

shall be in force from and after its passage and approval by the governor.

Passed the house March 13, 1895.

Passed the senate March 14, 1895.

Approved March 20, 1895.

CHAPTER CXV.

[H. B. No. 402.]

ESTABLISHMENT AND ORGANIZATION OF DRAINAGE DISTRICTS.

AN ACT to provide for the establishment and creation of drainage districts and the construction and maintenance of a system of drainage, and to provide for the means of payment thereof, and declaring an emergency.

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

SECTION 1. Any portion of a county, requiring drainage, which contains five or more inhabitants and freeholders therein may be organized into a drainage 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 hereafter be conferred by law upon such district and board of commissioners, and said district shall be known and designated as drainage district No. (here insert number), of the county of (here insert the name 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 drainage 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 employés as may be required, and prescribe

Drainage districts.

their duties, and perform such other acts as hereinafter provided, or that may hereafter be provided by law.

Districts,
how formed.

SEC. 2. For the purpose of the formation of such drainage districts, a petition shall be presented to the board of county commissioners of the county in which said proposed drainage 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 number of acres of land to be benefited [by] the proposed drainage system, and shall also contain the names of all the freeholders residing within said proposed district (so far as known), and shall contain a brief description of the proposed system of drainage, designating a point which shall be a good and sufficient outlet for the drainage of said district; the route over which the same is to be constructed, 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 drainage will be conducive to the public health, convenience and welfare, and increase the public revenue, and that the establishment of said district and said system of drainage will be of special benefit to the property included therein. Said petition shall be signed by such a number as own at least a majority of the acreage in the proposed district, and shall pray that the same be organized under the provisions of this act. Said petitioners shall, at the time of the filing of said petition, file a bond with said 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.

Petitions to be
published.

SEC. 3. Such petition shall be presented at a regular or special meeting of the board of county commissioners of 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 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 number of acres of land that will be benefited by said proposed drainage system, the number of freeholders residing within said boundaries of the said proposed district, and shall find whether the proposed drainage system will be conducive to the public health, welfare and convenience, increase the public revenue, and be of special benefit to the majority of the lands included within said boundaries of the said proposed district so established by said board of county commissioners: *Provided*, That no changes shall be made by said board of county commissioners in said boundary lines so as to include any territory outside of the boundaries described in said petition: *Provided further*, That any person or persons owning land 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 reasons therefor: *Provided, however*, That no person, persons or corporations not owning lands included within the proposed 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 further*, That 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

Commissioners to locate boundaries.

proposed boundaries. In such case the board of county commissioners shall give the 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 not exceeding sixty days, and if upon final hearing the board of county commissioners deem it advisable, and to the best interest of all concerned, they may grant the prayer of such petitioner or petitioners in whole or in part. No district shall be established unless it is shown that a good and sufficient outlet for the drainage thereof is within the boundaries of such district. 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 on the final hearing thereof.

Election to
establish
district.

SEC. 4. Upon the entry of the findings on 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 drainage system will be conducive to the public health, welfare and convenience, and will increase the public revenue and be of special benefit to the majority of the lands included within said boundaries, shall give notice of an election to be held in such proposed drainage district for the purpose of determining whether the same shall be organized under the provisions of this act as a drainage 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 "drainage commissioners" for said district proposed to be organized, which said three commissioners shall, upon their election, be the district authorities of said drainage district; and such notice shall particularly 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 drainage district and approximately the number of acres 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

Drainage com-
missioners,
how created.

located, and in case no such newspaper be printed or published therein, then in some 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; such notice shall designate the place within the proposed district where the election shall be held, and require the voters to cast ballots which shall contain the words "drainage district, yes," or "drainage district, no," and also the names of persons voted for for commissioners of said drainage district. The board of county commissioners shall also appoint two judges, one inspector and two clerks for such election, whose compensation shall be the same as in other elections for the election of county and state officers 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 collectible from the bond hereinbefore provided for, and any person having a charge against said district shall have a right of action thereon.

Notices published and posted.

Bond, action on.

SEC. 5. Such election shall be held on the day designated in such notice, and shall be conducted in accordance with the general election laws of the State of Washington, 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 limits of such district, as established by the board of county commissioners, for at least thirty days next preceding such election. The board of county commissioners shall meet on the Monday next succeeding such election, and proceed to canvass the votes cast thereat, and if, upon such canvass, it appears that a majority of the votes cast are for drainage district, "yes," the board shall have an order entered upon their minutes and declare such territory duly organized as a drainage district under the name and style of drainage district No. (here insert number) of (here insert name of county) of the State of Washington, and shall declare the three persons receiving respectively the highest

Election.

Drainage commissioners.

number of votes to be duly elected as a board of commissioners of such drainage district. Said board shall cause a copy of said order, duly certified, to be filed in the office of the secretary of state, and from and after the date of such filing such organization shall be deemed complete, and such board of commissioners so chosen at such election shall be entitled to enter immediately upon the duties of their office, and upon qualifying as county officers are required to qualify, and giving a bond to the State of Washington for the benefit of said drainage district, for the faithful performance of their duties as such board of drainage commissioners in the penal sum of \$5,000, with two or more sureties, to be approved by the board of county commissioners, and shall hold such office until the next general election for the election of officers in such drainage district, and until their successors are elected and qualified. Each board of commissioners thereafter, which may be constituted either by appointment or election, shall enter into a like bond and of like effect before entering upon their duties, which bond shall be approved by the judge of the superior court of the county in which said district is located, and shall be filed in said court.

Commissioners, bonds of.

General election, when.

SEC. 6. A general election for the election of a board of drainage commissioners of 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, and such election shall be held in accordance with the general election laws of the State of Washington for the election of county and state officers, and the expenses 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 \$2.00 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 drainage district, by posting the same in four public places within said district. Said notice shall contain the names of two electors of said district as judges of said election and the name of one elector of said district as inspector thereof,

Inspectors, compensation of.

Notice, how given.

the same to be chosen by said board of commissioners. Said board of commissioners shall be a canvassing board to canvass the vote 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.

SEC. 7. All drainage districts organized under the provisions of this act shall have the right of eminent domain, with the power by and through its board of commissioners, to cause to be condemned and appropriated private property for the use of said corporation in the construction and maintenance of a system of drainage, and make just compensation therefor: *Provided*, That the property of private corporations may be subjected to the same rights of eminent domain as that of private individuals: *Provided further*, That the said board of commissioners shall have power to acquire by purchase all the real property necessary to make the improvements herein provided for.

Eminent domain.

SEC. 8. Said board of drainage commissioners hereinbefore provided for shall have the exclusive charge of the construction and maintenance of all drainage systems which may be constructed within the boundaries of said district, and shall be the executive officers thereof, with full power to bind said district by their acts in the performance of their duties as provided by law. 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: *Provided*, That in counties where there may be more than one superior judge, the judge eldest in age shall make such appointment.

Commissioners, duties of.

SEC. 9. Whenever it is desired to prosecute the construction of a system of drainage within said district, 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 and termini of said system, with a complete description thereof,

Drainage, method of procedure.

together with specifications for its construction, with all necessary plats and plans thereof, together with the estimated cost of such proposed improvement, showing therein the names of the land owners whose lands are to be benefited by such proposed improvement; the number of acres owned by each land owner, and the maximum amount of benefits per acre to be derived by each land owner set forth therein from the construction of said proposed improvement, and that the same will be conducive to the public health, convenience and welfare, and increase the value of all of said property for purposes of public revenue. Said petition shall further set forth the names of the land owners through whose land the right-of-way is desired for said improvement; the amount of land necessary to be taken therefor, and an estimate of the value of said lands so sought to be taken for such right-of-way, and the damages sustained by any person or corporation interested therein, if any, by reason of such appropriation, irrespective of any benefits to be derived by such land owners by reason of the construction of said improvement. Such estimate shall be made, respectively, to each person through whose land said right-of-way is sought to be appropriated. 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 of record, and shall set forth that said proposed system of drainage is necessary to drain all of said lands described in said petition, and that all lands sought to be appropriated for said right-of-way are necessary to be used as a right-of-way in the construction and maintenance of said improvements; and when the proposed improvement will protect or benefit the whole or any part of any public or corporate road or railroad, so that the traveled track or roadbed thereof will be improved by its construction, such fact shall be set forth in said petition, and such public or private corporations owning said road or railroad shall be made parties defendant therein, and the maximum amount of benefits to be derived from

said proposed improvement shall be estimated in said petition against said road or railroad: *Provided, however,* That all maps, plats, field notes, surveys, plans, specifications, or other data heretofore made, ascertained or prepared under laws heretofore enacted on the subject of this act, may be used under the provisions of this act.

SEC. 10. 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 superior court, the board of commissioners of said drainage district may employ one or more good and competent surveyors and draughtsmen to assist them in compiling data required to be presented to the court with said petition, as hereinbefore provided, and such legal assistance as may be necessary, with full power to bind said district for the compensation of such assistants or employés employed by them, and such services shall be taxed as costs in the suit. Surveyors and draughtsmen.

SEC. 11. A summons stating briefly the objects of the petition and containing a description of the land, real estate, premises or property sought to be appropriated, and those which it is claimed to be benefited by such improvement, and stating the court wherein said petition is filed, the date of the filing thereof and when the defendants are required to appear (which shall be ten days, exclusive of the day of service, if served within the county in which the petition is pending, and if in any other county, then twenty days after such service, and if served by publication, then within thirty days from the date of the first publication), shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein. Said summons must be subscribed by the commissioners, or their attorney, running in the name of the State of Washington and directed to the defendants; and service thereof shall be made by delivering a copy of such summons to each of the persons or parties so named therein, if a resident of the state, or in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode, or in case of a foreign corporation, at its principal place of business in this state with Summons.

some person of more than sixteen years of age; in case of domestic corporations, said service shall be made upon the president, secretary or other director or trustee of such corporation; in case of minors, on their guardians; or in case no guardian shall have been appointed, then on the person who has the care and custody of such minor; in case of idiots, lunatics or insane persons, on their guardian; or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited by such improvement, is state, tide, school or county land, the summons shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited, is situated. In all cases where the owner or person claiming an interest in such real or other property is a non-resident of this state, or where the residence of such owner or person is unknown, and an affidavit of one or more of the commissioners of said district shall be filed that such owner or person is a non-resident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained by such deponent, service may be made by publication thereof in a newspaper published in the county where such lands are situated, once a week for three successive weeks; and in case no newspaper is published in such county, then such publication may be had in a newspaper published in the county nearest to the county in which lies the land sought to be appropriated, or which it is claimed will be benefited by said improvement. Such publication shall be deemed service upon each non-resident person or persons whose residence is unknown. Such summons may be served by any competent person over twenty-one years of age. Due proof of service of such summons by affidavit of publication shall be filed with the clerk of such court before the court shall proceed to hear the matter. Want of service of such notice shall render the subsequent proceedings void as to the person not served; but all persons or parties having been served with summons as herein provided,

Service by
publication.

either by publication or otherwise, shall be bound by the subsequent proceedings. In all cases not otherwise provided for service of notice, order and other papers in the proceedings authorized by this chapter may be made as the superior court, or the judge thereof, may direct: *Provided*, That personal service upon any party outside of the state shall be of like effect as service by publication.

SEC. 12. Any or all of said defendants may appear Appearance. jointly or separately and admit or deny the allegations of said petition and plead any affirmative matter in defense thereof at the time and place appointed for hearing said petition, or to which the same may have been adjourned. If the court or judge thereof shall have satisfactory proof that all of the defendants in said action have been duly served with said summons, as above provided, and shall be further satisfied by competent proof that said improvement is practicable and conducive to the public health, welfare and convenience, and will increase the value of said lands for the purpose of public revenue, and that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the establishment of said improvement, and that said improvement has a good and sufficient outlet, the court or judge thereof shall cause a jury of twelve qualified persons Jury. to be impaneled to assess the damages and benefits, as herein provided, if in attendance upon his court; and if not he may, if satisfied that the public interests require the immediate construction of said improvement, direct the sheriff of his county to summon from the citizens of the county in which said petition is filed as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the parties to the proceedings consent to a less number, such number to be not less than three, and such consent shall be entered by the clerk in the minutes of the trial. If necessary, to complete the jury in any case, the sheriff, under the direction of the court or judge thereof, shall summon as many qualified persons as may be required to complete the jury from the citizens of the

county in which the petition is filed. In case a special jury is summoned the cost thereof shall be taxed as part of the costs in the proceeding and paid by the district seeking to appropriate said land, the same as other costs in the case; and no person shall be competent as a juror who is a resident of, or land owner in, the district seeking to appropriate said land. The jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, by reason of the appropriation and use of such land, real estate, premises or other property for said improvement, and shall ascertain, determine and award the amount of damages to be paid to said owner or owners, respectively, and to all tenants, incumbancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the establishment of said improvement; and shall further find the maximum amount of benefits per acre to be derived by each of the land owners from the construction of said improvement. And upon a return of the verdict into court the same shall be recorded as in other cases; whereupon, a decree shall be entered in accordance with the verdict so rendered, setting forth all the facts found by the jury, and decreeing that said right-of-way be appropriated, and directing the commissioners of said drainage district to draw their warrant on the county treasurer for the amount awarded by the jury to each person for damages sustained by reason of the establishment of said improvement, payable out of the funds of said drainage district.

Jury,
duties of.

Appeals.

SEC. 13. Every person or corporation feeling himself or itself aggrieved by the judgment for damages, or the assessment of benefits, may appeal to the supreme court of this state, within thirty days after the entry of the judgment, and such appeal shall bring before the supreme court the propriety and justness of the amount of damage or assessment of benefit in respect to the parties to the appeal. Upon such appeal no bond shall be required and no stay shall be allowed.

Benefits and
damages.

SEC. 14. In case the damages or amount of compensation for such right-of-way, together with the estimated costs

of the improvement, amount to more than the maximum amount of benefits which will be derived from said improvement, or, if said improvement is not practicable, or will not be conducive to the public health, welfare and convenience, or will not increase the public revenue, or will not have sufficient outlet, 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.

SEC. 15. Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this act, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he is entitled to the same, the court shall make an order directing the payment to such claimant of the portion 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 in the application of such claimant is in such condition as to require 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 claims to such land, real estate or premises be determined according to law.

Damages,
how paid.

SEC. 16. Upon the entry 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 the names of all the 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 lands benefited by said improvement belonging to each person and corporation, and shall file the same with the auditor of the county, who shall immediately enter the same upon the tax rolls of his office, as provided by law for the entry of other taxes, against the land of each of the said persons named in said list, together with the amounts thereof, and the same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and shall be collected in the same manner as other

Transcript to
contain, what.

Assessments,
manner of.

taxes and subject to the same right of redemption, and the lands sold for the collection of said taxes shall be subject to the same right of redemption as the sale of lands for general taxes: *Provided*, That said assessments shall not become due and payable except at such time or times and in such amounts as may be designated by the board of commissioners of said drainage district, which designation shall be made to the county auditor by said board of commissioners of said drainage district, by serving written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to benefits to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons or corporation, according to said notice, upon the assessment rolls in his said office, and collected therewith: *And provided further*, That no one call for assessments by said commissioners shall be in an amount to exceed twenty-five per cent. of the actual amount necessary to pay the costs of the proceedings, and the establishment of said district and drainage system and the cost of construction of said work.

Conditional
tax, how
levied.

SEC. 17. In the event of the dismissal of said proceedings and the rendition of judgment against said district, as hereinbefore provided, said drainage commissioner[s] shall levy a tax upon all the real estate within said district, taking as a basis the last equalized assessment of said real estate for 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 such 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 right of redemption shall exist as in the sale of real estate for the payment of taxes for general purposes.

SEC. 18. After the filing of said certificate said commissioners of such drainage district shall proceed at once in the construction of said improvement, and in carrying on said construction or any extensions 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 material that may be 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 contractor that may be necessary in the premises: *Provided*, That in case the whole or any portion of said improvement is let to any contractor said commissioners shall require said contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by said contract, with two or more sureties to be approved by the board of commissioners of said drainage district and running to said district as obligee therein, conditioned for the faithful and accurate 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 or additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said drainage district in the name of said district as obligee therein, conditioned that said contractor, his executors, administrators or assigns, or sub-contractor, his executors, administrators or assigns, performing the whole or any portion of said work under contract of said original contractor, shall pay or cause to be paid all just claims for all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise or provisions of any kind or character used by said contractor or sub-contractor, or any employé 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 corporation performing said labor and furnishing said materials, goods, wares, merchandise and provisions, shall, within ninety days

Commissioners, duty of.

Contractor to give bond.

Liability of sureties.

after the completion of said improvement, file their claim, duly verified, that the amount is just and due and remains unpaid, with the board of commissioners of said drainage district.

Work, where
to begin.

SEC. 19. The work on said improvement shall begin at the outlet thereof, and shall be completed toward the terminus of said system, and shall be completed toward said terminus with all expedition possible, and said board of commissioners of such drainage district, or any contractor thereunder, shall have no power whatever to change said route or system of improvement or the manner of doing the work therein so as to make any radical changes in said 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 of improvement or the manner of the construction thereof shall be deemed necessary by said board of commissioners at any time during the progress thereof, and if the written consent to 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 plan 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 the original petition, upon all the land owners or others claiming any lien or interest therein appearing of record in said district, and any or all of said parties so served may appear in said cause and submit their objections thereto, and after the time for the appearance of all 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 said proceedings that the property rights of any of said land owners will be affected by such proposed change in said improvements, then the court, after having

Changes,
how made.

Summons,
how served.

passed upon all preliminary questions as in the original proceedings, may call a jury to be impaneled as in the case of the original proceeding for the establishment of said improvements, and upon the final hearing of said cause, the jury shall return a verdict finding the amount of damages, if any, sustained by all persons and corporations, the same as upon the 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 said proposed change, and shall readjust the amount of benefits claimed to have been increased or diminished by any of said land owners by reason of said proposed change in said improvements, and the proceedings thereafter shall be the same as to rendering judgment, appeal therefrom, payment of compensation and damages and filing of the certificate with the auditor, as hereinbefore provided for in the proceedings upon the original petition, and said commissioners shall have a right thereafter to proceed with the construction of said improvements according to the changes made therein.

Jury to determine damages.

SEC. 20. 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 work completed: *Provided*, That no allowance or payment shall be made for said work to any contractor or sub-contractor to exceed seventy-five per cent. of the proportionate amount of the work completed by such contractor or sub-contractor, and twenty-five per cent. of the contract price shall be reserved at all times by said board of commissioners until said work is wholly completed, and shall not be paid upon the completion of said work until ninety days have expired for the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvements; and upon the completion of said work and the payment of all claims hereinbefore provided for according to the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor.

Contractors, when paid.

Private drains
to connect.

SEC. 21. Any person or corporation owning land within said district shall have a right to connect any private drains or ditches for the proper drainage of such land with said system, and in case any persons or corporations shall desire to drain such lands into said system and shall find it necessary, in order to do so, to procure the right-of-way over the land of another, or others, and if consent thereto cannot be procured from such person or persons, then such land owner may present in writing a request to the board of commissioners of said district, setting forth therein the necessity of being able to connect his private drainage with said system, and pray therein that said system be extended to such point as he may designate in said writing, and immediately thereon said board of commissioners shall cause a petition to be filed in the superior court, for and in the name of said drainage district, requesting in said petition that said system be extended as requested, setting forth therein the necessity thereof and praying that relief [leave] be granted by the board to extend the system in accordance with the prayer of said petition, and the proceedings in such case, upon the presentation of such petition and the hearing thereof, shall be, in all matters, the same as in the hearing and presentation of the original petition for the establishment of the original system of drainage in said district, as far as applicable. That the costs in such proceedings shall be paid from the assessment of benefits to be made on the lands of the person or persons benefited by such extension, and the assessment and compensation for the right-of-way, damages and benefits, and payment of damages and compensation, and the collection of the assessments for benefits, shall be the same as in the proceedings under the original petition, and the construction of the said extension shall be made under the same provisions as the construction of the original improvement; and all things that may be done or performed in connection therewith shall be, as near as may be applicable, in accordance with the provisions already set forth herein for the establishment and construction of said original improvement: *Provided*, That such petitioner or petitioners shall, at the time of filing such petition by said drainage commissioners,

enter into a good and sufficient bond to said drainage district in the full penal sum of five hundred dollars, with two or more sureties, to be approved by the court, conditioned for the payment of all costs in case the prayer of said petition should not be granted, which bond shall be filed in said cause.

SEC. 22. In case of the establishment of a drainage district and system of drainage under the provisions of this act above any other district that may have theretofore been established and above any other system of drainage that may have theretofore been constructed in said district, and in case said district to be established above may desire to connect its drainage system with the lower or servient district, shall be made a party to the proceedings for the establishment of such system, and the petition to be filed in the superior court for the establishment of the system of drainage in said upper district shall, in addition to the facts hereinbefore provided and required to be set forth therein, set forth the fact that said lower system in said lower district is necessary to be used as an outlet for the system of drainage of said upper district, and that the same will be a sufficient outlet and will afford sufficient capacity to carry the drainage of both said upper and lower districts; and in case said system of said lower district will be required to be enlarged by widening or deepening the same, or both, in order to give sufficient outlet to said upper district and afford sufficient drainage for said upper and lower districts, then the plans and specifications for enlarging the system of said lower district shall be filed with said petition in addition to the other data hereinbefore provided for in this act. All the land owners in said lower district, or any person claiming any interest therein as mortgagee or otherwise, shall be made parties defendant in said petition, and the proceedings therein as to the assessment of damages and compensation for land taken, if any be necessary to be taken in enlarging said lower system, shall be the same as in the establishment of systems of drainage in the lower or servient district as hereinbefore provided for; but the jury, in addition to the facts to be found by them as

Parties to
proceed-
ings, when.

Parties de-
fendant.

Jury, duty of.

Jury, findings of.

provided for in the establishment of a drainage system in the lower district, shall find and determine whether said lower system, when improved according to the plans and specifications filed with the said petition, will afford sufficient drainage for both said upper and lower districts, which finding shall be made by the jury before considering any other question at issue in said proceeding; and in case said jury should find that the system of said lower district when improved as proposed in said petition would not be sufficient, then, in that case, said finding shall terminate the proceedings, and no further proceedings in said case shall be had, and the costs of said proceeding shall be paid as costs in other proceedings, as hereinbefore provided for; but in such case the finding of said jury shall not terminate the objects of said upper district or operate to disorganize the same, but said upper district may begin new proceedings for the establishment of a system of drainage with some new outlet provided therein. All costs for the enlarging or improving of said lower system that may be required shall be assessed to the land owners in the upper district according to the benefits to be derived from the construction of said entire system, and no additional cost shall be thrown upon the lower district, and all compensation for taking any right-of-way that may be necessary to be taken in enlarging said lower system, and all damages occurring therefrom, if any, to the land owners of said lower district, shall be ascertained and paid in the same manner as hereinbefore provided for for the adjustment of compensation and damages in the establishment of drainage systems in lower districts. Said lower district, by and through its board of commissioners, may appear in said cause and show therein any injury it may sustain as a district by reason of the additional cost of maintenance of said lower system as improved and enlarged, and such fact shall be determined in said cause and the jury shall find the amount of the increased costs of maintenance per annum, which will be sustained by said lower district by reason of said enlarging or improving of the same, and judgment shall be rendered in favor of said lower district against said upper district for such amount so found, and

the same shall be paid each year as the cost of construction is paid as provided for in this act, and the amount so paid shall be held by said lower district as an additional fund for the maintenance of its said system as improved and enlarged by said upper district.

SEC. 23. Any town or city already incorporated, or which may hereafter be incorporated, may exercise the functions of a drainage district under the provisions of this act, or the whole or any portion of any such town or city may be included with other territory in a common district under the provisions for the establishment thereof as provided for herein.

Incorporated towns, functions of.

SEC. 24. The board of commissioners of any drainage district organized under the provisions of this act shall, on or before the first day of January of each year, make an estimate of the cost of maintenance of the drainage system constructed in such district, which estimate shall include the costs of making any necessary repairs that it might become necessary to make in the maintenance of such system. Such estimate shall be made for the succeeding year, and the amount so estimated shall be certified by the board of commissioners to the auditor of the county in which such district is located on or before said date, and the amount thereof shall be apportioned to the land owners in such district benefited by said improvement in proportion to the maximum benefits originally assessed, and such amount shall be added to the general taxes of such land owners and collected therewith.

Cost of maintenance, estimate of.

SEC. 25. The board of commissioners of such district shall elect one of their number chairman and one secretary, and shall keep minutes of all their proceedings, and may issue warrants of such district in payment of all claims of indebtedness against such district; such warrants shall be in form and substance the same as county warrants, or as near the same as may be practicable, 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

Commission, officers and duty of.

indebtedness of such district for less than the face or par value.

Bonds, to
issue when.

SEC. 26. Upon the establishment of any district under the provisions of this act and the establishment of a system of drainage therein as provided for in this act, the board of commissioners of such drainage district may, upon 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 costs of construction of said improvement, together with the costs of the establishment thereof, including damages assessed and compensation made to land owners for right-of-way and the expenses and costs of the entire proceeding, 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 form herein prescribed 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 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 the first publication: *Provided*, That no bonds shall, under the provisions hereof, be sold for less than their par value.

Bonds.

SEC. 27. Said bonds shall be numbered from one upwards, consecutively, and be in denominations of not less than one hundred dollars nor more than one thousand dollars. They shall bear the date of issue, shall be made payable to the bearer in not more than ten years nor less than five years from the date of their issue, and bear interest at a rate not exceeding seven per cent. 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 drainage commissioners, and

shall be attested by the secretary of said board, and the seal of such district shall be affixed to each bond, but not to the coupons.

SEC. 28. Said bonds may be exchanged at not less than ^{Bonds.} their par value for an equal amount of the warrants of the district issuing such bonds.

SEC. 29. Five years before said bonds shall become due ^{Bonds, liquida-} the drainage commissioners of such district issuing them, are hereby authorized and required, annually, to levy an assessment sufficient to liquidate said bonds at maturity; such assessment 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.

SEC. 30. It shall be the duty of the treasurer of any county ^{Treasurer,} in which there may be a district issuing bonds under the ^{duties of.} provisions of this chapter, whenever he has upon hand two thousand dollars of the special fund for the payment of said bonds, to advertise in the 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 with the funds in his hands, to be paid in numerical order of said bonds, beginning with bond number one, 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, said bonds shall cease to bear interest, which shall be stated in the notice.

SEC. 31. It shall be the duty of such drainage commis- ^{Coupons, pay-} sioners annually to levy an assessment sufficient for the ^{ment of.} 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 indorse said coupons as presented for payment in the same manner as other warrants upon the funds of said district are indorsed, and thereafter said coupons shall bear interest at the same rate as other warrants so presented and unpaid.

Bonds to be registered.

SEC. 32. 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.

Warrants presented for endorsement.

SEC. 33. All warrants issued under the provisions of this act shall be presented by the holders thereof to the county treasurer, who shall indorse thereon the day of presentation for payment, with the additional indorsement 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 indorsed 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 newspaper doing the county printing for the presentation to him for 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 indorsement.

Warrants paid, when.

Trial by jury.

SEC. 34. 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 separate findings, or may submit to such jury separate forms of verdict on all such questions to be found by the jury therein.

No lands exempt.

SEC. 35. All state, county, school district or other lands belonging to other public corporations requiring drainage shall be subject to the provisions of this act, and such corporations, by and through the proper authorities, shall be made parties in all proceedings herein affecting said lands, and shall have the same rights as private persons, and their

lands shall be subject to the right of eminent domain the same as the lands of private persons or corporations.

SEC. 36. In case lands belonging to the state, county, school district or other public corporations are benefited by any improvement instituted under the provisions of this act, all benefits shall be assessed against such lands, and the same shall be paid by the proper authorities of such public corporation 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. Assessments.

SEC. 37. Fees for service 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 as is or may be provided by law. Service fees.

SEC. 38. In performing their duties under the provisions of this act the board of drainage commissioners shall receive such compensation as may be just and reasonable for all necessary services actually performed, not exceeding two 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 or all of such board, that the same is just, reasonable, necessary and were actually performed and that no part of the same has ever been paid, and in case such services are rendered by said board in the establishment or construction of said improvement, or any extension thereof, the amount thereof so 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 repairing or maintenance of such improvement, such allowance shall be added to the annual cost of maintenance of such system: *Provided*, That any person interested therein may file objections to the allowance asked for, either in whole or in part, and such claims 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 the member thereof presenting such claim or allowance shall, at the time of the filing thereof in the court, post notices in at least four public Commissioners, compensation of.

places within said district, which said notices shall set forth therein the fact that an application for allowance has been filed in said court, giving the date of the filing thereof and the amount of the allowance applied for, and demand that any and all persons having any interest therein shall file objections in said court, if any they have, to the allowance of such 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 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.

Natural water-
courses.

SEC. 39. The whole or any portion of any natural watercourse, the whole or any portion of which lies within any district established under this act, or the whole or any portion of any ditch or drainage system already constructed or partially constructed prior to the passage of this act, may be improved and completed as a system under the provisions of this act: *Provided*, That in the improvement of any natural watercourse the rights of the public therein for purposes of navigation shall not be in any wise impaired, and vested rights therein shall not be disturbed.

SEC. 40. The superior 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.

SEC. 41. Whereas, there is no law in force in this state in relation to the subject matter of this act: therefore, an emergency is 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 house March 8, 1895.

Passed the senate March 13, 1895.

Approved March 20, 1895.