

the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate February 11, 1927.

Passed the House March 2, 1927.

Approved by the Governor March 7, 1927.

CHAPTER 202.

[S. S. B. 202.]

OVERFLOWING HIGHWAYS, STREETS, ETC., FOR POWER, IRRIGATION AND OTHER PURPOSES—ASCERTAINMENT OF DAMAGES.

AN ACT relating to overflowing and inundating state and county roads, permanent highways, streets and alleys in fourth class cities and towns for the purpose of constructing and operating water power plants, reservoirs and other impounding works for power purposes, irrigation and other uses, and the reestablishment and reconstruction of the same, and the bringing of condemnation suits therefor and determining the amount of damages, conferring certain powers upon the state highway committee, state supervisor of hydraulics, boards of county commissioners, and town councils of towns and cities of the fourth class, and declaring an emergency.

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

SECTION 1. The state highway committee shall have power to, and in its sole discretion may, grant to any person or corporation the right, privilege and authority to perpetually back and hold the waters of any lake upon or over any state, county or permanent highway or road, or any street or alley within the limits of any town or city of the fourth class, or any part thereof, and overflow and inundate the same whenever the state supervisor of hydraulics shall deem it necessary for the purpose of erecting, constructing, maintaining or operating any water power plant, reservoir or works for impounding water for power purposes, irrigation, mining or other public use and shall so certify to the state highway commit-

State highway committee may authorize overflow of waters upon highways or streets and alleys of fourth class cities.

For what purposes.

tee. The decision of the state highway committee, in the absence of bad faith, arbitrary, capricious or fraudulent action, shall be conclusive. But no such right shall be granted until it shall have been heretofore or shall be hereafter determined in a condemnation suit instituted by said person or corporation desiring to obtain such right or rights in the county wherein is situated that part of said road, highway, street or alley so to be affected that the use for which said grant is sought is a public use, nor until there shall be filed with the clerk of the court in which the order or decree of public use was entered a bond or undertaking signed by the person or corporation seeking the grant, executed by a surety company authorized to do business in this state, conditioned to pay all costs and expenses of every kind and description connected with and incident to the relocation and reconstruction of any such highway, road, street or alley, the same to be of substantially the same type and grade of construction as that of the highway, road, street or alley to be overflowed or inundated, including any such relocation, reconstruction and maintenance costs and expenses as may arise within a period of 18 months after such new highway, road, street or alley shall have been opened, in its entirety, to public travel, and also including any and all damages for which the state, county, city or town may be liable because of the vacation of any such highway, road, street or alley and the relocation thereof in the manner provided herein and to save harmless the state, county, city or town from the payment of the same or any part thereof. Such bond shall be in a penal sum of double the estimated amount of the expenses, costs and damages referred to above, such estimate in case of a state highway to be made by the state highway committee, in case of a county road or permanent highway, to be made by

Decision of state highway committee conclusive.

Condemnation suit determining public use a prerequisite.

Filing bond.

Relocation and reconstruction of highway or street.

All damages to be paid.

Bond to be double estimated costs, etc.

Bond to be approved by state highway committee or superior court judge.

Parties defendant in condemnation suit.

Right to overflow as against owner of fee in highway, alley, etc.

Owner's damages separate from those of state, county or city.

The committee, board or council.

Thirty days after entry of decree of public use and filing of bond.

the board of county commissioners and in case of a street or alley of a town or city of the fourth class, to be made by the city or town council thereof. Said bond shall be approved by the state highway committee when the road to be affected shall be a state highway, and in all other cases by a judge of the Superior Court in which the order or decree of public use was entered. In such condemnation suit the State of Washington shall be made a party defendant when the road affected shall be a state highway; if the road shall be a county road or permanent highway the county in which said road or permanent highway is situated shall be made a party defendant and when any street or alley in any town or city of the fourth class shall be affected such city or town shall be made a party defendant. Any person or corporation may acquire the right to overflow as against the owner of the fee in any such highway, road, street or alley by making the owner of such fee, or of any part thereof, a party defendant in the condemnation suit provided for herein, or by instituting a separate condemnation suit against any such owner; the damages sustained by any such owner as a result of the overflow of any such highway, road, street or alley to be determined as in other condemnation cases, separate and apart from any damage sustained by the state, county, city or town.

SEC. 2. It shall be the duty of the state highway committee, if the road to be affected shall be a state highway, or of the board of county commissioners of the county in which such road is located, if the road to be affected shall be a county road, or permanent highway, or of the town council of any town or city of the fourth class in which the road is located, if the road to be affected shall be a street or alley, within 30 days after entry of said order or decree of public use and the filing of the bond mentioned in

section 1 hereof, to enter an appropriate order or resolution directing the relocation and reestablishment and completion forthwith of such highway, road, street or alley in place of that so to be overflowed or inundated, and promptly thereafter to acquire all property and rights of way necessary therefor, instituting and diligently prosecuting such condemnation suits as may be necessary in order to secure such property and rights of way. The decision of the committee, board or council as to relocation and reestablishment set forth in such order or resolution shall be final and conclusive as to all matters and things set forth therein, including the question of public use and necessity in any and all condemnation suits to be brought under this act. After the reestablishment and relocation of any such highway, road, street or alley and the construction and opening thereof in its entirety to public travel and the signing of the grant authorized in section 1 of this act, the state highway, county road or permanent highway, street or alley or such part thereof described in said grant shall be deemed to be abandoned and thereafter cease to be a highway, road, street or alley.

To enter order for relocation and reestablishment of highway, street, etc.

Decision as to relocation final.

SEC. 3. An emergency exists making the provisions of this act necessary for the immediate preservation of public peace, health and safety, and for the support of the state government and its existing public institutions, and this act shall take effect immediately.

Emergency.

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