said apportionment. And said board shall at said hearing determine at what time and in what number of assessments, they will require the same to be paid, and order that the assessments as finally determined be placed upon the tax rolls for the year in which the first assessment is to be paid, against the lots or lands assessed. The treasurer shall collect such assessment in the same manner and at the same time as other taxes are collected, and if such assessments are not paid when due they shall become delinquent, be liable to the same penalty and bear the same interest and be collectible in the same manner as are other taxes assessed against said lots or tracts of land, and the treasurer shall not have authority to receive a portion of the taxes assessed against any piece of land in any one year un-

Apportion-  
ment of costs.

Objections.

Assessments.

Collection of  
assessments.

less he collect the full amount assessed against the lot or tract of land, including the ditch assessment, nor shall he cancel any assessment or allow any rebate except upon order of the board of county commissioners. The receipt for the payment of such ditch assessments shall be included in the receipt for the payment of other taxes for the same year.

Receipt.

Extension of  
assessment on  
tax rolls.

SEC. 23. If the county commissioners determine that the cost of the construction of said ditch shall be paid by two or more assessments, they shall make an order directing the officer who extends the taxes to extend the assessment for each year upon the tax rolls until all the assessments have been levied. When the assessments are paid the treasurer shall pay the same into the fund against which the warrants were drawn until all the costs paid out of such fund in the construction of the ditch shall have been repaid.

Clerk's record.

SEC. 24. The clerk of the board shall keep a special record in which he shall record the proceedings had in the construction of each ditch or improvement constructed under the provisions of this act.

What lands to  
be included.

SEC. 25. All state, school, granted or other lands shall be included within the provisions of this act, and whenever any such land will be benefited by such improvement they shall be included in the apportionment of the costs of the improvement. When an assessment is made against any such land for such improvement it shall be assessed according to subdivision thereof and said land shall be placed upon the tax rolls the same as other land. Should said

Assessment.

state land not be sold by the state before said assessment becomes delinquent then the county commissioners shall direct the payment of said tax out of the general revenue fund of the county, and on the tax rolls shall be entered opposite said tax the words "charged to county revenue fund." The valuation of

Exception.

Valuations.

said state land benefited by said improvement shall not be raised by or on account of said improvement, but when any of such land is offered for sale there shall be added to the appraised value for such lands as

provided for by law the amount of such payments made by the county out of the general fund, which amount so added shall be paid by the purchaser in cash at the time of the sale of said land in addition to the amount due to the state for said land, and such additional sum shall be received by the county treasurer and placed to the credit of the general county fund.

SEC. 26. If the county surveyor or the clerk of the board of county commissioners, or any other officer named in this act, neglect or refuse to perform any duty imposed upon him by the provisions of this act, he shall forfeit and pay a fine of twenty-five dollars for every such neglect, to be recovered before any officer having competent jurisdiction in the name of the state, for the benefit of the common schools of the county at the suit of any person aggrieved thereby.

Negligence of officers.

Penalty.

SEC. 27. The county commissioners may, upon the proper petition and bond being filed and notice having been given for one month, declare any ditch whether located by the county commissioners or others, vacated and abandoned, and its location and establishment to be held for naught, if, in their judgment, the same has ceased to be of public utility and the public convenience or welfare no longer demand the maintenance thereof. But private rights of persons acquired by reason of the location and establishment of such ditch shall not be interfered with nor in any way impaired thereby.

Vacation and abandonment.

Private rights.

SEC. 28. Any ditch which has been constructed under the provisions of any other act relating to the construction of ditches, and which has been in use for a period of three years or more without obstruction or [interruption], and the same shall be necessary to public health, welfare or convenience, shall become a legal ditch upon the passage of this act, and be subject to the provisions of this act affecting such improvements.

Legalizing old ditches.

SEC. 29. The county commissioners may apportion a sum sufficient from the general county fund to pay for the location and construction of such portions of the respective ditches as may be apportioned to the county or upon land owned by the county.

Apportionment.



Improve-  
ments.

SEC. 30. Any natural water course may be improved by the board of county commissioners in accordance with the provisions of this chapter, subject to vested rights of land, lots, mill or mine owners, along such water course.

Suitable  
blanks.

SEC. 31. It shall be the duty of the county attorney of each county to prepare suitable blanks for the use of the board of county commissioners under this chapter.

Obstructions  
and penalty.

SEC. 32. Whoever wilfully obstructs any ditch, or wilfully diverts the water from its proper channel, shall forfeit and pay to the county, for the benefit of the ditch so obstructed, the sum of fifty dollars, to be recovered before a justice of the peace or other court having jurisdiction of the matter, in the name of the state, and shall be liable for all damages that accrue to any person or corporation by said act.

Duty of county  
commis-  
sioners.

SEC. 33. It shall be the duty of the county commissioners to keep the ditches within their counties, whether constructed under the provisions of this act, or under the provisions of any laws heretofore enacted, free and clear of all obstructions, and, upon complaint of any person, shall immediately remove any obstruction which interferes with the flow of the water through said ditch.

Levy.

SEC. 34. At the same time that the levy for the general county revenue is made, the board of county commissioners shall levy a special tax to pay all expenses incurred in keeping any ditch or ditches in repair, which said tax shall be levied upon all lands benefited by the ditch in the same proportion as the apportionment made for the construction of the ditch, which said taxes shall be extended upon the tax rolls and be collectible as other taxes, and when paid shall be placed to the credit of the ditch fund to be paid out by warrants drawn upon said fund in payment for work performed in keeping said ditch or ditches in repair.

Extension on  
tax rolls.

Private  
ditches.

SEC. 35. The same proceedings may be had for the establishment of a ditch as a private way of necessity, as provided in this act, except that the bond required by section 5 of this act shall be conditioned for the

payment of all costs of establishment, location and damages paid, or for the costs incurred if the petition is dismissed. After the ditch has been established the county shall be relieved of further proceedings in the matter, and the ditch shall be constructed by and at the expense of the persons to be benefited by the same. Completion.

SEC. 36. When a ditch or improvement is proposed which will require a location in more than one county, application shall be made to the commissioners of each of said counties, and the county surveyor shall make reports for their respective counties. The line of the ditch shall be examined by the county surveyors of the counties wherein said ditch will lie, jointly. The hearing provided for by sections 11 and 12 of this act shall be had by the boards of the counties wherein the ditch will lie, in joint session, at the county seat nearest the line of the ditch. The county surveyor of the county wherein the greatest length of the ditch will lie shall have charge of the construction of the ditch. Joint ditches in more than one county.

SEC. 37. Nothing in this act shall be construed to repeal or in any wise unsettle the law on page 271 of the Session Laws of 1895, entitled "An act to provide for the establishment and creation of drainage districts and the construction and maintenance of a system of drainage and to provide for the means of payment thereof and declaring an emergency," approved March 20, 1895. This act not a repeal of act of 1895.

Passed the House February 18, 1901.

Passed the Senate March 5, 1901.

Approved by the Governor, March 8, 1901.