

the Board of State Land Commissioners, or upon his own initiative. The Commissioner of Public Lands is also authorized to appear for and represent the state in any such action or proceeding, relating to the public lands of the state.

[Am'd. § 67,
ch. 89, p. 261,
L. '97, § 2198
Bal.: § 8236
Pierce.]

SEC. 8. That section thirty-seven [sixty-seven] of chapter eighty-nine of the Session Laws of 1897 be amended to read as follows:

Board may
reconsider
action.

Sec. 67. The Board of State Land Commissioners or the Commissioner of Public Lands may review and reconsider any of their official acts relating to the public lands of the state until such time as a lease, contract or deed shall have been made, executed and finally issued by the Commissioner of Public Lands: *Provided*, That the Board of State Land Commissioners or the Commissioner of Public Lands may recall any lease, contract or deed for the purpose of correcting mistakes or errors or supplying omissions.

Passed by the House March 6, 1909.

Passed by the Senate March 9, 1909.

Approved March 20, 1909.

CHAPTER 224.

[S. B. 241.]

RELATING TO IMPROVED ROADS.

AN ACT providing for the construction and improvement of county roads at the expense of the lands specially benefited thereby; authorizing the creation of local improvement districts and the levying of special assessments on the lands in such districts for paying the cost and expenses thereof, and the payment of such assessments immediately or by installments; providing for the issuance and disposal of local improvement district warrants to pay the cost and expenses of such construction and improvements, as a charge upon the property of the local district, and providing for the payment of such warrants.

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

SECTION 1. The board of county commissioners of any county in this state shall have power, as hereinafter pro-

vided, to cause to be constructed or improved any county road, or any part of such road, within the limits of their respective counties, by deviating from existing lines whenever it shall be deemed of advantage to obtain a shorter or more direct road without lessening its usefulness or whenever such deviation is of advantage by reason of lessened gradients, or by draining in any direction to reach the most convenient and sufficient outlet, or by grading or by constructing thereon a roadway of Elford, macadam, gravel, or any other suitable material; and to levy and cause to be collected an assessment upon all lots, tracts and parcels of land specially benefited by such improvement for paying the cost and expenses thereof, which assessment shall become a first lien upon all property liable therefor, prior and superior to all other liens and encumbrances; and to provide for the payment of such assessment either on the immediate payment plan or by installments, and to issue local improvement district warrants for such installments.

Road may be improved.

Cost charged to property benefited.

SEC. 2. Upon the presentation of a petition as provided in section three hereof the board of county commissioners shall pass a resolution that the public interest demands the improvement of any such county road, or part thereof, situated within such county, and described in such resolution, but such description shall not include any portion of a highway within the boundaries of any city or incorporated town.

Resolution to improve.

SEC. 3. The owners of two-thirds of the lineal feet of lands fronting on such county road, or part thereof sought to be improved, in any county in this state may present to the board of county commissioners of such county a petition setting forth that the petitioners are such owners and that they desire such road, or part thereof, to be improved under the provisions of this act, the particular road or portion thereof sought to be improved, the kind and nature of the improvement desired, and the mode of payment of the assessments to be levied for defraying the cost and expenses of such improvement. If any such property

Petition for improvement.

stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator or guardian, as the case may be, shall be deemed equivalent to the signature of the owner of the property on such petition.

Hearing
on petition.

Notice of
hearing.

Supervisors
appointed.

SEC. 4. Such board of county commissioners shall make an order appointing a place in the vicinity of said road in said county where, and a time when said petitioners and all owners of land fronting upon said road, or portion thereof sought to be improved, and to be specially benefited by such improvement, and upon whose lands special assessments will be levied to pay for such improvement, may meet with the county engineer, or his duly appointed deputy; and the county auditor shall immediately give notice to said county engineer of such meeting, and shall cause a notice thereof to be given by publication in a newspaper printed and published in the vicinity of said road, or nearest thereto, in said county, and of general circulation therein, for three consecutive weeks next prior to the time of such meeting, which notice shall state the time and place of said meeting, the kind of improvement asked for, the place of beginning, intermediate points if any, and place of termination of said road, or the portion thereof sought to be improved. At said meeting said county engineer, or his said deputy, or in the absence of both, some one of the said owners present, shall preside, and said petitioners and said owners of such lands shall then proceed to elect three of such owners as a committee of supervisors, at least one of whom shall be chosen from among the said petitioners. A majority of such owners present and voting at such meeting shall be sufficient for such election, and said presiding officer shall declare and certify to said board of county commissioners the names of such owners so elected as such committee of supervisors. The persons so elected shall, as soon as may be thereafter, qualify by taking an oath that they are owners of lands fronting upon or specially benefited by said improvement and to be included within the local assessment district therefor, as hereinafter provided, and that they will fully, im-

partially and faithfully perform the duties of such supervisors to the best of their ability, which said oath may be administered by any one authorized by the laws of the State of Washington to administer oaths, or by said county engineer or his deputy, who are thereunto hereby fully authorized.

SEC. 5. . It shall be the duty of such committee of supervisors and the county engineer or his said deputy to forthwith, or as soon as they can assemble at said place, meet and proceed to view, examine and survey said road, or the portion thereof sought to be improved, so that such county engineer can from such examination and survey make plans and specifications and an estimate of the cost of such construction and improvement; to examine and determine the lands that will be specially benefited by such improvement and should be included within the local district to be assessed to defray the cost and expense of such improvement; to ascertain what, if any, damage or injury to the property of any person or persons will be sustained by or in consequence of the making of such improvement for the payment of which such local district would be liable and, in so far as may be, obtain without cost to the local district the release in writing from such person or persons of their claim for such damage or injury, or, in case of failure so to do, arrange, in so far as may be, for such release to be given, upon the approval and ordering of such improvement, on such terms as to amount as may be deemed fair and reasonable to be paid from the funds collected upon the assessment of said district; and such county engineer shall without unnecessary delay prepare such plans and specifications and an estimate of the cost of such improvement, including therein all expenses incident thereto except for services of any county officer receiving a salary, and prepare a plat and description of such local improvement district and a description of the several tracts or parcels of land included therein and the valuation of said lands as appears upon the last annual assessment roll of the county made for the purpose of levying general taxes; and for the purpose of making such

View of
road.

Plans and
estimate
of cost.

Engineer may employ assistants.

surveys said county engineer shall take to his aid such assistants as are necessary and usually employed by him in making county surveys and at such compensation as is usually paid for like services employed in making other county surveys, the same to be charged as an expense against said local improvement district. The improved or permanent roadway of all such roads so improved shall not be less than eight nor more than sixteen feet in width with shoulders of not less than two feet nor more than four feet in width, unless for special reasons to be stated by said county engineer and committee of supervisors it is required that it shall be of greater width.

Width of road.

Boundaries of improvement district.

SEC. 6. Such local improvement district shall be constituted, and the boundaries thereof fixed, as follows: The road, or portion thereof to be improved, co-terminous with the improvement, shall be the central line through the district, and the bordering lands on each side, and within a distance of half a mile from the margin of said road and co-terminous with the construction work or improvement shall be included in and constitute the body of the improvement district, and shall be subject to assessment to the extent above provided. For the purpose of making an equitable apportionment of the assessment, such improvement district shall be divided longitudinally into three parts as follows: All land on both sides of said road, or portion thereof, to be improved, and within a distance of eight hundred and eighty feet from the margins thereof shall constitute the first subdivision; all the land outside of the first subdivision, and within eight hundred and eighty feet from the exterior margins thereof, shall constitute the second subdivision; and all the land outside of said second subdivision and within eight hundred and eighty feet from the exterior margins thereof shall constitute the third subdivision. Each separate tract or parcel of land in said first subdivision shall be assessed and be subject to a charge for a proportional part of forty-five per cent. of the whole cost of the construction work or improvement of said road, including said incidental expenses, and it shall be subject to a lien therefor until it

Three divisions.

1st division assessed 45 per cent.

shall be paid; each separate tract or parcel of land in said second subdivision shall be assessed and subject to a charge for a proportional part of thirty-five per cent. of said whole cost and expense of said construction work or improvement, and be subject to a lien therefor until it shall be paid; each tract or parcel of land in said third subdivision shall be assessed and subject to a charge for a proportional part of twenty per cent. of said whole cost and expense of said construction work or improvement, and be subject to a lien therefor until it shall be paid. The charge upon the several separate tracts or parcels of land in each subdivision shall be assessed ratably according to the front foot plan; that is to say, one foot of longitude measured along the road constituting the center of such improvement district, and extending latitudinally across the subdivision shall be taken as the unit by which to determine the proportion of the assessment, so that a unit in each subdivision will be 880 square feet of superficial area. If the areas of said subdivision are not equal to each other the rates fixed for each subdivision shall be fixed on the basis that the benefit conferred on 880 square feet of land in subdivisions first, second and third, are related to each other as are the numbers 45, 35 and 20, respectively.

2d division
assessed
35 per cent.

3d division
assessed
20 per cent.

Front foot
assessment.

SEC. 7. As soon as the county engineer shall have completed said work, and at the next ensuing meeting of the board of county commissioners the said county engineer in conjunction with said committee of supervisors shall render a detailed report to said board of county commissioners, with all maps, descriptions, plans, specifications, details and estimates of damages, costs and expenses, and if it shall appear from the said report that the whole amount of the damages, cost and expense of said construction or improvement, chargeable as a lien against the property specially benefited within such improvement district, does not exceed fifty per cent. of the total assessed valuation of the lots, tracts and parcels of land contained in such improvement district as the same appears upon the last annual assessment roll of the county made for levying

Engineer
to report
to com-
missioners.

Limit
of cost.

general taxes, the said board of county commissioners shall make and enter upon their records an order that the said improvement be made, and creating such local improvement district for the payment of said damages, costs and expenses of making said improvement, by special assessment of the property in said district specially benefited, according to said report, to be known and designated Local Improvement District No. in county, Washington, and such report shall be kept on file in the office of the auditor of said county with the files pertaining to the proceedings of said board of county commissioners.

Designation of district.

SEC. 8. When said county engineer and committee of supervisors are unable to agree with the owner of any lands upon the amount of damages, if any, sustained by the taking or injuring of his property by reason or in consequence of making of such improvement, they shall in said report to the county commissioners set forth such fact with a statement of their reasons therefor, and said county commissioners shall cause the amount thereof to be ascertained and determined by condemnation and paid in the same manner as damages are so ascertained, determined and paid where new roads are laid out and opened and the county commissioners and land owners are unable to agree upon the amount thereof; and such damages, and the expenses incident to ascertaining and determining the same, shall be advanced on the order of the county commissioners from the funds of the county, so that the progress of such work shall not be delayed, and said funds shall be reimbursed the amount so advanced from the first money collected of the local improvement district funds, and the same shall constitute a part of the cost and expense of making such improvement.

Condemnation proceedings.

County to advance cost.

SEC. 9. After the making of such order directing the making of such improvement and establishing such local improvement district, said county engineer and committee of supervisors shall let a contract for furnishing of the necessary materials and the performance of the work and labor necessary for the construction and completion of said improvement, according to said plans and specifica-

Contract.

tions, and under the supervision of said county engineer. They shall advertise for bids for three successive weeks in a newspaper published at the county seat of such county, and in such other newspaper as said committee of supervisors shall deem of advantage, for the construction of said improvement, according to such plans and specifications, fixing the time for opening such bids at the office of the county commissioners and award such contract to the lowest responsible bidder, except that no contract shall be awarded at a greater sum than the estimate of cost of such work hereinbefore provided for. But if no bid otherwise acceptable be made within such estimate, such county engineer may amend his estimate, and in conjunction with said committee of supervisors certify such amended estimate to the county commissioners, and, if said amended estimate does not exceed said fifty per cent. limit of valuation, said board of county commissioners shall make and enter a new order, in like manner as provided in section eight hereof, based upon such amended estimate, and said county engineer and committee of supervisors may proceed anew to obtain bids and award the contract as herein provided. The county engineer and committee of supervisors may reject any and all bids, and before the execution of a contract for such construction, they shall require a bond executed by a corporate surety or two or more individuals, good and sufficient sureties, satisfactory to them, conditioned that the contractor will furnish the required material and perform the required work upon the terms specified and within the time prescribed and in accordance with the plans and specifications, and will pay for all labor and materials employed upon or in said work; and as a bond of indemnity against any direct or indirect damages that shall be suffered or claimed for injuries to persons or property during the construction of said improvement and until the same is accepted. Partial payments may be provided for in the contract, and paid in the manner herein provided when certified by the county engineer and committee of supervisors to an amount not to exceed eighty per cent. of the value of the work done. In letting

Bids
called for.

Amended
estimate.

Bond of
contractor.

Payments
made as
work
progresses.

Protection
for labor
and materials
furnished.

said contract said surveyor [engineer] and supervisors shall provide therein that at least twenty per centum of the amount due the contractor on estimates shall be retained to secure the payment of laborers who have performed work on said improvement and material men who have furnished materials therefor, and such laborers and material men shall for thirty days after their work has been completed or their materials furnished have a lien on such twenty per centum so reserved for labor done and materials furnished: *Provided*, Notice thereof in writing shall have been filed with the county engineer within said thirty days, which lien shall be senior to all other liens, whether by judgment, attachment or contract, and no improvement shall be deemed completed until the county engineer and committee of supervisors shall have filed with the clerk of the board of county commissioners a statement signed by a majority of them declaring the same to have been completed, and all such liens shall have been discharged. Such contract shall be executed in the name and on behalf of the county by the chairman of the board of county commissioners and attested with the seal of said board, for the use and benefit of said local improvement district; but such county shall not thereby be rendered subject to any claim or liability except from the special assessment made upon the property of such local district for such improvement or from the proceeds of the sale of any local improvement warrants issued to pay for such improvement as herein provided. Such contractor's bond shall be executed to the county, and in its name enforced by and for the use and benefit of any and all whom it may concern, and shall be kept in the custody of the county auditor.

District
only liable.

SEC. 10. Such notice for bids shall state generally the work to be done, and refer to the plans and specifications [filed] with the board of county commissioners, and shall call for proposals for doing the same and furnishing the necessary materials therefor, sealed and filed with the county auditor, as clerk of the board of county commissioners, on or before the day and hour named in said notice. All bids shall be accompanied by cash or a certified check payable

to the order of the county auditor for a sum not less than five per cent. of the amount of the bid, as a guaranty of the good faith of the bidder, and no bid shall be considered unless accompanied by such cash or check. At the time and place named such bids shall be publicly opened and read; no bid shall be rejected for informality, but shall be received if it can be understood what is meant thereby. The county engineer and committee of supervisors shall determine the lowest bidder, and may let such contract to such bidder if within said estimate, or if in their opinion all bids are too high, they may reject all of them and re-advertise for bids, and in such case all checks and cash shall be returned to the bidders; but if such contract be let, then and in such case all checks and cash shall be returned to the bidders except that of the successful bidder, which shall be retained until a contract be entered into for making such improvement between the bidder and the county in accordance with such bid. If the said bidder fails to enter into such contract in accordance with his bid within ten days from the date on which he is notified that he is the successful bidder, and to execute and file a bond as hereinbefore provided, the said cash and check and the amount thereof shall be forfeited to the county, for the use and benefit of the particular local improvement district, and the county auditor shall cash said check and pay said amount into the county treasury to the credit of the said local improvement district, and the said county engineer and committee of supervisors shall re-advertise for bids for the doing of such work. Neither said supervisors nor any county officer shall have power to remit such forfeiture.

Good faith
in bid.

Rejection
of all bids.

Forfeit of
deposit.

SEC. 11. Whenever a contract has been let for the construction or improvement of any such county road in accordance with the provisions of this act, the contractors may and are hereby authorized to, whenever the county engineer supervising the work shall certify to the necessity therefor in writing, close any such road or part thereof to the public by putting up a sufficient obstruction and notice to the effect that such road is closed for improve-

Road closed
pending im-
provements.

ment. When so closed any person disregarding such obstruction and driving, riding or walking over any portion of such road so closed shall be deemed guilty of a misdemeanor and shall upon conviction thereof be subject to a fine of five dollars. Nothing herein contained, however, shall relieve the contractor of the burden of keeping county roads under construction or improvement at all times open to the public until the county engineer supervising the work shall have certified to the necessity for closing such road and shall have filed such in the office of the county auditor.

Inspectors.

SEC. 12. The committee of supervisors and county engineer together shall appoint some suitable and competent person, other than one of said committee, as an inspector of such work as it progresses, whose duty it shall be to be upon the work at all times during its progress and to inspect and observe the performance thereof and to report to and be under the supervision of the county engineer, and to inform said county engineer and said committee of supervisors of any inferior materials used or any departure from the plans and specifications not authorized by said county engineer and committee of supervisors; and he shall be paid for his services as such inspector at the rate of three dollars per day for the time he is actually engaged upon said works. Each member of the committee of supervisors shall be paid for his services the sum of three dollars per day for the time said committee of supervisors is actually engaged in meeting and acting with said county engineer, and in transacting as a committee the business of said local improvement district, until the work of said improvement shall have been fully completed and accepted by them and said county engineer.

Compensation of supervisors.

SEC. 13. When the final order for said improvement shall have been made, such county engineer and committee of supervisors shall proceed to apportion the estimated cost and expenses of said improvement upon the land embraced in said improvement district, according to the benefits to be derived therefrom, and, not more than thirty days after said contract shall have been let as hereinbefore provided,

report to and file with the board of county commissioners an assessment roll, in duplicate, prepared by such surveyor [engineer], which shall contain the description of each lot or parcel of land or part thereof to be assessed, the amount to be charged, levied or assessed against each lot or parcel of land or part thereof in proportion to the special benefits to be derived by each such lot or parcel or part thereof from such improvement, and the name of the owner of each such lot or parcel of land or part thereof, if known, but in no case shall a mistake in the name of the owner be fatal when the description of the property is correct. As soon as said assessment roll shall have been so reported and filed, the county commissioners shall cause notice to be published for three consecutive weeks, which notice shall be published in the newspapers in which notice of invitation for bids for the letting of said contract was published, notifying all persons interested that said assessment roll has been filed, and requiring them to appear at the office of the county commissioners, at the county seat, at a time not less than fifteen days from the date of the last issue of said publication of said notice, and make objections thereto if any they have. At the time fixed the county commissioners shall meet, and, if no objections have been filed to said assessment roll, they shall make and enter an order confirming the same; but if objections, in writing, have been filed by any of the land owners affected thereby, the county commissioners shall proceed to hear such objections and for that purpose shall hear any testimony that shall be offered by any party interested; and either one of the county commissioners shall be authorized to administer oaths to witnesses. After such hearing they shall make such corrections and changes, if any, as to them shall appear just and requisite to apportion the assessment to the benefits to be received from such improvement, and shall then make and enter an order approving and certifying such assessment roll, and levying and assessing the amounts thereof against each and all of the lots and parcels of land, or parts thereof, respectively, included in said roll as approved, and the same shall become a first lien

Assessment roll.

Notice of assessment.

Hearings.

thereon. The costs and expenses of surveys and of all preliminary proceedings to and including the letting of the contract and giving notice that the assessment roll has been certified for collection and the preparation, issuance and disposal of the warrants for the payment of the cost and expenses of such improvement shall be paid out of the county treasury, and shall be refunded, as well as all other amounts advanced by the county for expenses of such improvement, or for damages as hereinbefore provided, from the local improvement funds as soon as sufficient thereof shall come into the hands of the county treasurer.

Refund to
general fund.

Modes of
payment.

SEC. 14. There shall be two modes of making payment of such special assessments chargeable against the several tracts and parcels of land included in such local improvement district, namely, that of "immediate payment" and that of "payment by warrants." The mode adopted and the period, not exceeding ten years, over which such warrants shall be made payable, shall be that petitioned for.

"Immediate
payment."

SEC. 15. In case of the payment of such assessments by the mode of immediate payment, the county commissioners, as soon as such assessment roll has been approved and certified, shall deliver the same to the county auditor, who shall file one of such duplicates thereof in his office with the files of the proceedings of said county commissioners in relation to such improvement district, and shall immediately deliver the other of said duplicates to the county treasurer for the collection of such assessments. The county treasurer shall give notice by publication for two consecutive weeks in the newspapers in which notice of proposal for bids was advertised, and shall mail a copy of such notice to the owner of the property assessed when the name of such owner and his postoffice address is known, but the failure to mail such notice shall not be fatal when publication thereof is made, which said notice shall state that such assessment roll has been certified to him for collection, and that unless payment is made within thirty days from the date of such notice such assessment will become delinquent and shall bear interest at the rate of ten per cent. per annum, and if not paid before such assessment

Notice of
assessment.

shall have become delinquent, a penalty of five per cent. shall be added, and the sums delinquent shall be added on the annual tax roll for the current year against each lot, tract and parcel so delinquent, and, with the interest and penalty, collected as other taxes, separate account being kept thereof, and if not paid within the time fixed for the payment of general county taxes, shall be collected as such taxes are collected, together with such additional charges and penalties as are authorized to be charged and collected on other delinquent taxes, and each lot, tract or parcel so delinquent shall be sold for the amount of such assessment, with interest, penalty and costs, at the time and in the manner and by the same authority and process as lands and lots are sold for general county taxes.

Manner of
collecting
assessments.

SEC. 16. In case of the mode of "payment by warrants" being adopted, the county commissioners, and the county engineer and committee of supervisors, shall proceed the same in all respects as in case of the mode of "immediate payment," to the approval and certifying of the assessment roll; but the county commissioners at the time of levying said assessment, and in their order making such levy, shall provide and declare that the sum charged thereby against each of such tracts or parcels of land may be paid in equal annual installments, with interest upon the whole sum so charged at the rate fixed in said order, specifying the number of such installments, which shall be equal to the number of years which the warrants issued to pay for the improvement may run before payment of the same may be demanded by the holder thereof; and each year thereafter the county treasurer shall collect one of said installments, together with the interest due thereon and on all installments thereafter to become due, in the same manner and with the same added penalty and interest in case of delinquency, and by means of the same proceedings to enforce such payment by the sale of the land as hereinbefore provided for the collection of said assessment by the method of immediate payment.

"Payment
by warrants."

Collection of
installments.

SEC. 17. The county commissioners may, and, in all cases where the improvement is ordered upon a petition

specifying the method of payment by warrants, must provide for the payment of the cost and expenses of such improvement, to be made under the provisions of this act, by special warrants as a charge against the property of the local improvement district, issued to the contractor in payment of the contract price, or by the proceeds of such warrants to be issued and sold as hereinafter provided.

Special warrants.

SEC. 18. The county commissioners shall make and enter an order authorizing and directing the issuance of such warrants, which by their terms shall be made payable on or before a date not to exceed ten years from and after the date of their issue, which latter date may be fixed by the order, and payment of which shall not be demanded by the holder thereof until the end of said period, and they shall bear such interest as shall insure their being disposed of at par and as may be provided for in said order, not exceeding ten per cent. per annum, which interest shall be payable annually, and each warrant shall have attached thereto interest coupons for each interest payment. Such warrants shall bear the date of issue and be made payable to bearer. The warrants and each coupon shall be signed by the chairman of the board of county commissioners and shall be attested by the clerk of said board, and the seal of such board shall be affixed to each warrant but not to the coupon. Such warrant shall be printed, engraved or lithographed on good bond paper, and state on its face that it is issued in accordance and compliance with this act, designating the same by title and date of approval. Such warrants shall be in denominations of not less than one hundred nor more than one thousand dollars, and they shall refer to the improvement to pay for which the same shall be issued, and to the order and record thereof authorizing the same; each warrant shall provide that the principal sum therein named, and the interest thereon, shall be payable out of the local improvement fund created by special assessment for the payment of the cost and expenses of such improvement, and not otherwise, and shall bear upon its face the designation of the local improvement district, thus, Local

Interest on warrants.

Form of warrants.

Denominations.

Improvement District Number in County, Washington. Such warrants shall not be issued in excess of the cost and expenses of the improvement.

SEC. 19. In case of payment by such special warrants, the county treasurer shall give notice by publication for two consecutive weeks, and shall mail a copy of such notice to the owner of the property assessed in the manner and with the same qualifications as to the giving of such notice provided in section sixteen of this act with regard to immediate payment, which notice shall state that such assessment roll has been certified to him for collection, and that unless payment of the whole amount of such assessment is made within thirty days from the date of such notice, special warrants will be issued against said property for the payment of said assessment, and thereafter the same will be payable in annual installments with interest thereon at the rate provided for in said warrants. At any time within such thirty days any owner of lands within such local improvement district may pay the said assessment chargeable against his said lands, and release and discharge the same therefrom and from the operation and effect of such warrants; and no warrants shall be issued until twenty days after the expiration of such thirty days, nor for any amounts of such assessment so paid in full within such thirty days. The owner of any such lands may redeem the same from all liability for such assessment at any time after said thirty days by paying the entire installments of said assessment remaining unpaid and charged against such lands at the time of such payment with interest and all charges thereon to the date of the maturity of the installment next falling due. In all cases where any assessment or any installment thereof is paid as herein provided, the same shall be paid to the county treasurer, and all sums so paid shall be applied solely to the payment of the cost and expenses of such improvement, or to the redemption of such warrants issued therefor if paid after such warrants are issued.

Notice to
property
owners.

Whole
assessment
may be paid.

County
treasurer
to collect.

SEC. 20. The special warrants issued under the provisions of this act, or such portion thereof as may remain

Contractor
may take
special
warrants.

unsold, if the same are ordered sold by the county commissioners, may be issued to the contractor constructing the improvement in payment therefor, or the order of the board of county commissioners directing the issuance of such warrants may provide that the same may be sold by the county treasurer, in the manner prescribed in such order, at not less than their par value and accrued interest; and the proceeds of such warrants shall be applied in payment of the cost and expenses of such improvement.

Call for
warrants.

SEC. 21. The county treasurer shall pay the interest on the warrants authorized to be issued by this act out of the funds of the local improvement district collected on assessments on account of which said warrants are issued. Whenever there shall be sufficient money in such local improvement fund against which such warrants have been issued under the provisions of this act, over and above sufficient for the payment of interest on all unpaid warrants, to pay the principal of one or more of such warrants, he shall call in and pay such warrants in their numerical order. Such call shall be made by publication in the county official newspaper on the day following the maturity date of the installment of assessment or as soon thereafter as practicable, and shall state that special warrants No. . . . (giving the serial number or numbers of said warrants called) of such local improvement district will be paid on the day the next interest coupons of said warrants shall become due, and interest upon said warrants thus called shall cease upon said date.

Warrant
holder may
force
collection.

SEC. 22. If the county treasurer shall fail, neglect or refuse to pay said warrants issued under the provisions of this act, or to collect promptly any such assessments when due, the owner of any such warrants may proceed in his own name to collect such assessments and to foreclose the lien thereof in any court of competent jurisdiction, and shall recover in addition to the amount of such warrants and interest thereon, five per centum, together with the costs of such suit. Any number of holders of such warrants for any single improvement may join as plain-

tiffs and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. Neither the holder nor any owner of any such warrant issued under the authority of this act shall have any claim therefor against the county through the instrumentality of which the same is issued, except from the special assessment made for the improvement for which such warrant was issued, but his remedy in case of non-payment shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed or engraved on each warrant so issued.

SEC. 23. It shall be the duty of the county auditor to audit all claims and accounts for services and every kind of expense payable from the funds of the local improvement district, when the same shall have been first approved and certified by the committee of supervisors; and when so approved and audited, the county auditor shall issue to the county treasurer an order, in favor of the person to whom such claim or account is payable, to pay the same, and upon the presentation of such order by the person to whom it was issued, or his assignee, the county treasurer shall pay the same from the funds of such local improvement district provided for the payment of the cost and expenses of such improvement, and not otherwise. Estimates for work done under the contract for the construction and completion of such improvement shall be made by the county engineer with the approval of the committee of supervisors, and the same shall be likewise audited by the county auditor, and, when so made, approved and audited, the same shall be likewise paid by the county treasurer upon the order of the county auditor, to an amount, however, not exceeding eighty per centum of such estimate during the progress of the work. In case of said assessment being made payable by installments, the county treasurer shall pay such order only from such assessments as shall have been collected prior to the issue of such special local improvement warrants and from the proceeds of the sales of such warrants after the issue

Claims, how audited.

Payments on work done.

thereof; but in case it has been arranged with the contractor for the work, and ordered by the board of county commissioners, that such contractor shall receive such warrants to pay the contract price of the work, such order of the county auditor upon such approved estimates shall call for such warrants instead of money, and shall be paid in such warrants by the county treasurer, with whom the same shall be deposited for that purpose, and in that case such warrants shall not be given a date prior to the time of their delivery to such contractor upon such order, which date shall be then written in such warrants by the county treasurer and be deemed to be the date of their issue, from which interest shall begin to run and the time at or after which their payment may be demanded by the holder shall be computed. The amounts collected upon the installment payments of such assessments shall be reserved and disbursed by said county treasurer for the payment of the principal and interest on and for the redemption of such warrants. The proceeds from the sale of such warrants shall be disbursed by such county treasurer in payment of the cost and expenses of such construction and improvement of such county road, upon the orders of such county auditor, as hereinabove provided.

SEC. 24. Any money remaining in the county treasury belonging to the funds of such local improvement district, after the payment of the whole cost and expense of such construction or improvement, in excess of the total sum required to defray all expenditures on account thereof, including the reimbursement of the county for any advancements, shall be refunded, on demand, to the amount of such overpayment; and if there shall be such an excess in the assessment of any person who shall not have paid his assessment in full a rebate shall, on demand, be allowed to such person to the amount of such over-assessment: *Provided*, Such demand hereinabove provided for be made within two years from the date upon which the assessment for such local improvement district became due. Any such funds remaining in the county treasury after the expiration of two years for which no demand has been

Refund of
assessments.

made as herein provided, belonging to any local improvement district, after the payment of the whole cost and expense of such improvement, shall go into a special fund and be disbursed by the county treasurer under the directions of the county commissioners for keeping in repair the county road or part thereof so improved in said local improvement district.

SEC. 25. No person shall be permitted to take advantage of any error committed in any proceeding to lay out, construct or improve any county road, or part thereof, under and by virtue of this act nor of any error committed by the county commissioners or by the county auditor, or county treasurer or county engineer or any other person or persons in the proceedings to lay out, construct or improve such road; nor of any informality, error, or defect appearing in the record of such proceedings, unless the party complaining is affected thereby. But the court in which any action may be brought to enjoin, reverse, or declare void the proceedings by which any such road has been laid out, constructed or improved, or ordered to be laid out, constructed or improved, or to enjoin the collection of any tax or assessment levied or ordered to be levied for the purpose aforesaid, may, if there be manifest error in such proceedings affecting the rights of the plaintiff in such action, set the same aside, as to him, without affecting the rights or liabilities of other parties in interest; and the court shall, in the final hearing, make such order in the premises as may be equitable and just, and may order the assessment levied against the plaintiff's property to remain on the assessment roll for collection, or to be again levied in whole or in part, or may perpetually enjoin the same, or any part thereof. The cost of such action, and the proceedings had therein, shall be apportioned among the parties, or paid out of the county treasury, in whole or in part, as justice may require and the court direct: *Provided*, That all the land liable to assessment, under the provisions of this act, for the construction of such road, shall be held responsible to the county, to protect the county against all loss or liability arising from

Who may maintain action.

Review by court.

Property benefited only liable.

any judicial proceedings affecting the assessment for benefits, and also all costs and expenses that may arise in any litigation; and re-assessments by the county engineer and committee of supervisors shall be made to discharge the same.

Roads, how
kept up.

SEC. 26. All roads laid out, constructed or improved under the provisions of this act, shall thereafter be maintained in repair by the county, as other roads are kept and maintained in repair.

Present laws
continued.

[See ch. 123,
p. 301, L. '98.]

SEC. 27. Nothing herein shall be construed as repealing or modifying any existing law for the creation, laying out, opening, construction or improvement of any public highway or county road, but shall be construed as an additional power and method for the improvement of county roads, and as extending to owners of rural lands a similar right to that enjoyed by cities of the first class of making good roads of the public highways which are appurtenant to such lands at their own expense by charging the cost thereof upon such lands specially benefited, without impairing the county general funds or road and bridge funds, and shall be construed as co-operating and concurrent with the laws providing for the improvement of public highways under the supervision of the State Highway Commissioner.

Passed by the Senate March 8, 1909.

Passed by the House March 10, 1909.

Approved March 20, 1909.