

other than a final order, from which an appeal is allowed by this act, within fifteen days after the entry of the order, if made at the time of the hearing, and in all other cases within fifteen days after the service of a copy of such order, with written notice of the entry thereof, upon the party appealing, or his attorney. In criminal causes, an appeal must be taken within ninety days after the entry of final judgment.

SEC. 2. This act shall not apply to any orders or judgments already made, whether entered or not.

Passed the senate February 19, 1895.

Passed the house March 8, 1895.

Approved March 11, 1895.

CHAPTER L.

[S. B. No. 281.]

COUNTY ROADS.

AN ACT providing for viewing, laying out, surveying and establishing county roads.

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

SECTION 1. County roads shall be laid out and established by order of the county commissioners of the proper counties on the application of householders in the manner provided in this act.

SEC. 2. Applications for the laying out and establishing or changing of any county road shall be by petition in writing to the board of county commissioners, signed by at least ten householders of the county residing in the vicinity of the proposed road.

SEC. 3. Such petition must set forth the terminal points of the proposed road; the course, the width, which shall not be less than thirty feet nor more than one hundred feet, and that the proposed road is practicable and will be of general use and public utility.

SEC. 4. Such petition must be accompanied by a bond Bond required. in the penal sum of three hundred dollars, payable to the county, executed by one or more of such petitioners as principal or principals with two or more sufficient sureties, and conditioned that the petitioners will pay into the county treasury the amount of all cost and expense incurred in viewing and surveying the proposed road and in the proceedings, in case the road shall not be established, and said petition and bond shall be filed with the clerk of the said board of county commissioners.

SEC. 5. Said board, at the next meeting after the filing Viewers, when appointed. of such petition and bond, or at the time of such filing, if said board is then in session, shall consider such petition and bond, and if, upon such consideration, the board is satisfied that said petition contains substantially the matters and things required by law to be set out in such petition; that at least ten of the petitioners are householders of the county residing in the vicinity of the proposed road, and that the said bond is sufficient, the said board shall appoint three viewers, one of whom shall be the county surveyor, or his deputy, all of whom must be disinterested persons, none of them being petitioners, and the clerk of said board shall make and furnish to said viewers a copy of said petition and a copy of the order appointing said viewers.

SEC. 6. Said viewers shall be sworn to perform their Duty of viewers. duties faithfully, and as soon as practicable after their appointment they shall examine the route of the proposed road, and view, lay out, and survey such road in accordance with the petition, as nearly as practicable, and shall mark plainly the course of the road as so surveyed. They shall, as far as practicable, cause notice of the route of the road as surveyed to be given to each resident owner, lessee, occupant or owner's agent of lands over which such road passes. They shall receive from each person interested in such lands, who will give the same, a statement in writing, signed by such person, and (1) consenting that such road be established as surveyed and waiving all claim to damages on account thereof, or (2) claiming damages on account of the establishment and opening of such road, and

specifying the amount so claimed. They shall estimate the actual damage to each tract of land over which the road passes as so surveyed, and shall estimate the cost of opening and constructing such road, including all necessary bridges and culverts, and all clearing, grubbing and grading. They shall consider the necessity for the road, and the public convenience to be subserved thereby, and whether such road ought to be established and opened.

SEC. 7. When the view and survey of the proposed road is completed, the viewers must report in writing to the board of county commissioners:

1. The terminal points, course and length of the road as laid out and surveyed.

2. An accurate description of each tract of land over which such road passes, with the name and place of residence or address of the owners, lessees, and incumbrancers of each of said tracts, and the quantity or area of land to be taken from each tract for such road.

3. The estimated damages to each tract of land over which such road has been so laid out and surveyed.

4. The names of the persons interested in said lands who consent to the establishment of the road, and waive all claims to damages.

5. The names of the persons interested in said lands who refuse their consent, and the amount of damages claimed by each.

6. Whether such road should be of a width different from that specified in the petition, and if so, giving the width recommended by the viewers.

7. The probable cost of the construction of the road, including all necessary bridges and culverts, and all clearing, grubbing and grading.

8. The opinion of the viewers as to the necessity for the road, and their decision as to whether the same ought to be established and opened or not.

9. Such other facts, matters and things as such viewers may deem of importance to be known by the board of county commissioners.

10. They may, in their discretion or by order of the board, report upon the feasibility and cost of any other

route than the one petitioned for, which could subserve the same purpose.

SEC. 8. Said viewers shall file with their report the written consent and waivers of damages by persons interested in the lands affected by the establishment of said road, and the claims of damages, procured as provided in this act.

SEC. 9. The surveyor must file with such report a correctly prepared map of said road, as laid out and surveyed, which map must show the tracts of lands over which such road passes, with the name of the owner of each tract written thereon, and said surveyor shall also file therewith his field notes of such survey. Surveyor to file map.

SEC. 10. The viewers, axmen, flagmen, and all other necessary assistants employed in such survey, shall be paid not to exceed the sum of two dollars per day for their services out of the proper fund of the county, the surveyor shall be paid as provided by law for the time occupied by him in viewing, laying out and surveying the road and making the plat and field notes, which plat and field notes must be filed as in this act provided before he receives his said compensation. All claims for services in and about the viewing, laying out and surveying of county roads shall be submitted to and audited by the board of county commissioners. Wages paid.

SEC. 11. The board of county commissioners at their next meeting after the filing of the report of the viewers, or at the time when the same is filed, if then in session, must fix a time for the hearing of the report, and must cause notice of such hearing to be given to the owners, lessees and incumbrancers of the lands to be taken for such road, who have not consented to the establishment of the road and waived their claims to damages therefor, which notice shall be given as follows: If such owners, lessees and incumbrancers reside or are present within the county, then by serving upon them personally within the county a written notice at least twenty days before the time set for said hearing, setting forth the time and purpose of such hearing; and if any of said owners, lessees or incumbrancers are absent from said county, or for any reason cannot Notice to owners, how given.

be served personally therein, such notice shall be given, as to them, by posting written notice of the time and purpose of such hearing, one at a conspicuous place on the land or left at the residence of the owner, lessee or incumbrancer, as the case may be, and one at a conspicuous place at the court house of the county, at least twenty days before the time set for said hearing.

County commissioners to determine damages and establish roads.

SEC. 12. On the day fixed for said hearing or to which such hearing may be postponed or adjourned, the said board, upon due proof to the satisfaction of the board, made by affidavit, of the service or posting of notice of the hearing, as by this act required, shall proceed to the hearing of said report, and shall examine the same, together with the map and the petition, the written claims for damages, the written consent and waivers of damages, and all other papers on file in the proceedings, and shall hear and consider all testimony and documentary evidence adduced for or against the establishment of the road, or as to the amount of damages which should be awarded in any case, and shall, at that time or as soon thereafter as may be, declare by order the decision of the board—(1) As to whether the road shall be established in accordance with the report of viewers, or otherwise, or at all, and if the decision of the board be that the road shall be established, and if all persons interested in the lands to be taken have consented to the establishment of said road and have waived their claims to damages therefor, the said board shall, at the same time, make an order finally establishing the road, and shall order that the same be opened in the manner provided by law. If the decision of the board be that the road shall be established, and if any of the persons interested in the lands to be taken therefor shall not have consented to the establishment of the road, or waived their claims for damages therefor, or shall claim damages therefor, said board shall, at that time, by order, declare the amount of damages awarded by such board to each of such persons, and shall order the amount of such award to be set apart in the treasury out of the proper fund, to be paid to the proper owner or claimant upon his showing or establishing his right thereto, and if the awards be accepted

the board of county commissioners shall make an order finally establishing such road, and directing that the same be opened in the manner provided by law.

SEC. 13. If any award of damages is not accepted within thirty days from the date of the award, it shall be deemed rejected, and the board must then, by order, direct proceedings to procure the right-of-way to be instituted in the superior court of the county by the county attorney of the county, in the manner provided by law for the taking of private property for public use, and to that end are hereby authorized to institute and maintain in the name of the county the proceedings provided in chapter 6, title 9, of the Code of Procedure of the State of Washinton, volume 2, as arranged and annotated by Wm. Lair Hill; and when under such proceedings the right-of-way is procured, said board shall declare the road finally established, and shall order that the same be opened in the manner provided by law.

Rejection of awards and subsequent procedure.

SEC. 14. Before causing condemnation proceedings to be instituted in the superior court as hereinbefore provided, it shall be the duty of the county commissioners to tender to each person interested in the land to be appropriated for the public highway as hereinbefore provided, such amount as in the judgment of such county commissioners such person is justly entitled to, and in case a tender cannot be made by reason of the absence of such non-consenting land owner or person whose property is taken or damaged as hereinbefore provided, a warrant shall be drawn in the name of the county auditor, who shall cash the same and deposit said cash with the clerk of the court of the county wherein the road to be laid out and opened is located.

Tender of award.

SEC. 15. The warrant hereinbefore provided for shall be drawn upon the general road and bridge fund: *Provided, however,* That if there is not sufficient money in said fund at any time to pay any warrant so drawn in full, said county commissioners shall provide a special fund for the purpose of paying such warrants, and shall cause such warrant to be drawn on such special fund.

Award, how paid.

SEC. 16. Whenever any warrant is drawn upon said general road and bridge fund for the purposes herein speci-

Duty of treasurer.

fied, it shall be the duty of the clerk of the board of county commissioners to notify the county treasurer of the date and the amount of each such warrant, and in case the said warrant is not accepted by the person to whom it is tendered, at the time of tender, the county treasurer shall set apart from the general road and bridge fund, a sum sufficient to pay such warrant with one year's interest thereon at the rate of eight per cent. per annum, and said fund shall be kept intact until the claim of damages of the person in whose favor said warrant is drawn has been settled either by agreement or condemnation proceeding as hereinbefore provided.

Costs.

SEC. 17. When condemnation proceedings are instituted as hereinbefore provided against any person to whom tender has been made, and such person shall fail in such proceedings to recover judgment for a greater sum than the amount so tendered him, all costs of such condemnation proceedings shall be taxed against such non-consenting owner.

SEC. 18. The act approved March 9th, 1893, entitled "An act providing for viewing, laying out and surveying public roads, and providing for the award of damages in the location of said roads, and declaring an emergency," is hereby repealed: *Provided*, That such repeal shall in no manner affect pending proceedings which may be perfected under the laws now in force on the subject matter of this act.

SEC. 19. Whereas, the existing laws relating to the viewing, laying out, surveying and establishing county roads are deemed defective, and the subject is one of great importance, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval by the governor.

Passed the senate February 28, 1895.

Passed the house March 1, 1895.

Approved March 11, 1895.