

CHAPTER 61.

(S. B. No. 188)

PROVIDING FOR THE IRRIGATION, IMPROVEMENT AND SALE OF GRANTED LANDS.

AN ACT providing for the irrigation, improvement and sale of lands granted to the State of Washington for any and all purposes and uses.

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

SECTION 1. That the Commissioner of Public Lands of the State of Washington, be and is hereby authorized and empowered to receive and file proposals, and to enter into contract as herein provided, for the construction of irrigation works to reclaim any and all of the lands granted to the State of Washington for any and all purposes and uses.

SEC. 2. Any person, company or association of persons or incorporated company doing business in the State of Washington desiring to construct ditches, canals or other irrigation works for the reclamation of said lands, shall file with the Commissioner of Public Lands, proposal to construct the ditches, canals or other irrigation works necessary to the complete reclamation of said lands. The proposal shall be prepared in accordance with the rules adopted by the Commissioner of Public Lands. It shall state the source of water supply, the location and dimension of the proposed works, the location and character of the land proposed to be irrigated, the price per acre at which perpetual water right will be sold to settlers on the land to be irrigated, and shall be accompanied by maps, plans and specifications of the proposed works and land to be irrigated, which shall be considered a part of the proposal. In the case of incorporated companies it shall state the name of the company, the purpose of its incorporation, the names and places of residence of its trustees and officers, the amount of its authorized and of its paid up capital. If the applicant is not an incorporated company, the proposal shall set forth the name or names of the party or parties and such other facts as will enable the Commissioner of Public Lands to determine his or their financial ability to carry out the proposed undertaking.

Certified
check to ac-
company each
proposal.

SEC. 3. A certified check for a sum not less than two hundred and fifty dollars (\$250.00) nor more than two thousand five hundred dollars (\$2500.00), as may be determined by the Commissioner of Public Lands, shall accompany each such proposal, the same to be held as guarantee of the execution of the contract with the State, in accordance with its terms by the party submitting such proposal. In case of the approval of the same and the acceptance of the proposal by the Commissioner of Public Lands, and to be forfeited to the State in case of the failure of said party to enter into a contract with the State in accordance with the provisions of this act.

Duty of Land
Commissioner
upon receipt
of proposal.

SEC. 4. Immediately upon the receipt of any proposal as designated in section 2, it shall be the duty of the Commissioner of Public Lands to examine the same and ascertain if it complies in form with the rules adopted by him as provided in section 2. If it does not it is to be returned for correction; and if not corrected within sixty days, it may be rejected by the Commissioner of Public Lands. The Commissioner of Public Lands shall determine whether or not the proposed works are feasible and the water provided is adequate, and whether the proposed irrigation works described in the maps, plans and specifications, are adequate for the irrigation of the lands intended to be irrigated. When a request or proposal is not approved by the Commissioner of Public Lands, he shall notify the party making such request or proposal of his disapproval thereof, and the party so notified shall have sixty days in which to make a satisfactory proposal, but the Commissioner of Public Lands may, at his discretion, extend the time six months.

Approval of
plans—con-
tract.

SEC. 5. If the plans and specifications for the proposed irrigation works and the furnishing of a perpetual water supply for the irrigation of said lands is approved by the Commissioner of Public Lands, the said Commissioner of Public Lands is authorized and empowered to enter into a contract with the party submitting the proposal, which contract shall contain complete specifications of the location, dimensions and character of the proposed ditch, canal or other irrigation work; the price per acre at which perpetual water rights shall be sold to the settler or owner, which price may be paid in a lump sum or in ten annual payments, as the settler or owner may elect; the amount of water to be supplied and the price of the annual maintenance fee per acre:

Provided, That no contract under the provisions of this act shall be entered into by the Commissioner of Public Lands until the same shall have been approved by the Attorney General and the Governor.

SEC. 6. No contract shall be made by the Commissioner of Public Lands which requires greater time than three years for the construction of the works and such additional time as may be granted by the Commissioner of Public Lands not to exceed two years, and all contracts shall state that the work shall begin within six months from the date of the contract; at least one-tenth of the construction work shall be completed within twelve months from the date of said contract, and the construction of said works shall be prosecuted with reasonable diligence to completion. The Commissioner of Public Lands shall, before letting any contract for the construction of any works herein provided for, require the contractor to enter into a bond to the State of Washington in the penal sum of not less than twenty per cent of the estimated cost of the works, conditioned for the faithful performance of the terms and conditions of said contract.

SEC. 7. Upon the failure of any party having a contract with the State for the construction of irrigation works, to begin the same within the time specified by the contract, or to complete the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the State, it shall be the duty of the Commissioner of Public Lands to give such party written notice of such failure and if, after a period of sixty days from the giving of such notice, such party shall have failed to proceed with the work or to conform with the specifications of his contract with the State the bond and contract of such party and all work constructed under such contract shall be at once and thereby forfeited to the State, and it shall be the duty of the Commissioner of Public Lands at once so to declare and to give notice once each week for a period of four weeks in some newspaper of general circulation in the County in which the work is situated, and in one newspaper at the State Capital in like manner and for a like period, that upon a day fixed, proposals will be received at the office of the Commissioner of Public Lands for the purchase of the incompleated works and for the completion of said contract, the time for receiving said bids to be at least sixty days subsequent to the issuing of the last notice of

Application of money received.

of forfeiture. The money received from the sale of partially completed works, under the provisions of this section, shall first be applied to the expenses incurred by the State in their forfeiture and disposal and to satisfy the bond, and the surplus, if any exists, shall be paid to the original contractor with the State. Whenever after the completion of said irrigation works any contractor or his successors or assigns shall fail to furnish an adequate amount of water to irrigate the lands of water right owners or there shall exist other cause as provided by law for the appointment of a receiver, the Attorney General may apply for the appointment of a receiver to take possession of the irrigation works and canal and other property of such party and manage, operate, sell or dispose of same. Such application shall be made to the Superior Court of the County in which the whole or some portion of the irrigation works or canal of such party is situated; and the Court or its receiver by order of the Court shall have and may exercise such powers as to the possession, management, operation, sale or disposition of the property and works of such party as is provided by the law relating to receivers: *Provided*, That nothing herein contained shall be taken or construed as limiting the right of any party to have a receiver appointed as is in other cases provided by law.

Appointment of receiver.

State not to be obligated.

SEC. 8. Nothing in this act shall be construed as authorizing the Commissioner of Public Lands to obligate the State to pay for any work constructed under any contract or to hold the State in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the State.

Application to purchase irrigable lands.

SEC. 9. Whenever application has been made to the Commissioner of Public Lands for the purchase of any of the irrigable lands described in this act as provided by law, the said application shall be accompanied by the sworn statement of the applicant that he is ready and willing to enter into contract with the person, company, or association of persons, or incorporated company, who have been authorized by the Commissioner of Public Lands to furnish water for the reclamation of said lands, which statement shall be filed with said application, and the Commissioner of Public Lands may thereupon proceed to the appraisement, advertisement and sale of said lands as provided by law. In case of the sale of any lands to any party pursuant to the appraisement and advertisement thereof, the Commissioner of Public Lands

shall not issue a contract therefor until there shall have been filed in his office a certified copy of a contract for a perpetual water right for said lands made and entered into by the party purchasing the same with the person, company or association of persons, or incorporated company, who have been authorized by the Commissioner of Public Lands to furnish water for the reclamation of said lands.

Perpetual
water right.

SEC. 10. The water right to all land acquired under the provisions of this act shall attach to and become appurtenant to the land. Any person, company or association of persons, or incorporated company furnishing water for any tract of land shall have a prior lien on said water right and land upon which said water is used for all deferred payments for said water right and for any maintenance fee due, said lien to be in all respects prior to any other lien or liens created or attempted to be created by the owner or possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired and until all delinquent maintenance fees are fully paid. The contract for the water right upon which the aforesaid lien is founded shall be recorded in the office of the County Auditor of the County where the land is situated. Upon default of any of the deferred payments secured by any lien under the provisions of this act or maintenance fee, the person, company or association of persons, or incorporated company holding or owning said lien, may foreclose the same according to the conditions and terms of the contract granting and selling to the settler or owner the water right and providing for a maintenance fee. All sales shall be advertised in a newspaper of general circulation, published in the County where said land and water right are situated, once a week for four consecutive weeks, and shall be sold to the highest bidder at the front door of the court house of the County, or such place as may be agreed upon by the terms of the contract. And the sheriff of said County shall in all such cases give notice of sale and shall sell such land and water right and shall make and deliver a certificate of sale to the purchaser, and at such sale no person, company or association of persons or incorporated company, owning or holding any lien shall bid in or purchase any land or water right at a greater price than the amount due on deferred payment or payments for

Water right
appurtenant
to land—
prior lien.

Recording
of contract.

Sales to be
advertised.

Notice by
Sheriff.

said water right and maintenance fee due and the costs incurred in making the sale of the land and water right. At any time within nine months after the foreclosure sale by the sheriff of the land and water right as aforesaid, the original owner, against whom the lien has been foreclosed, or any party entitled to redeem the land sold under execution may redeem the land and water right so sold in the same manner and order and under the same procedure as is or may be provided by law for the redemption of land sold under execution. The party redeeming said land and water right shall pay to the sheriff the amount for which said land and water right was sold and costs and increased costs, together with interest thereon at the legal rate, and all taxes and payments made subsequent to such foreclosure as well as all maintenance fees at the time of redemption with interest at like rate. If there be more than one redemption each successive redemption shall be made within six (6) weeks after the last preceding redemption. And where the lien holder becomes the purchaser at such foreclosure sale, and in no other case, if such land and water right be not redeemed by the original owner or other person entitled to redeem as above provided within nine (9) months then at any time within three (3) months after the expiration of such nine (9) months any person desiring to settle upon and use such land and water right may redeem the said land and water right in the manner hereinafter provided for redemption by the owner or other redemptioners. Where such land and water right are not purchased by the lien holder at such foreclosure sale the Sheriff shall pay out the proceeds of such sale as follows:

Redemption
of land.

Proceeds—
how paid.

First: He shall retain all charges, costs and fees for his services and account for the same as in civil cases.

Second: To lienholder or his assigns the amount of the lien together with all interest, costs and fixed charges thereon.

Third: The balance, if any remaining, to the person against whom such lien was foreclosed or his assigns.

When the period of redemption shall have expired the Sheriff or his successors in office shall execute a proper conveyance of the land and water right sold, to the party entitled thereto. The foreclosure herein provided for may be transferred to the Superior Court of the proper County in the

same manner and with like effect as foreclosures of chattel mortgages on notice may be transferred.

SEC. 11. The maps in the office of the Commissioner of Public Lands of the lands proposed to be irrigated under the provisions of this act, shall show the location of the canals or other irrigation works approved in the contract with the Commissioner of Public Lands, and all lands described therein belonging to the State of Washington shall be subject to the right of way of such canals, distribution system and irrigation works, such right of way to embrace the entire width of the canal, distribution and irrigation works and such additional width as may be required for their proper operation and maintenance.

Maps, what to show.

SEC. 12. The Commissioner of Public Lands shall provide suitable rules for the filing of proposals for the construction of irrigation works. There shall be kept in the office of the Commissioner of Public Lands, for public inspection, copies of all maps, plats, contracts for the construction of irrigation works, and of the purchase of the land by settlers. He shall require from each person, company or association of persons, or incorporated company engaged in the construction of irrigation works under the provisions of this act, an annual report, to be submitted to him on or before November 1st, of each year. This report shall show the number of water rights sold, the number of users of water under said irrigation works, the legal subdivisions of land for which water is to be furnished, the names of the officers of the company, the acreage of land which the said irrigation works are prepared to supply with water, and such other data as the Commissioner of Public Lands may see fit to require.

Rules and regulations of Land Commissioner.

SEC. 13. The Commissioner of Public Lands shall include in his biennial report to the Governor a report setting forth in detail the names, location and character of the irrigation works in process of construction, the acreage and legal subdivisions of land intended to be reclaimed and the terms of payment for water right sold.

Report of Land Commissioner to Governor.

SEC. 14. All suits or actions brought by the Commissioner of Public Lands under the provisions of this act, shall be instituted by him in the name of the State of Washington.

Suits or actions.

SEC. 15. Nothing in this act shall be construed as a repeal, amendment or modification in any respect of an act entitled, "An act to provide for the acceptance by the State

of Washington from the United States of certain desert lands, and providing for the reclamation, occupation and disposal of the same, and declaring an emergency," approved March 16, 1903.

Passed the Senate February 17, 1905.

Passed the House March 1, 1905.

Approved by the Governor March 3, 1905.

CHAPTER 62.

(S. B. No. 95)

MAINTENANCE AND TRIAL OF ACTIONS BY PERSONS INJURED BY INTOXICATED PERSONS.

AN ACT amending Section 2945 of Ballinger's Codes and Statutes of Washington, and relating to the maintenance and trial of actions by persons injured in their persons, property, or means of support by intoxicated persons or in consequence of the intoxication of persons.

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

SECTION 1. That section 2945 of Ballinger's Codes and Statutes of Washington, relating to the maintenance of actions by persons injured in their persons, property, or means of support, by intoxicated persons, or in consequence of the intoxication of persons, be, and the same hereby is, amended to read as follows:

Section 2945. Every husband, wife, child, parent, guardian, employe, or other person who shall be injured in person or property, or means of support, by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action, in his or her own name, severally or jointly, against any person or persons who shall, by selling or giving intoxicating liquors, have caused the intoxication of such person, for all damages sustained, and the same may be recovered in a civil action in any court of competent jurisdiction. On the trial of such action, the plaintiff or plaintiffs must prove that such intoxicating liquors were sold under circumstances sufficient to lead a man of ordinary intelligence to believe that such sale would prob-

2945
Ballinger.

Right of
action.