

thorized by law or the rules of the Senate, including the pay per diem and mileage within the State of Washington allowed by law to witnesses summoned to appear before the Senate by either party, said per diem to be the same as allowed to witnesses in the superior courts of this state.

How paid.

SEC. 3. The expenditures provided for in section 2 of this act to be paid upon vouchers approved by the president and secretary of the Senate.

Passed by the Senate July 1, 1909.

Passed by the House July 2, 1909.

Approved by the Governor July 2, 1909.

CHAPTER 8.

[Senate Bill No. 5.]

COMMERCIAL WATERWAYS.

AN ACT relating to the establishment and creation of commercial waterway districts, and the construction and maintenance of a system of commercial waterways, including the straightening, deepening and widening of rivers, watercourses and streams and the protection of the banks thereof, and disposing of the interests of the state in the beds and shores of navigable waters, and to provide for the means of payment thereof, and declaring an emergency.

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

Waterway
districts.

SECTION 1. Any portion of the county requiring commercial waterways which contains five or more inhabitants and freeholders therein may be organized into a commercial waterway district, and when so organized such district, and the board of commissioners hereinafter provided for, shall have and possess the power herein conferred, or that may be hereafter conferred by law upon such district and board of commissioners, and said district shall be known and designated as commercial waterway district No. — of the county of ———, the State of Washington, and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession, and shall adopt and use a seal.

The commissioners hereinafter provided for, and their successors in office, shall, from the time of the organization of such commercial waterway district, have the power, and it shall be their duty to manage and conduct the business and affairs of the district; make and execute all necessary contracts, employ and appoint such agents, officers and employes as may be required, and prescribe their duties, and perform such other acts as hereinafter provided, or that may hereafter be provided by law.

Powers of
commission.

SEC. 2. For the purpose of the formation of such waterway district a petition shall be presented to the board of county commissioners of the county in which said proposed commercial waterway district is located, which petition shall set forth the object for the creation of said district; shall designate the boundaries thereof and set forth therein the area of land to be benefited by the proposed commercial waterway system, and shall also contain the names of all freeholders residing within said proposed district, so far as known, and shall contain a brief description of the proposed system of waterways, route over which the same is to be conducted, together with the proposed spurs or branches, if any there may be, and the termini thereof, and set forth the further fact that the establishment of said district and the proposed system of commercial waterways will be of special benefit to the property included therein, and will be conducive to the public health and increase the public revenue. Said petition shall be signed by such a number as own at least a majority of the area of land in the proposed district, and shall pray that the same may be organized under the provisions of this act. Said petitioners shall at the time of the filing of said petition file a bond with such county commissioners, running to the State of Washington, in the penal sum of five hundred dollars, with two or more sureties, to be approved by the board of county commissioners, conditioned that they will pay all costs in case said district, for any reason, shall not be established.

Petition.

Majority of
owners neces-
sary to
petition.

SEC. 3. Said petition shall be presented at a regular or special meeting of the board of county commissioners of

Publication
of notice of
petition.

Hearing on.

Changes in
district.

Additional
petition.

said county, and shall be published for at least two weeks in two successive issues of some weekly newspaper printed and published in said county, and in case no such newspaper be printed or published in such county, then in some such newspaper of general circulation therein, before the time at which the same is to be presented, together with a notice stating the time of the meeting at which the same shall be presented. When such petition is presented for hearing, the board of county commissioners shall hear the same, or may adjourn said hearing from time to time, not exceeding one month in all; and any person or corporation may appear before said board of county commissioners and make objections to the establishment of said district, or the proposed boundary lines thereof, and upon a final hearing of said board of county commissioners shall make such changes in the proposed boundaries as they may deem to be proper, and shall establish and define such boundaries, and shall ascertain and determine the area of land that will be specially benefited by said proposed system of commercial waterways, the number of freeholders residing within said boundaries of said proposed district, and shall find whether the proposed commercial waterways will be conducive to the public health, welfare and convenience, increase the public revenue, and be of special benefit to the majority of the land included within said boundaries of said proposed district so established by said board of county commissioners: *Provided further*, That any person or persons owning lands within the proposed boundaries and who did not sign said petition, or any person, persons or corporations owning land not included within the proposed boundaries may file a petition with the board of county commissioners asking that the proposed boundaries be extended so as to include other lands described therein; setting forth in said petition the reason therefor, but no person, persons or corporations not owning land included within the boundaries, as originally petitioned for, shall have the right to file such petition unless they ask therein to have their own lands included within the proposed boundaries: *Provided*, Any corporation owning land

included within the boundaries described in the original petition may also petition the board of county commissioners for an extension of the proposed boundaries: *Provided further*, That the boundaries of any commercial waterway district heretofore or hereafter established may be extended by the board of county commissioners to include other lands in said county, upon petition signed by the owners of a majority of the area of said lands in the proposed extension; which said petition for extension shall set forth and contain, with reference to the extension, such matters and things and data so far as applicable, as is provided for in the petition required for presentation to the board of county commissioners for the purpose of the formation of the original waterway district: *Provided further*, That all necessary expenses incident to making such extension, together with the proportionate share of the first cost of any system of commercial waterways existing in the original commercial waterway district at the time of making said extension, shall be levied against and apportioned to the land included in such extension as in this act provided. In such case, the board of county commissioners shall give like notice as provided for in this section of the hearing of the original petition, and the final hearing thereof may in such case be continued from time to time for a period of not exceeding sixty days, and if on final hearing the board of county commissioners deem it advisable and for the best interest of all concerned, they may grant the prayer of said petitioners in whole or in part, and said board of county commissioners of such county shall enter an order on the records of their office setting forth all facts found by them upon the final hearing of said petition, and which may be adduced by them from the evidence heard upon the final hearing thereof.

Boundaries
extended.

Expense of
extension.

SEC. 4. Upon the entry of the findings of the final hearing of said petition as set forth in the last preceding section, said board of county commissioners of said county, if they find said proposed system of commercial waterways will be of special benefit to the majority of the area of lands included within said boundaries and will be con-

Notice of
election.

ducive to the public health, welfare and convenience, and will increase public revenue, shall give notice of an election to be held in such proposed commercial waterway district for the purpose of determining whether the same shall be organized under the provisions of this act as a commercial waterway district of the State of Washington, and for the further purpose of choosing at such election three commissioners, who shall be known and designated as "Commercial Waterway Commissioners" for said district proposed to be organized, which said three commissioners shall, upon their election, be the district authorities of said commercial waterway district, and such notice shall describe the boundaries as established by the board of county commissioners on its final hearing of said petition and shall state the name of such proposed commercial waterway district and, approximately, the area of land in said district to be benefited thereby, and the same shall be published for, at least, two weeks prior to such election in a weekly newspaper printed and published within the county within which said district is located, and in case no such newspaper be printed or published in such county, then in such newspaper of general circulation therein for two successive issues thereof, and shall be posted for the same period in at least four public places within the boundaries of said proposed district, which notice shall designate the places within the proposed district where the said election shall be held and require the voters to cast ballots which shall contain the words, "Commercial Waterway District, Yes" or "Commercial Waterway District, No," and also names of the persons voted for commissioners for said commercial waterway district. The board of county commissioners may appoint two judges, one inspector and two clerks for each of said election places and the compensation shall be the same as hereinafter provided for, and shall be a charge upon said district in case the same be established and shall be paid in the same manner as other expenses are paid which are incurred in the establishment and construction of said improvement. In case said district be not established, then all costs and expenses shall be collectable from the

Name of
district.

Ballots—
form of.

Elections,
how con-
ducted.

bond hereinbefore provided for, and any person having a charge against said district shall have a right of action thereon.

SEC. 5. Said election shall be held on the day designated in such notice and shall be conducted as hereinafter provided for, and no person shall be entitled to vote at such election unless he shall be a qualified elector of the county in which such district is located, and shall have resided within the boundaries of said proposed district for a period of not less than ninety days next preceding the date of such election. The board of county commissioners shall on the Monday next succeeding said election count and canvass the votes cast therefor, and if on said canvass and count it appears that the majority of votes cast are for the "Commercial Waterway District, Yes," the board shall immediately enter an order upon its records declaring the proposed territory duly organized as a commercial waterway district, giving to such district a proper number, followed by the name of the county and state, and shall, also, declare the three persons who received the highest number of votes duly elected commercial waterway commissioners of such commercial waterway district. Said board shall cause a copy of the order entered of record duly signed and to be filed in the office of the Secretary of State, and from and after the date of such filing said organization shall be deemed complete, and the members of said board of commissioners so chosen at such election, before entering upon the discharge of their duties shall qualify as county commissioners, are required to qualify and to enter into a bond payable to the State of Washington for the benefit of said district with two or more sureties in the penal sum of not less than one thousand (\$1,000) dollars nor more than five thousand (\$5,000) dollars, conditioned for the faithful performance of their duties as commercial waterway commissioners, to be approved by the board of county commissioners and to be filed with the county clerk of the county in which said district is situated. The said commercial waterway commissioners shall hold office until the next general election at which officers

Voters.

Canvass.

Order estab-
lishing.Bond of
commis-
sioners.

Term of office.

of said commercial waterway district are to be elected and until such further time as their successors are elected and qualified. The members of each successive board of commercial waterway commissioners, whether elected or appointed, shall before entering upon their duties take an oath and enter into a bond, as herein provided, and after being approved by the board of county commissioners shall be filed in the office of the county clerk of the county in which said district is situated.

Oath of commissioners.

Time of election.

SEC. 6. A general election for the election of a board of commercial waterway commissioners for such district shall be held upon the first Tuesday after the first Monday in December of each year thereafter, and the term of office shall begin the second Monday of the following January. Said election shall be held in accordance with the school laws of the State of Washington. No official ballot shall be required at the first or any subsequent election, and the law known as the direct primary law of this state shall have no application to the election held under this act, and the expense thereof shall be defrayed by said district, and the judges, clerks and inspectors of said election shall each receive as compensation for the services rendered at such election the sum of three (\$3) dollars per day: *Provided*, That at least thirty days' notice immediately preceding any such general election shall be given thereof by the board of commissioners of such commercial waterway district by posting the same in four public places within the said district. Said notice shall designate the voting places and contain the names of two electors of said district for each of said voting places as judges of said election, and the name of one elector of said district for each of said voting places as inspector thereof, the same to be chosen by said board of commissioners. Said board of commissioners shall act as a canvassing board to canvass the votes of each election, and they shall meet the day following such election and canvass said votes and declare the result thereof and issue certificates of election.

Primary law not applicable.

Notice of general election.

Canvass of returns.

Eminent domain.

SEC. 7. (a). Any district organized under the provisions of this act shall have the right of eminent domain,

with power by and through its board of commissioners to cause to be condemned and appropriated private property for the use of said organization in the construction and maintenance of a system of commercial waterways, and make just compensation therefor; and the property of private corporations shall be subject to the same rights of eminent domain as private individuals, and the said board of commissioners shall have the right to acquire by purchase all the real property necessary to make the improvements herein provided for.

(b). Said board of commissioners herein provided shall have the right, power and authority to straighten, widen, deepen and improve any and all rivers, watercourses, streams, whether navigable or otherwise, flowing through or located within the boundaries of said commercial district. To straighten, widen or deepen.

(c). To construct all needed and auxiliary ditches, canals, flumes, locks, dykes, and all other artificial appliances in the construction of a commercial waterway system, and which may be necessary or advisable to protect the land in any commercial waterway district, from overflow, or to assist and become necessary in the preservation and maintenance of such commercial waterway system. Canals or locks.

(d). In the accomplishment of the foregoing objects, the commissioners of such waterway districts are hereby given the right, power and authority by purchase or the exercise of the power and authority of eminent domain, or otherwise, to acquire all necessary and needed rights-of-way in the straightening, deepening or widening, or otherwise improving of such rivers, watercourses or streams, and such auxiliary ditches, canals, flumes and dykes herein above mentioned, and when so acquired shall have and are hereby given the right, power and authority by and with the consent and approval of the United States government in cases where such consent is necessary, to divert, alter and change the bed or course of or otherwise improve any such river, watercourse or stream aforesaid, or to deepen, widen and straighten the same. Rights-of-way.

(e). The right, power and authority to acquire the

necessary and needed rights-of-way for any and all purposes created by this act may be acquired by the commissioners of any waterway district over and across upon any land or interest therein of the State of Washington, or any county of this state, and streets, alleys and avenues, or public places of any city, town or municipal corporation of this state: *Provided, however,* That the construction of such commercial waterway or commercial waterways shall not have the effect of impairing any right, power or authority now existing on the part of any city or town to construct in, upon, underneath, above or across such commercial waterway or commercial waterways, sewers, water pipes, mains, the granting of any franchise thereon, or improve by the way of planking, replanking, paving, repaving or any other power, right and authority which, but for this act, such city or town would have in or to such street, avenue, alley or public place, except, however, that such right, power and authority on behalf of such city or town shall not be exercised either by such city or town or by any person or persons, firms or corporations, to whom it might grant any right or franchise which will materially impair the efficiency of said commercial waterway or commercial waterways. The provisions of this section as regards such system of commercial waterway or commercial waterways, to be selected within the boundaries of any incorporated city or town, shall apply to the extension or enlargement of any commercial waterway or commercial waterways already existing upon, over and across any street, avenue, alley or public place of any city or town, as well as the original construction thereof.

SEC. 8. All the right, title and interest of the State of Washington in and to so much of the beds and shores of any navigable river, stream, waterway or watercourse located within the boundaries of any commercial waterway district up to and including the line of ordinary high tide in waters where the tide ebbs and flows up to and including the line of ordinary high water within the banks of any navigable rivers and lakes, to the extent that same, under any proceedings to be had under this act, shall

Lands of
state.

Rights of
municipalities.

State tide
or shore
lands go to
districts.

cease to become part of such river, stream, waterway or watercourse by reason of the diversion of such river, stream, waterway or watercourse, under any proceedings had under this act, are hereby given and granted and vested in the respective commercial waterway districts now existing, or hereafter to be formed, and the commissioners of such respective commercial waterway districts are hereby given the right, power and authority to sell such beds and shores in such manner and upon such notice and proceedings as govern, under the existing laws of the state, the board of county commissioners in the sale and disposition of any real estate belonging to the counties of this state. The proceeds of such sales are to be used for the benefit of such commercial waterway districts, and the payment of any expenses connected with the construction of such commercial waterways or maintenance thereof: *Provided, however,* That the commissioners of such commercial waterway district may, in their discretion, exchange such abandoned beds and shores, for other property needed in the straightening, deepening or widening of such rivers, watercourses or streams, and which exchange may be made upon such terms and conditions and in such areas as, in the discretion of such commissioners, they may deem advisable and for the best interests of such commercial waterway district without any notice or other formality or proceedings whatever.

Districts
may trade
river beds.

SEC. 9. (a) Whenever the county owns any lands situated within the boundaries of the proposed commercial waterway district, the county auditor, when so directed by the board of county commissioners of the county in which such lands are situated, is hereby authorized to sign the petition praying for the formation of such commercial waterway districts for and on behalf and as the act and deed of such county, and when so signed the same shall be considered in determining the question of majority signature in the area of the land to the petition for a formation of such district.

County may
petition.

(b). Whenever any city or town owns any land situ-

City may
petition.

ated within the boundaries of a proposed commercial waterway district, the city comptroller, when so directed by the council of said city or town in which such lands are situated, is hereby authorized to sign the petition praying for the formation of such commercial waterway districts for and on behalf and as the act and deed of such city or town, and when so signed the same shall be considered in determining the question of majority signature in the area of land to the petition for the formation of such district.

State may
petition.

(c). Whenever the State of Washington owns any land situated within the boundaries of the proposed commercial waterway district the Commissioner of Public Lands of the State of Washington, when so directed by the board of said land commissioners of said state, is hereby authorized to sign the petition praying for the formation of such commercial waterway district for and on behalf and as the act and deed of such state, and when so signed the same shall be considered in determining the question of majority signature in the area of the land to the petition for the formation of such district.

Road district
may petition.

(d). Whenever any highway, roads or bridges are maintained by the county in which a commercial waterway district may be established, as herein provided, and it shall appear that the construction and maintenance of such commercial waterway system will be beneficial to such highways, roads, and bridges or which will be beneficial to such highways, roads and bridges as may hereafter be constructed or maintained by the county in which such system of commercial waterways is situated, then the board of county commissioners of such county may, and it shall be the duty of such board to appropriate to such commercial waterway district an amount of money sufficient to pay the proportionate share of such county in accordance with the benefits received or to be received; whenever it may appear to the board of county commissioners of any county that any improvements made or to be made in any commercial waterway district under the provisions of this act shall, on account of the health of the people of the county, be beneficial in respect thereto, the board of county commissioners

may make an appropriation of money to such commercial waterway district in such an amount to such board as may seem proper.

(e). Whenever it shall appear to the city or town council of any incorporated city or town, not included or wholly included, within the limits of any commercial waterway district established hereunder, that the construction and maintenance of such commercial waterway system will be of special commercial benefit and will be beneficial to the health of the inhabitants of such incorporated city or town and to the general welfare of the said city or town, then the said city or town council is hereby empowered and authorized to appropriate such amount of money out of the general funds of the said city or town as may to the said city or town council seem proper and just to such commercial waterway system, or the city or town council may for such purpose levy an assessment upon all the property in said city and town subject to taxation by said city or town, which shall not exceed one-half mill for each dollar of property.

Municipality
may aid.

(f). Public highways, streets and alleys shall not be considered in computing the area of said district.

Streets not
included in
area.

SEC. 10. Said board of commercial waterway commissioners hereinbefore provided for shall have the exclusive charge of the construction and maintenance of all commercial waterways or commercial waterway systems which may be constructed within the said district, and shall be the executive officers thereof, with full power to bind said officers. In case of vacancy or vacancies occurring in said board by the death, failure to elect, failure to qualify, resignation or removal of one or more of the members thereof from said district, such vacancy or vacancies shall be filled at once from the freeholders and qualified electors of said district by the judge of the superior court of said county, and said appointee shall serve the unexpired term, or until the next general election or until a successor is elected and qualified: *Provided*, That in counties where there may be more than one superior judge, the judge eldest in age shall make such appointment.

Board to
construct.

Vacancies—
judge to
appoint.

Contents of
petition.

SEC. 11. Whenever it is desired to prosecute the construction of a system of waterways within said district, by and through its board of commissioners, shall file a petition in the superior court of the county in which said district is located, setting forth therein the route over which the same is to be constructed, with a reasonably accurate description thereof, together with the estimated cost of such proposed improvements, showing therein the names of the owners and occupants thereof, and all persons having any interest therein, so far as is known to the officers filing the petition or appearing from the records in the office of the county auditor, and the maximum amount of benefits to be derived by each tract or parcel of land set forth therein from the construction of said proposed improvement, and that the same will be of special benefit to the property included therein, and will be conducive to the public health, convenience and welfare, and increase the value of all of said property for the purpose of public revenue; said petition shall further set forth a reasonably accurate description of the tracts or parcels of land and property, which shall be taken or damaged, and the names of the owners and occupants thereof, and all persons having any interest therein so far as known to the officers filing the petition, or appearing from the records in the office of the county auditor, and the amount of land necessary to be taken therefor. Said petition shall set forth as defendants therein all the persons or corporations to be benefited by said improvement, and all persons or corporations through whose land the right-of-way is sought to be appropriated, and all persons or corporations having any interest therein as mortgagee or otherwise, appearing on record, and shall set forth that said proposed system of commercial waterways is necessary, and that all lands sought to be appropriated for said right-of-way are necessary to be used as a right-of-way for the construction and maintenance of said improvement.

SEC. 12. In the preparation of the facts and data to be inserted in said petition and filed therewith for the purpose of presenting the matter to the said superior court,

or at any other time, the said board of commissioners of said commercial waterway district may employ one or more good and competent engineers, surveyors and draftsmen to assist them in compiling data required to be presented to the court with said petition as hereinbefore provided, and such legal and other assistance as may be necessary, with full power to bind said district for the compensation of such assistance or employes employed by them, and such services shall be taxed as costs in the suit.

Engineers
to prepare
data.

SEC. 13. Upon the filing of the petition aforesaid a summons, returnable as summons in other civil actions, shall be issued and served upon the person made parties defendant, together with a copy of the petition, as in other civil actions, and in case any of them are unknown or reside out of the state, a summons for publication shall issue and publication be made and return and proof thereof be made in the same manner as is or shall be provided by the laws of the state for service upon absent defendants in other civil actions. Notice so given by publication shall be sufficient to authorize the court to hear and determine the suit as though all parties had been sued by their proper names and had been personally served.

Service of
petition.

SEC. 14. In case the land, real estate, premises or other property sought to be appropriated or damaged is state, school or county land, or other land belonging to a public corporation, the summons and copy of petition shall be served on the auditor of the county in which said land, real estate, premises or other property is situated. Service upon other parties defendant shall be made in the same manner as is or shall be provided by law for service of summons in other civil actions.

Service on
auditor.

SEC. 15. Upon the return of said summons, or as soon thereafter as the business of the court will permit, the said court shall proceed to the hearing of such petition and shall impanel a jury to ascertain the just compensation to be paid for the property taken or damaged, but if any defendant or party in interest shall demand, and the court shall deem it proper, separate juries may be impaneled as

Hearing on
petition.

to the compensation or damages to be paid to any one or more of such defendants or parties in interest.

Jury to ^{fix} compensation.

SEC. 16. Such jury shall also ascertain the just compensation to be paid to any person claiming an interest in any lot, parcel of land or property which may be taken or damaged by such improvement, whether or not such person's name or such lot, parcel of land or other property is mentioned or described in such petition: *Provided*, Such person shall first be admitted as a party defendant to said suit by such court and shall file a statement of his interest in and description of the lot, parcel of land or other property in respect to which he claims compensation.

Jury to view property.

SEC. 17. The court may, upon the motion of such district or of any defendant, direct that said jury (under the charge of any officer of the court and accompanied by such person or persons as may be appointed by the court to point out the property sought to be taken or damaged) shall view the lands and property affected by said improvement.

Building, measure of damages.

SEC. 18. If there be any building standing, in whole or in part, upon any land to be taken, the jury shall add to their finding of the value of the land taken the damages to said building. If the entire building is taken, or if the building is damaged so that it cannot be readjusted to the premises, then the measure of damages shall be the fair market value of the building. If part of the building is taken or damaged and the building can be readjusted or replaced on the part of land remaining, then the measure of damages shall be the cost of readjusting or moving the building, or the part thereof left, together with the depreciation in the market value of said building by reason of said readjustment or moving.

Adverse interests.

SEC. 19. If the land and buildings belong to different parties, or if the title to the property be divided into different interests by lease or otherwise, the damages done to each of such interests may be separately found by the jury on the request of any party. In making such findings, the jury shall first find and set forth in their verdict the total

amount of the damage to said land and buildings and all premises therein, estimating the same as an entire estate and as if the same were the sole property of one owner in fee simple; and they shall then apportion the damages so found among the several parties entitled to the same, in proportion to their several interests and claims and the damages sustained by them respectively, and set forth such apportionment in their verdict. No delay in ascertaining the amount of compensation shall be occasioned by any doubt or contest which may arise as to the ownership of the property, or any part thereof, or as to the extent of the interest of any defendant in the property to be taken or damaged, but in such case the jury shall ascertain the entire compensation or damage that should be paid for the property and the entire interests of all the parties therein, and the court may thereafter require adverse claimants to interplead, so as to fully determine their rights and interests in the compensation so ascertained. And the court may make such order as may be necessary in regard to the deposit or payment of such compensation.

SEC. 20. Upon the return of the verdict the proceedings of the court regarding new trial and the entry of judgment thereon shall be the same as in other civil actions, and the judgment shall be such as the nature of the case shall require. The court shall continue or adjourn the case from time to time as to all occupants and owners named in such petition who shall not have been served with process or brought in by publication, and new summons may issue or new publication may be made at any time; and upon such occupants or owners being brought in, the court may impanel a jury to ascertain the compensation so to be made to such defendant or defendants for private property taken or damaged, and like proceedings shall be had for such purpose as herein provided.

Proceedings
for new trial.

SEC. 21. The court shall have power at any time, upon proof that any such owner or owners named in such petition who has not been served with process has ceased to be such owner or owners since the filing of such petition, to impanel a jury and ascertain the just compensation to be

New owners,
damages.

made for the property (or the damages thereto) which has been owned by the person or persons so ceasing to own the same, and the court may, upon any finding or findings of any jury or juries, or at any time during the course of such proceedings enter such order, rule, judgment or decree as the nature of the case may require.

Guardians
ad litem.

SEC. 22. When it shall appear from the said petition or otherwise, at any time during the proceedings upon such petition, that any infant or insane or distracted person is interested in any property that is to be taken or damaged, the court shall appoint a guardian *ad litem* for such infant or insane or distracted person to appear and defend for him, her or them, and the court shall make such order or decree as it shall deem proper to protect and secure the interest of such infant or insane or distracted person in such property or the compensation which shall be awarded therefor.

No damages,
no costs.

SEC. 23. Any final judgment or judgments rendered by said court upon any finding or findings of any jury or juries, or upon any finding or findings of the court in case a jury be waived, shall be lawful and sufficient condemnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings all costs which shall be taxed as in other civil cases: *Provided*, That in any case defendant recovers no damages, no costs shall be taxed. Such judgment or judgments shall be final and conclusive as to the damages caused by such improvement unless appealed from, and no appeal from the same shall delay proceedings, if such district shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs, and such districts, after making such payment into court, shall be liable to such owner or owners or parties interested for the payment of any further compensation which may at any time be finally awarded to such parties so appealing in said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor and abide any rule or order of the court in relation to the matter in contro-

Appeals not
to delay.

versy. In case of an appeal to the supreme court of the state by any party to the proceedings, the money so paid into the superior court by such district, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the owner of the land, real estate, premises, or other property accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived conclusively an appeal to the supreme court and final judgment may be rendered in the superior court as in other cases.

Custody of
moneys on
appeal.

SEC. 24. The court, upon proof that just compensation so found by the jury, or by the court in case the jury waived, together with the costs, has been paid to the person entitled thereto, or has been paid into court as directed by the court, shall enter an order that the district shall have the right at any time thereafter to take possession of or damage the property in respect to which such compensation shall have been so paid or paid into court as aforesaid, and thereupon the title to any property so taken shall be vested in fee simple in such district.

Title to pass,
when.

SEC. 25. In case the damages or amount of compensation for such area, together with the estimated costs of the improvement, amount to more than the maximum amount of benefits which will be derived from said improvement, the court shall dismiss such proceedings and in such case a judgment shall be rendered for the costs of said proceedings against said district, and no further proceedings shall be had or done therein, and upon the payment of the costs said organization shall be dissolved by decree of said court.

Proceedings
dismissed if
costs exceed
improve-
ments.

SEC. 26. Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided by this act, may apply to the court therefor, and upon bringing evidence satisfactory to the court that he is entitled to the same, the court shall make an order directing the payment of such claim of the proportion of such money as he or it may be found entitled to, but if upon application the court or judge thereof shall decide that the title to the land, real estate or premises specified

Payments.

in the application of such claimant is in such condition as to require than [that] an action be commenced to determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claimants to such land, real estate or premises be determined according to law.

Transcript.

SEC. 27. Upon the entering of the judgment upon the verdict of the jury, the clerk of said court shall immediately prepare a transcript which shall contain a list of all of the names, persons and corporations benefited by said improvement, and the amount of benefit derived by each respectively, and shall duly certify the same, together with a list of the land benefited by said improvement belonging to each person or corporation, and shall file the same with the auditor of the county, who shall immediately enter the same on the rolls of the taxes, as provided by law, for the entry of the taxes against the land of each of the said persons named in said list, together with the improvements therefor, and the same shall be subject to the same interests and benefits, in case of delinquency, as in cases of general taxes, and shall be collected in the same manner as other taxes, and subject to the same right of redemption, and the land sold for the collection of said taxes shall be subject to the same right of redemption as in the sale of land for general taxes: *Provided*, That said assessments do not become due and payable, except at such time or times and in such amount as may be designated by the board of commissioners for said commercial waterway district, which designation shall be made to the county auditor by said board of commissioners of said commercial waterway by serving a written notice upon the county auditor, designating the time and amount of assessment, said assessment to be in proportion to the benefits to become due and payable, which amount shall fall due at the time of the filling out of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person or corporation, according to said notice upon the assessment rolls in his said office and collect therewith: *Provided further*, That no one call for

Assessments delinquent.

Assessments, when payable.

assessments by said commissioners shall be in an amount to exceed 25% of the actual amount necessary to pay the costs of the proceedings and the assessment of said district and system of commercial waterways, and the costs of construction of said work. Installments.

SEC. 28. In the event of the dismissal of said proceedings, and the rendition of a judgment against said district as hereinbefore provided, said commercial waterway commissioners shall levy a tax upon all real estate within said district, taking as a basis the last equalized assessment of said real estate for said state and county purposes sufficient to pay said judgment and the cost of levying said tax, and shall cause said tax roll to be filed in the office of the clerk of the superior court, in which judgment was rendered. If said tax is not paid within sixty days after the filing of said tax roll, the court shall, upon the application of any party interested, direct said real estate to be sold in payment of said tax. Said sale to be made in the same manner and by the same officer as is or may be provided by law for the sale of real estate for taxes for general purposes, and the same rate of redemption shall exist as in the sale of real estate for the payment of taxes for general purposes. Tax levy for costs.

Sale for taxes.

SEC. 29. After the filing of said certificates said commissioner of said commercial waterway district shall proceed at once in the construction of said improvements and in carrying on said construction or any extension thereof. They shall have full charge and management thereof and shall have the power to employ such assistance as they may deem necessary, and purchase all materials that they may deem necessary in the construction and carrying on of the work of said improvement, and shall have power to let the whole or any portion of said work to any responsible contractor, and shall in such case enter into all necessary agreements with such contractors that may be necessary in the premises: *Provided*, That in case the whole or any portion of such improvement is let to any contractor, said commissioners shall require such contractor to give a bond in double the amount of the contract price of the whole or Construction of works.

Contracts.

Bond of contractor.

of such portion of said work covered by such contract, with two or more good sureties, to be approved by the board of commissioners of said commercial waterway district running to said district as obligee therein, conditioned for the faithful performance of said contract by said contractor, his executors, administrators or assigns, according to the terms and conditions of said agreement, and shall cause said contractor to enter into a further and additional bond in the same amount with two or more good and sufficient sureties to be approved by said board of commissioners of said commercial waterway district as obligee therein, conditioned that said contractor, his executors, administrators or assigns, or sub-contractor, his executors, administrators or assigns, shall perform the whole or any portion of said work under contract of said original contractor; and shall pay or cause to be paid all just claims of all persons performing labor or rendering service in the construction of said work or furnishing material, merchandise or provision of any kind or character used by said contractor, or sub-contractor, or any employee thereof, in the construction of said improvement: *Provided further*, That no sureties on said last mentioned bond shall be liable thereon unless the persons or corporations performing said labor and furnishing said materials, goods, wares, merchandisé and provisions shall, within ninety days after the completion of such improvement, file their claim duly verified, if the amount is just and true and remains unpaid, with the commissioners of said commercial waterway district.

Bond to cover labor and material claims.

Filing of claims.

Prosecution of work.

SEC. 30. The work on said improvement shall begin without delay, and shall be carried on with all expedition possible, and said board of commissioners of said commercial waterway district, or any contractor thereunder, shall have no power whatever to change the location of the commercial waterways, or the system of improvements or the manner of doing the work therein so as to make any radical changes in such improvement without the written consent of all the land owners to be benefited thereby and the land owners which may be damaged thereby; and in case

any substantial changes in said system, improvement or manner of construction thereof shall be deemed necessary by said board of commissioners at any time during the progress thereof, and if the written consent of such changes cannot be procured from said land owners, then said commissioners for and on behalf of said district shall file a petition in the superior court of the county within which said district is located, setting forth therein the changes which they deem necessary to be made in the plans or manner of the construction of said improvement, and praying therein to be permitted to make such changes, and upon the filing thereof the commissioners shall cause a summons to be served setting forth the prayer of said petition under the seal of said court, which summons shall be served in the same manner as the service of summons in the case of an original petition upon all the land owners or others claiming any lien thereon or interest therein appearing of record in said commercial waterway district, and any or all such parties so served may appear in said cause and submit their objections thereto, and after the time for the appearance of said parties has expired the court shall proceed to hear said petition at once without further delay, and if it appears during the course of such proceedings that the property rights of any of said land owners will be affected by such proposed change in said improvement, then the court after having passed upon all preliminary questions as in the original proceedings, shall cause a jury to be impaneled as in the case of the original proceedings for the establishment of said improvement, and upon the final hearing of said cause the jury shall return a verdict in the amount of damages, if any, sustained by all persons and corporations, the same as upon original petition, by reason of such proposed change; and the amount of compensation to be paid to any persons or corporations therefor, and for any additional right-of-way that may be necessary to be appropriated by reason of such proposed change, and shall readjust the amount of benefits claimed to have been increased or diminished, if any, of said land owners by reason of such proposed

Petition to
change.

Hearing on
change of
plans.

Damages for
change of
plans.

change in said improvement, and the proceedings thereunder would be the same as to rendering judgment, appeal therefrom. Payment of compensation and damage and filing the certificate with the auditor as hereinbefore provided for in the proceedings under the original petition and said commissioners shall have the right thereafter to proceed with the construction of said improvement according to the changes made therein.

Payments
as work
progresses.

SEC. 31. During the construction of said improvement said commissioners shall have the right to allow payment thereof in installments as the work progresses in proportion to the amount of said work completed: *Provided*, That no allowance or payment shall be made for said work to any contractor or sub-contractor to exceed 75% of the proportionate amount of the work completed by such contractor or such sub-contractor, and 25% of the contract price shall be reserved at all times by said board of commissioners until such work is wholly completed, and shall not be paid upon the completion of said work until ninety days have expired from the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvement; and upon the completion of said work and the payment of all claims hereinafter provided for thereon, and the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor.

Cost of main-
tenance.

SEC. 32. The board of commissioners of any commercial waterway district, organized under the provisions of this act, shall on or before the first day of November of each year make an estimate of the cost and maintenance of the commercial waterway system of such district, which estimate shall include the cost of making any necessary repairs that it might become necessary to make in the maintenance of such system. Such estimate shall be for the succeeding year and the amount so estimated shall be certified by the board of commissioners, and the auditor of the county in which said district is located on or before said date, and the amount thereof shall be levied against

Levy for.

and apportioned to the land of said district benefited by said improvement in proportion to the maximum benefit originally assessed, and such amount shall be added to the general taxes against said lands and collected therewith.

SEC. 33. The board of commissioners of said district shall elect one of their number chairman and one secretary, ^{Officers of board.} and shall keep minutes of all their meetings and may issue warrants of such district in payment of all claims or indebtedness against said district. Such warrants shall be in form and substance the same as county warrants or as near the same as may [be] practical, and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment as hereinafter provided, and shall be signed by the chairman and attested by the secretary of said board: *Provided*, That no warrants shall be issued by said board of commissioners in payment of any indebtedness of such district for less than the face or par value.

SEC. 34. Upon the establishment of any district under the provisions of this act and the establishment of a system of commercial waterways therein as provided for in this act, the board of commissioners of such commercial waterway district may, upon the petition of a majority of all the land owners owning land within such district to be benefited thereby, issue bonds for the total amount of the cost of construction of said improvement, together with the cost of the establishing thereof, including damages, assessments and compensations made to the land owners for the right-of-way, and the expense and cost of the entire proceedings payable at a time not less than five years nor longer than ten years from the date thereof; and such commissioners may at any time thereafter issue such bonds in the manner and forms herein described for the purpose of funding any outstanding warrants or obligations of such district, and in case of such last named issue all the outstanding warrants shall immediately become due and payable upon receipt of the money by the county treasurer from the sale of said bonds, and upon a call of such outstanding obligations to be issued by him which call shall be ^{Negotiable bonds.}

made by said treasurer immediately upon receipt of the proceeds from the sale of said bonds by publication for two successive weeks in the county paper authorized to do the county printing, and such warrants and outstanding obligations shall cease to draw interest at the end of thirty days after the date of first publication: *Provided*, That no bonds shall, under the provisions hereof, be sold for less than their par value.

Denomina-
tion of
bonds.

SEC. 35. Said bonds shall be numbered from one upward consecutively, and be in denominations of not less than \$100 nor more than \$1,000. They shall bear the date of issue and shall be made payable to the bearer not more than ten years nor less than five years from the date of their issue, and to bear interest at the rate not exceeding 7% per annum, payable annually, with coupons attached for each interest payment. The bonds and each coupon shall be signed by the chairman of the board of commercial waterway commissioners and shall be attested by the secretary of such board, and the seal of said district shall be affixed to each bond, but not to the coupons.

Bonds ex-
changed for
warrants.

SEC. 36. Said bonds may be exchanged at not less than par value for an equal amount of the warrants of the district issuing bonds.

Sinking fund.

SEC. 37. Five years before said bonds shall become due, the commercial waterway commissioners of such district issuing them are hereby authorized and required annually to levy assessments sufficient to liquidate said bonds at maturity. Such assessments shall be collected by the county treasurer and kept as a separate fund for the sole purpose of liquidating said bonds in accordance with the provisions of the following section.

Payment.

SEC. 38. It shall be the duty of the treasurer of any county in which there may be a district issuing bonds under the provisions of this chapter whenever he has in hand \$2,000 of the special fund for the payment of said bonds, to advertise in a newspaper doing the county printing for the presentation to him for payment of as many of the bonds issued under the provisions of this act as he may be

able to pay, the funds in his hands to be paid in numerical order of said bonds beginning with Bond No. 1 until all of said bonds are paid: *Provided*, That thirty days after the first publication of said notice of the treasurer calling in any of said bonds by their number shall cease to bear interest, which shall be stated in the notice.

SEC. 39. It shall be the duty of such commercial waterway commissioners annually to levy an assessment sufficient for the payment of the coupons hereinbefore mentioned as they fall due. Said coupons shall be considered for all purposes as warrants drawn upon the funds of the district issuing bonds under the provisions of this act, and when presented to the county treasurer and no funds are in the treasury to pay said coupons, it shall be his duty to endorse said coupons as presented for payment in the same manner as other warrants upon the funds of said district are endorsed and thereafter said coupons shall bear interest at the same rate as other warrants so presented and unpaid.

Interest,
tax levy.

SEC. 40. Before the bonds are delivered to the purchaser, they shall be presented to the county treasurer, who shall register them in a book kept for that purpose and known as the "Bond Register," in which register he shall enter the number of each bond, the date of issue, the maturity, amount and rate of interest, to whom and when payable, and the proceeds derived from the sale of said bonds shall in all cases be paid by the purchaser thereof to the county treasurer.

Bonds
registered.

SEC. 41. All warrants issued under the provisions of this act shall be presented by the holders thereof to the county treasurer, who shall endorse thereon the date of presentation for payment, and the additional endorsement thereon in case of non-payment that they are not paid for want of funds, and no warrant shall draw interest under the provisions of this act until it is so presented and endorsed by the county treasurer, and it shall be the duty of such treasurer from time to time, when he has sufficient funds in his hands for that purpose, to advertise in the

Warrants,
how en-
dorsed.

Payment.

newspaper doing the county printing for the presentation to him for the payment of as many of the outstanding warrants as he may be able to pay: *Provided*, That thirty days after the first publication of said notice of the treasurer calling in any of said outstanding warrants, said warrants shall cease to bear interest which shall be stated in the notice. Said notice shall be published two weeks consecutively and said warrants shall be called in and paid in the order of their endorsement.

Questions for jury.

SEC. 42. Upon the trial of any questions of issue by a jury under the provisions of this act, the trial court may in its discretion submit all questions to be found by the jury in the form of verdict on all such questions to be found by the jury therein.

Public lands.

SEC. 43. All state, county and school districts, or other lands belonging to other public corporations, shall be subject to the provisions of this act and such corporations, by and through their proper authorities, shall be made parties in all proceedings therein affecting said lands, and shall have the same rights and liable to the same right of eminent domain as private persons, and their lands shall be subject to the right of eminent domain the same as the land of private persons or corporations.

Assessment of public lands.

SEC. 44. In case lands belonging to the state, county and school district, or other public corporations, are benefited by any improvement instituted under the provisions of this act, all benefits shall be assessed against said lands, and the same shall be paid by the proper authorities of such public corporations at the times and in the same manner as assessments are called and paid in case of private persons out of any general fund of such corporation.

Service of process.

SEC. 45. Fees for services of all process necessary to be served under the provisions of this act, shall be the same as for like services in other civil cases or that is and may be provided by law.

SEC. 46. In performing their duties under the provisions of this act, the board of commercial waterway commissioners shall receive such compensation as may be just

and reasonable for all necessary services actually performed not exceeding three dollars per day, to be determined and allowed by the court upon presentation by said commissioners, or either of them, of an itemized statement duly verified by either member or all of said members, if same is just, reasonable, necessary and actually performed, and no part of the same has ever been paid. In case such services are rendered by said board in the establishment and construction of said improvement, the amount thereof allowed by the court shall be deemed to be a part of the cost of the construction and establishment of said improvement, and in case such compensation to be allowed by the court shall be for services rendered by said board in the repair or maintenance of such improvements, such allowance shall be added to the actual cost of maintenance of such system: *Provided*, That any person interested therein may file objection to the allowance ask [asked] for, either in whole or in part; such claim so filed shall not be passed upon or allowed by the court until the expiration of thirty days from the filing thereof. Said board of commissioners, or members thereof, presenting such claims or [for] allowance shall, at the time of filing thereof in the court post notices in at least four public [places] within said district, which notice shall set forth therein the fact that an application for allowance has been filed in said court, giving the date of filing thereof and the amount of allowance applied for and demanded, if any, and all persons having an interest therein shall file objections in said court, if any they have, to the allowance of said claim or any portion thereof within thirty days from the filing of such application for allowance, and the court shall hear said application and the objections thereto, if any be made and filed, and shall in its discretion make such allowance and in such amount as it may deem to be just in the premises, and the same shall be paid as other claims against said district are paid.

Compensation
of commis-
sioners.

Notice of
claim for
compensation.

SEC. 47. The court may compel the performance of the duties imposed by this act, and may in its discretion on proper application therefor, issue its mandatory injunction for such purpose.

Power of
court.

Emergency.

SEC. 48. An emergency exists and this act shall take effect immediately.

Passed by the Senate July 1, 1909.

Passed by the House Aug. 13, 1909.

Approved by the Governor Aug. 17, 1909.

CHAPTER 9.

[House Bill No. 4.]

RELATING TO TREASURER OF STATE COLLEGE.

AN ACT relating to the management of the State College of Washington.

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

State Treas-
urer is
treasurer of
college.

SECTION 1. The State Treasurer shall hereafter constitute and be the treasurer of all funds belonging to the State College, Experiment Station and School of Science of the State of Washington, known as the State College of Washington. All moneys or funds received from the United States or from any other source whatsoever for the benefit of said State College or from the products or property of said college, or for the use of or belonging to said college shall be paid to and deposited with the State Treasurer; when so deposited the same shall be held as special funds for said college, and are hereby appropriated to the uses and purposes for which the same are received. Upon receipt of any funds belonging to said college by the State Treasurer, he shall issue duplicate receipts therefor and deposit one of such receipts with the State Auditor, who shall keep the accounts of said college as other accounts are kept, and shall draw warrants against said accounts upon the presentation of properly executed vouchers therefor, but no warrant shall be drawn on any such fund for an amount in excess of the amount remaining in such fund.

Receipts of
funds.

Vetoed.

SEC. 2. [Vetoed.] All acts or parts of acts providing for the election of a treasurer by the board of regents of