

CHAPTER 153.

[S. B. 102.]

ENABLING CITIES TO EXERCISE THE RIGHT OF EMINENT DOMAIN.

AN ACT to enable cities of the first, second, and third class and having a population of over fifteen hundred inhabitants to exercise the right of eminent domain for the taking and damaging of land and property for public purposes, providing a method for making compensation therefor, and providing for special assessments in certain cases upon property benefited.

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

SECTION 1. Every city of the first, second and third classes and other cities having a population of over fifteen hundred inhabitants within the State of Washington, is hereby authorized and empowered to condemn land and property, including State, county and school lands and property for streets, avenues, alleys, highways, bridges, approaches, culverts, drains, ditches, public squares, public markets, city and town halls, jails and other public buildings, and for the opening and widening, widening and extending, altering and straightening of any street, avenue, alley or highway, and to damage any land or other property for any such purpose or for the purpose of making changes in the grade of any street, avenue, alley or highway, or for the construction of slopes or retaining walls for cuts and fills upon real property abutting on any street, avenue, alley or highway now ordered to be, or such as shall hereafter be ordered to be opened, extended, altered, straightened or graded, or for the purpose of draining swamps, marshes, tide lands, tide flats or ponds, or filling the same, within the limits of such city, and to condemn land or property, or to damage the same, either within or without the limits of such city for public parks, drives and boulevards, hospitals, pest houses, drains and sewers, garbage crematories and destructors and dumping grounds for the destruction, deposit or burial of dead animals, manure, dung, rubbish, and other offal, and for aqueducts, reservoirs, pumping stations and other structures for conveying into and through such city a supply of

Cities may
condemn—
for what
purposes.

fresh water, and for the purpose of protecting such supply of fresh water from pollution, and to condemn land and other property and damage the same for any other public use after just compensation having been first made or paid into court for the owner in the manner prescribed by this act.

SEC. 2. When the corporate authorities of any such city shall desire to condemn land or other property, or damage the same, for any purpose authorized by this act, such city shall provide therefor by ordinance, and unless such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon property benefited, compensation therefor shall be made from any general funds of such city applicable thereto. If such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon property benefited, the proceedings for the making of such special assessment shall be as hereinafter prescribed, in this act: *Provided*, That no special assessment shall be levied under authority of this act except when made for the purpose of streets, avenues, alleys, or highways or alterations thereof or changes of the grade therein or other improvements in or adjoining the same, or for bridges, approaches, culverts, sewers, drains, ditches, public squares, drives or boulevards or for the purpose of draining swamps, marshes, tide flats, tide lands or ponds or for filling the same; and it is *further provided*, That when a street, avenue, highway or boulevard is established or widened to a width greater than one hundred and fifty feet the excess over and above the one hundred and fifty feet shall be paid out of the general fund of such city without any deduction for benefits of such excess.

SEC. 3. Whenever any such ordinance shall be passed by the legislative authority of any such city for the making of any improvement authorized by this act or any other improvement that such city is authorized to make, the making of which will require that property be taken or damaged for public use, such city shall file a petition in the superior court of the county in which such city is

Compensation, how made.

Assessment of property benefited.

Petition to superior court.

situated, in the name of the city, praying that just compensation, to be made for the property to be taken or damaged for the improvement or purpose specified in such ordinance, be ascertained by a jury or by the court in case a jury be waived.

Contents of
petition.

SEC. 4. Such petition shall contain a copy of said ordinance, certified by the clerk under the corporate seal, a reasonably accurate description of the lots, parcels of land and property which will be taken or damaged, and the names of the owners and occupants thereof and of persons having any interest therein, so far as known, to the officer filing the petition or appearing from the records in the office of the county auditor.

Summons.

SEC. 5. Upon the filing of the petition aforesaid a summons, returnable as summons in other civil actions, shall be issued and served upon the person made parties defendant, together with a copy of the petition, as in other civil actions. And in case any of them are unknown or reside out of the State, a summons for publication shall issue and publication be made and return and proof thereof be made in the same manner as is or shall be provided by the laws of the State for service upon absent defendants in other civil actions. Notice so given by publication shall be sufficient to authorize the court to hear and determine the suit as though all parties had been sued by their proper names and had been personally served.

State,
school or
county
land.

SEC. 6. In case the land, real estate, premises or other property sought to be appropriated or damaged is State, school or county land, the summons and copy of petition shall be served on the auditor of the county in which such land, real estate, premises or other property is situated. Service upon other parties defendant shall be made in the same manner as is or shall be provided by law for service of summons in other civil actions.

Hearing.

SEC. 7. Upon the return of said summons, or as soon thereafter as the business of court will permit, the said court shall proceed to the hearing of such petition and shall impanel a jury to ascertain the just compensation to be paid for the property taken or damaged, but if

Jury trial.

any defendant or party in interest shall demand, and the court shall deem it proper, separate juries may be impaneled as to the compensation or damages to be paid to any one or more of such defendants or parties in interest.

SEC. 8. Such jury shall also ascertain the just compensation to be paid to any person claiming an interest in any lot, parcel of land or property which may be taken or damaged by such improvement, whether or not such person's name or such lot, parcel of land or other property is mentioned or described in such petition: *Provided*, Such person shall first be admitted as a party defendant to said suit by such court and shall file a statement of his interest in and description of the lot, parcel of land or other property in respect to which he claims compensation.

Jury to determine compensation.

SEC. 9. The court may upon the motion of such city or of any defendant direct that said jury (under the charge of any officer of the court and accompanied by such person or persons as may be appointed by the court to point out the property sought to be taken or damaged) shall view the lands and property affected by said improvement.

View by jury.

SEC. 10. If there be any building standing, in whole or in part, upon any land to be taken, the jury shall add to their finding of the value of the land taken the damages to said building. If the entire building is taken, or if the building is damaged, so that it cannot be readjusted to the premises, then the measure of damages shall be the fair market value of the building. If part of the building is taken or damaged and the building can be readjusted or replaced on the part of the land remaining, then the measure of damages shall be the cost of readjusting or moving the building, or the part thereof left, together with the depreciation in the market value of said building by reason of said readjustment or moving.

Damage to buildings.

SEC. 11. If the land and buildings belong to different parties, or if the title to the property be divided into different interests by lease or otherwise, the damages done to each of such interests may be separately found by the jury on the request of any party. In making such find-

Separate findings.

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

Return of
verdict.

SEC. 12. Upon the return of the verdict the proceedings of the court regarding new trial and the entry of judgment thereon shall be the same as in other civil actions, and the judgment shall be such as the nature of the case shall require. The court shall continue or adjourn the case from time to time as to all occupants and owners named in such petition who shall not have been served with process or brought in by publication, and new summons may issue or new publication may be made at any time; and upon such occupants or owners being brought in, the court may impanel a jury to ascertain the compensation so to be made to such defendant or defendants for private property taken or damaged, and like proceedings shall be had for such purpose as herein provided.

New
parties.

Procedure
if cases not
all tried.

SEC. 13. The court shall have power at any time, upon proof that any such owner or owners named in such petition who has not been served with process has ceased to

be such owner or owners since the filing of such petition, to impanel a jury and ascertain the just compensation to be made for the property (or the damage thereto) which has been owned by the person or persons so ceasing to own the same, and the court may upon any finding or findings of any jury or juries, or at any time during the course of such proceedings enter such order, rule, judgment or decree as the nature of the case may require.

SEC. 14. When it shall appear from said petition or otherwise, at any time during the proceedings upon such petition, that any infant or insane or distracted person is interested in any property that is to be taken or damaged, the court shall appoint a guardian *ad litem* for such infant or insane or distracted person to appear and defend for him, her or them, and the court shall make such order or decree as it shall deem proper to protect and secure the interest of such infant or insane or distracted person in such property or the compensation which shall be awarded therefor.

Infants
or insane
persons—
guardian
for.

SEC. 15. When the ordinance providing for any such improvement provides that compensation therefor shall be paid, in whole or in part, by special assessment upon property benefited, the compensation found by the jury for any land or property taken shall be irrespective of any benefit from the improvement proposed. When such ordinance does not provide for any assessment, in whole or in part, upon property benefited, the compensation found for land or property taken and in all cases the damages found in respect to lands or property not taken, shall be ascertained over and above any local and special benefit arising from such proposed improvement, except as provided in section two of this act as to streets, avenues and boulevards established or widened to a width greater than one hundred and fifty feet; in which class of cases no benefits shall be deducted as to such excess.

Compensa-
tion irre-
spective of
benefit.

SEC. 16. Any final judgment or judgments rendered by said court upon any finding or findings of any jury or juries, or upon any finding or findings of the court in case a jury be waived, shall be lawful and sufficient con-

Final
judgments.

demnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings and all costs which shall be taxed as in other civil cases, provided that in case any defendant recovers no damages, no costs shall be taxed. Such judgment or judgments shall be final and conclusive as to the damages caused by such improvement unless appealed from, and no appeal from the same shall delay proceedings under said ordinance, if such city shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs, and such city, after making such payment into court, shall be liable to such owner or owners or parties interested for the payment of any further compensation which may at any time be finally awarded to such parties so appealing in said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor, and abide any rule or order of the court in relation to the matter in controversy. In case of an appeal to the Supreme Court of the State by any party to the proceedings the money so paid into the superior court by such city, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the owner of the land, real estate, premises, or other property accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived conclusively an appeal to the Supreme Court and final judgment may be rendered in the superior court as in other cases.

Liability
of city.

Appeal to
Supreme
court.

Acceptance
of award.

Title vests
upon pay-
ment into
court.

SEC. 17. The court, upon proof that just compensation so found by the jury, or by the court in case the jury is waived, together with costs, has been paid to the person entitled thereto, or has been paid into court as directed by the court, shall enter an order that the city or town shall have the right at any time thereafter to take possession of or damage the property in respect to which such compensation shall have been so paid or paid into court as aforesaid, and thereupon, the title to any property so taken shall be vested in fee simple in such city or town.

SEC. 18. When the ordinance under which said improvement is ordered to be made shall not provide that such improvement shall be made wholly by special assessment upon property benefited, the whole amount of such damage and costs, or such part thereof as shall not be assessed upon property benefited shall be paid from the general fund of such city or town, and if sufficient funds therefor are not already provided, such city or town shall levy and collect a sufficient sum therefor as part of the general taxes of such city or town, or may contract indebtedness by the issuance of bonds or warrants therefor as in other cases of internal improvements.

Payment
from gen-
eral fund.

SEC. 19. When such ordinance under which said improvement shall be ordered, shall provide that such improvement shall be paid for, in whole or in part, by special assessment of property benefited thereby, the damages and costs awarded, or such part thereof as is to be paid by special assessment, shall be levied, assessed and collected in the manner hereinafter provided.

Payment
by special
assessment.

SEC. 20. Such city may file in the same proceeding a supplementary petition, praying the court that an assessment be made for the purpose of raising an amount necessary to pay the compensation and damages which may or shall have been awarded for the property taken or damaged, with costs of the proceedings, or for such part thereof as the ordinance shall provide. The said court shall thereupon appoint three competent persons as commissioners to make such assessment, or if there be a board of eminent domain commissioners of such city, appointed under the provisions of this act, said proceeding for assessment shall be referred to said board. Said commissioners shall include in such assessment the compensation and damages which may or shall have been awarded for the property taken or damaged, with all costs and expenses of the proceedings incurred to the time of their appointment, or to the time when said proceeding was referred to them, together with the probable further costs and expenses of the proceedings, including therein the estimated costs of making and collecting such assessment.

Supple-
mentary
petition.

Court shall
appoint
commis-
sioners.

SEC. 21. At any time after the taking effect of this act, any such city may petition the superior court of the county in which said city is situated, that a board of eminent domain commissioners be appointed to make assessments in all condemnation proceedings instituted by such city. Said superior court shall thereupon, by order duly entered in its records, appoint three competent persons as commissioners who shall be known as and who shall constitute the "board of eminent domain commissioners of the city of," and who shall thereafter make assessments in all condemnation proceedings instituted by such city. The order of the court shall provide that one of the members of such board shall serve for one year, one for two years and one for three years, from the date of their appointment and until their successors are appointed and qualified. . Annually thereafter, said superior court shall appoint one such person as such commissioner, whose term shall begin on the same day of the month on which the first order of appointment was made and continue for three years thereafter and until his successor is appointed and qualified. If any commissioner shall be disqualified in any proceeding by reason of interest, or for any other reason, said superior court shall appoint some other competent person to act in his place in such proceeding.

Eminent Domain Commissioners, appointment.

Terms.

Oath.

Compensation.

SEC. 22. All commissioners, before entering upon their duties shall take and subscribe an oath that they will faithfully perform the duties of the office to which they are appointed, and will to the best of their abilities make true and impartial assessments according to the law. Every commissioner shall receive compensation at the rate of five dollars per day for each day actually spent in making the assessment herein provided for. Each commissioner shall file in the proceeding in which he has made such assessment his account, stating the number of days he has actually spent in said proceeding, and upon the approval of said account by the judge before whom the proceeding is pending, the comptroller or city clerk of such city shall issue a warrant in the amount approved by the judge upon the special fund created to pay the awards and costs of

said proceeding, and the fees of such commissioners so paid shall be included in the cost and expenses of such proceedings. In case such commissioners are, during the same period, or parts thereof, engaged in making assessment in different proceedings, in rendering their accounts they shall apportion them to the different proceedings in proportion to the amount of time actually spent by them on the assessment in each proceeding.

SEC. 23. It shall be the duty of such commissioners to Procedure. examine the locality where the improvement is proposed to be made and the property which will be especially benefited thereby; and to estimate what proportion, if any, of the total cost of such improvement will be a benefit to the public, and what proportion thereof will be a benefit to the property to be benefited, and apportion the same between the city and such property so that each shall bear its relative equitable proportion, and having found said amounts, to apportion and assess the amount so found to be a benefit to the property upon the several lots, blocks, tracts and parcels of land, or other property in the proportion in which they will be severally benefited by such improvement: *Provided*, That no property shall be assessed a greater amount than it will be actually benefited.

SEC. 24. Such commissioners in each proceeding shall Assessment roll. also make or cause to be made an assessment roll in which shall appear the names of the owners, so far as known, the description of each lot, block, tract or parcel of land or other property and the amounts assessed as special benefits thereto, and in which they shall set down as against the city the amount they shall have found as public benefit, if any, and certify such assessment roll to the court before which said proceeding is pending, within sixty days after their appointment or after the date of the order referring said proceeding to them, or within such extension of said period as shall be allowed by the court.

SEC. 25. After the return of such assessment roll, the Hearing on assessment. court shall make an order setting a time for the hearing thereof before the court, which day shall be at least twenty days after return of such roll. It shall be the duty of

Notice. such commissioners to give notice of such assessment and of the day fixed by the court for the hearing thereof in the following manner:

1. They shall at least twenty days prior to the date fixed for the hearing on said roll, mail to each owner of the property assessed, whose name and address is known to them, a notice substantially in the following form:

Form. "Title of Cause. To.....: Pursuant to an order of the superior court of the State of Washington, in and for the county of, there will be a hearing in the above entitled cause on..... at upon the assessment roll prepared by the commissioners heretofore appointed by said court to assess the property specially benefited by the (here describe nature of improvement); and you are hereby required if you desire to make any objections to said assessment roll, to file your objections to the same before the date herein fixed for the hearing upon said roll, a description of your property and the amount assessed against it for the afore-said improvement is as follows: (Description of property and amount assessed against it.)

.....
.....
.....

Commissioners."

Posting notice.

2. They shall cause at least twenty days' notice to be given by posting notice of the hearing on such assessment roll in at least three public places in such city, one of which shall be in the neighborhood of such proposed improvement, and when a daily newspaper is published in such city, by publishing the same in at least five successive issues of said paper, or if no daily newspaper is published in such city and a weekly newspaper is published therein, then in at least each issue of such weekly newspaper for two successive weeks or if no daily or weekly newspaper is published in such city, then in a newspaper published in the county in which such city is situated. Such notice so required to be posted and published, may be substantially as follows:

“Title of Cause. Special assessment notice. Notice is hereby given to all persons interested, that an assessment roll has been filed in the above entitled cause providing for the assessment upon the property benefited of the cost of (here insert brief description of improvement) and that said roll has been set down for hearing on the day of at The boundaries of said assessment district are substantially as follows: (here insert an approximate description of the assessment district). All persons desiring to object to said assessment roll are required to file their objections before said date fixed for the hearing upon said roll, and appear on the day fixed for hearing before said court.

.....

Commissioners.”

SEC. 26. On or before the final hearing, the affidavit of one or more of the commissioners shall be filed in said court, stating that they have sent, or caused to be sent, by mail, to the owners whose property has been assessed and whose names and addresses are known to them, the notice hereinbefore required to be sent by mail to the owners of the property assessed. They shall also cause to be filed the affidavit of the person who shall have posted the notice required by this act to be posted, setting forth when and in what manner the same was posted. Such affidavits shall be received as *prima facie* evidence of a compliance with this act in regard to giving such notices. They shall also file an affidavit of publication of such notice in like manner as is required in other cases of affidavits of publication of notice of summons.

Proof of service.

SEC. 27. If twenty days shall not have elapsed between the first publication or the posting of such notices and the day set for hearing, the hearing shall be continued until such time as the court shall order. The court shall retain full jurisdiction of the matter, until final judgment on the assessments; and if the notice given shall prove invalid or insufficient the court shall order new notice to be given.

Continuance of hearing.

Objections
to report.

SEC. 28. Any person interested in any property assessed may file objections to such report at any time before the day set for hearing said roll. As to all property to the assessment of which objections are not filed as herein provided, default may be entered and the assessment confirmed by the court. On the hearing, the report of such commissioners shall be competent evidence and either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law, tried by the court without a jury, and if it shall appear that the property of the objector is assessed more or less than it will be benefited, or more or less than its proportionate share of the costs of the improvement, the court shall so find, and also find, the amount in which said property ought to be assessed, and the judgment shall be entered accordingly.

Evidence.

Modification
of assess-
ment.

SEC. 29. The court before which any such proceedings may be pending shall have authority at any time before final judgment to modify, alter, change, annul or confirm any assessment returned as aforesaid; or cause any such assessment to be recast by the same commissioners, whenever it shall be necessary for the obtainment of justice, or may appoint other commissioners in the place of all or any of the commissioners first appointed for the purpose of making such assessment or modifying, altering, changing or recasting the same, and may take all such proceedings and make all such orders as may be necessary to make a true and just assessment of the cost of such improvement according to the principles of this act, and may from time to time, as may be necessary, continue the application for that purpose as to the whole or any part of the premises.

Effect of
judgment.

SEC. 30. The judgment of the court shall have the effect of a separate judgment as to each tract or parcel of land or other property assessed, and any appeal from such judgment shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. Such judgment shall be a lien upon the property assessed from the date thereof until payment shall be made.

Lien.

SEC. 31. The clerk of the court in which such judgment is rendered shall certify a copy of the assessment roll and judgment to the treasurer of the city, or if there has been an appeal taken from any part of such judgment, then he shall certify such part of the roll and judgment as is not included in such appeal, and the remainder when final judgment is rendered: *Provided*, That if upon such appeal, the judgment of the superior court shall be affirmed, the assessments on such property as to which appeal has been taken shall bear interest at the same rate and from the same date which other assessments not paid within the time hereafter provided shall bear. Such copy of the assessment roll shall describe the lots, blocks, tracts, parcels of land or other property assessed, and the respective amounts assessed on each, and shall be sufficient warrant to the city treasurer to collect the assessment therein specified.

Assessment roll to be certified.

Description of property.

SEC. 32. The treasurer receiving such certified copy of the assessment roll shall immediately give notice thereof by publishing such notice at least once in the official newspaper or newspapers of such city or town, if such newspaper or newspapers there be; and if there be no such newspaper, then by posting four notices thereof in public places along the line of the proposed improvement; such notice may be substantially in the following form:

Treasurer to give notice.

"SPECIAL ASSESSMENT NOTICE."

"Public notice is hereby given that the superior court of county, State of Washington, has rendered judgment for a special assessment upon property benefited by the following improvement (here insert the character and location of the improvement in general terms) as will more fully appear from the certified copy of the assessment roll on file in my office, and that the undersigned is authorized to collect such assessments. All persons interested are hereby notified to call and pay the amounts assessed at my office (here insert location of office) within sixty days from the date hereof.

Form.

"Dated this.....day of.....A. D. 190...

"City (or town) Treasurer of....."

Notice
by mail.

SEC. 33. It shall be the duty of the city treasurer into whose hands such judgment and assessment roll shall come, to mail notices of such assessment to the persons whose names appear on the assessment roll, so far as the addresses of such persons are known to him. Any such treasurer omitting so to do, shall be liable to a penalty of five dollars for every such omission; but the validity of the special assessment shall not be affected by such omission. When any assessment or assessments are paid, it shall be the duty of the treasurer to write the word "paid" opposite the same together with the name and postoffice address of the person making the payment and the date of payment. The owner may annually notify the treasurer of his address and it shall be the duty of the treasurer to mail the notice above provided for to such address.

Return
of assess-
ment roll.

SEC. 34. Within fifteen days from the expiration of the time limited for the payment of any such assessments, the treasurer shall return the assessment roll to the comptroller, if there be such officer of the city or town; otherwise, to the city or town clerk, designating thereon the assessments paid and those unpaid. The comptroller or clerk, as the case may be, shall, upon receipt of said roll, credit the treasurer with the amount of the assessments collected thereon, and thereupon issue and annex to said roll a warrant directing the treasurer to sell all the property described in said roll upon which assessments are levied, whether in the name of a designated owner or in the name of an unknown owner, to satisfy all delinquent and unpaid assessments upon said roll, with costs, interest and charges. All assessments unpaid at the expiration of the time fixed herein for the payment of the same, shall bear interest at the rate of ten per cent per annum from said date until paid.

Penalty
for delin-
quency.

SEC. 35. Such warrant issued for the purpose of making sale of said delinquent property shall be deemed and taken as an execution against said property for the amount of said assessments, with interest and costs, and the treasurer shall, within sixty days from the receipt thereof by him, commence the sale of said property and continue

Sale of
property.

such sale from day to day thereafter, except on Sundays and legal holidays, until all the property described in said assessment roll on which any such assessment is delinquent and unpaid is sold. Such sale shall take place at the front door of the building in which the city council holds its sessions. The treasurer shall give notice of such sales by publishing a notice thereof once each week for three consecutive weeks in the official newspaper of the city, or if there be no such newspaper, then by publishing the same for said period in some newspaper published in the same county in which the city is situated, or if no such newspaper is published in such county, then in some newspaper published in the State of daily circulation in such county. Such notice shall contain a list of all property upon which such assessments are delinquent with the amount of the assessment, interest and costs to date of sale, including the cost of advertising such sale, together with the names of the owners of such property, or the words "unknown owners" as the same may appear upon said assessment roll, and shall specify the time and place of sale, and that the property therein described will be sold to satisfy the assessment, interest and costs due upon the same. All of such sales shall be made between the hours of ten o'clock A. M. and four o'clock P. M. Each lot or parcel of land or other property shall be sold separately and in the order in which the same appears on the assessment roll, commencing at the head thereof. If there be no bidder for any lot or parcel of land or other property for a sum sufficient to pay the delinquent assessment thereon, with interest and costs, the treasurer shall strike the same off to the city for the whole amount which he is required to collect by such sale.

Notice
of sale.

Each lot
sold separately.

SEC. 36. All lots and parcels of land sold for delinquent improvement assessments, shall be sold to the person at such sale offering to pay the amount due on each tract or lot for the least quantity thereof to be taken from the east side of such tract or lot, and the remainder thereof shall be discharged from the lien. After receiving the amount of the assessment, penalty, cost and charges, the

Part sold
from east
side of lot.

Certificate
of purchase.

treasurer shall make out a certificate, dated on the day of sale, stating (when known) the name of the owner as given on the assessment roll, a description of the land sold, the amount paid therefor, the name of the purchaser, that it was sold for the assessment, giving the name of the street or other brief designation of the improvement for which the assessment was made, and specifying that the purchaser will be entitled to a deed in two years from the date of sale unless redemption thereof be made. Such certificate shall be signed by the treasurer, and shall be delivered to the purchaser, and shall be by such purchaser recorded in the office of the county auditor of the county in which the lands are situated within three months from the date thereof. If not recorded within said time, the lien thereof shall be postponed to claims of subsequent purchasers and incumbrances for value and in good faith who become such while the same is unrecorded.

Bidders
not taking—
sale to city.

SEC. 37. If any bidder to whom any property is stricken off at such sale does not pay the assessment, interest and costs before ten o'clock A. M. of the day following the day of such sale, such property must then be resold, or if the assessment sale is closed, be deemed to have been sold to the city or town, and a certificate of purchase shall be issued to the city therefor.

Custodian
of certifi-
cate.

SEC. 38. The city comptroller, if there be such officer, and if not then the city or town clerk, shall be the custodian of all certificates for property sold to the city, and shall at any time within two years from the date of such certificate, and before redemption of the property therein described, sell and transfer any such certificate to any person who will pay to him the amount for which the property therein described was stricken off to the city with interest subsequently accrued, thereon, and the treasurer may, if so authorized by the council, sell and transfer any such certificate in like manner after the expiration of such two years from the date of the certificate.

Return
of sale.

SEC. 39. Within ten days after the completion of the sale of all property described in such assessment rolls, and authorized to be sold as aforesaid, the treasurer must

make return to the comptroller; or other officer by whom the warrant was issued, of said assessment roll, with a statement of his doings thereon, showing all property sold by him, to whom sold and the sum paid therefor. The city treasurer shall also within ten days after the completion of the sale of all property described in such assessment rolls transmit to the treasurer of the county in which said city is located, a statement showing all property sold by him, when sold, to whom sold and the sums paid therefor and the description of the improvement under which said sale was made. The county treasurer shall thereupon note upon the general tax rolls of said county the date of said sale, and the improvement for which the same was sold, and thereafter whenever the county treasurer shall furnish a statement of taxes to any property owner, he shall include therein a statement of such sale and the improvement for which the same was sold.

SEC. 40. The purchaser at such sale acquires a lien on the property so bid in by him for the amount paid by him at such sale as well as for all taxes and special assessments and all interest, penalties, costs and charges thereon, whether levied previously or subsequently to such sale, and whether for State, county, city or town purposes subsequently paid by him on such property, and shall be entitled to interest at the rate of fifteen per cent per annum on the original amount paid by him from the date of said sale and on such subsequent payments from the date of the respective payments.

Purchaser
acquires
lien.

SEC. 41. Every piece of property sold for an assessment shall be subject to redemption by the former owner, or his grantee, mortgagee, heir or other representative at any time within two years from the date of the sale upon payment to the treasurer for the purchaser of the amount for which the same was sold, with interest at the rate of fifteen per cent per annum, together with all taxes and special assessments, interest, penalties and charges thereon paid by the purchaser of such piece of property since such sale, with like interest thereon. Unless written notice of taxes and assessments subsequently paid, and the amount thereof shall be deposited with the treasurer, redemption

Redemption.

may be made without including the same. On any such redemption being made, the treasurer shall give to the redemptioner a certificate of redemption therefor, and pay over the amount received from such redemption to the purchaser or his assigns. Should no redemption be made within said period of two years, the treasurer shall, on demand of the purchaser or his assigns, and the surrender to him of the certificate of purchase, execute to such purchaser or his assigns, a deed for the piece of property therein described: *Provided*, That no such deed shall be executed until the holder of such certificate of purchase shall have notified the owner of such piece of property that he holds such certificate, and that he will demand a deed therefor; and if, notwithstanding such notice, no redemption is made within sixty days from the date of the service or first publication of such notice, said holder shall be entitled to said deed. Said notice shall be given by personal service upon said persons: *Provided*, That in case said parties are nonresidents of the State or they cannot be found therein after diligent search, then such notice may be given by publication in a weekly newspaper published in said city once each week for three successive weeks or if no newspaper be published in said city, then publication shall be made as provided in section 25 of this act. Such notice and return thereto, with the affidavit of the person claiming such deed showing that such service was made, shall be filed with the treasurer. Such deed shall be executed only for the piece of property described in the certificate, and after payment of all subsequent taxes and special assessments thereon. The deed shall be executed in the name of the city by which the improvement is made; shall recite in substance the matters contained in the certificate, the notice to the owner, and that no redemption has been made of the property within the time allowed by law. Such deed shall be signed and acknowledged by the city treasurer as such. The deed shall be *prima facie* evidence that the property was assessed as required by law; that the assessment was not paid; that the property was sold as required by law; that it was not

Deed.

Notice to owner.

Effect of deed.

redeemed; that notice had been given, and that the person executing the deed was the proper officer; and the deed shall be conclusive evidence of the regularity of all other proceedings from the assessment, inclusive, up to the execution of the deed.

SEC. 42. All moneys collected by the treasurer upon assessments under this act shall be kept as a separate fund and shall be used for no other purpose than the redemption of warrants or bonds drawn or issued against the fund. Redemption fund.

SEC. 43. Whenever before the sale of any property the amount of any assessment thereon, with interest and costs accrued thereon, shall be paid to the treasurer, he shall thereupon mark the same paid, with the date of payment thereof on the assessment roll, and whenever after sale of any property for any assessments, the same shall be redeemed, he shall thereupon enter the same redeemed with the date of such redemption on such record. Such entry shall be made on the margin of the record opposite the description of such property. Records shall be satisfied.

SEC. 44. If the treasurer shall receive any moneys for assessments, giving a receipt therefor, for any property and afterwards return the same as unpaid, or shall receive the same after making such return, and the same be sold for assessment which has been so paid and receipted for by himself or his clerk or assistant, he and his bond shall be liable to the holder of the certificate given to the purchaser at the sale for the amount of the face of the certificate, and a penalty of fifteen per centum additional thereto besides legal interest, to be demanded within two years from the date of the sale and recovered in any court having jurisdiction of the amount, and the city shall in no case be liable to the holder of such certificate. Liability of treasurer.

SEC. 45. If any assessment be annulled or set aside by any court, or be invalid for any cause, a new assessment may be made, and return and like notice given and proceedings had as herein required in relation to the first; and all parties in interest shall have the like rights, and the city council or other legislative body, and the superior court, shall perform the like duties and have like power Reassessment.

in relation to any subsequent assessment as are hereby given in relation to the first assessment.

Lien of
assessment.

SEC. 46. All the assessments levied by any city under this act shall, from the date of the judgment confirming the assessment be a lien upon the real estate upon which the same may be imposed, and such lien shall continue until such assessments are paid; if any proceedings taken for the enforcement thereof, shall be held void or invalid, such city shall provide by ordinance for new proceedings and a new sale for the enforcement thereof in like manner as hereinbefore provided; and in addition to the remedy hereinbefore provided, any city may enforce such lien by civil action in any court of competent jurisdiction in like manner and with like effect as actions for the foreclosure of mortgage.

Bonds.

SEC. 47. Such city may, in its discretion by general or special ordinance, or both, instead of requiring immediate payment for the said assessment to be made by the owners of property included in said assessment roll, authorize the issuance of interest bearing bonds or warrants of such assessment district which shall include the property liable to assessment for such improvement, the said bonds or warrants to be payable on or before a date not to exceed ten (10) years from and after their date and may be issued subject to call, the amount of the said assessment to be payable in installments or otherwise, and the bonds to be of such terms as shall be provided in such ordinance or ordinances and to bear interest at such rate as may be prescribed in such ordinance or ordinances, but not to exceed eight (8) per cent per annum. Such bonds or warrants shall be payable only from the funds created by the special assessment hereinbefore authorized upon the property in the said assessment district, and the holder of any such bond or warrant shall look only to such fund for the payment of the principal and interest thereof and shall have no claim or lien therefor against the city by which the same was issued except from such fund.

SEC. 48. If any street, avenue, or alley, or the right to use and control the same for purposes of public travel,

shall belong to any city and such city shall establish a grade therefor, which grade requires any cut or fill, damaging abutting property, the damages to arise from the making of such grade may be ascertained in the manner provided in this act, but such city may provide that the compensation to be made for such damage, together with the accruing costs, shall be added to the cost of the labor and material necessary for the grading thereof, and shall be paid by assessment upon the property within the local assessment district defined by law or the charter or ordinances of such city in the same manner and to the same extent as other expenses of such improvement are assessed and collected. In such cases it shall not be necessary to procure the appointment of commissioners to take the other proceedings herein provided for making such assessments, but all the proceedings for the assessment and collection of such damages and costs, shall, if so ordained by such city, be governed by the charter provisions, law or ordinances in force in such city for the assessment and collection of the cost of such improvements upon property locally benefited thereby: *Provided, however,* That this section shall apply only to the original grading of such street, avenue or alley.

Damage to abutting property.

SEC. 49. At any time within two months from the date of rendition of the last judgment awarding compensation for any such improvement in the superior court, or if any appeal be taken, then within two months after the final determination of the appeal in the Supreme Court, any such city may discontinue the proceedings by ordinance passed for that purpose before making payment or proceeding with the improvement by paying or depositing in court all taxable costs incurred by any parties to the proceedings up to the time of such discontinuance. If any such improvement be discontinued, no new proceedings shall be undertaken therefor until the expiration of one year from the date of such discontinuance.

Proceeding may be discontinued.

SEC. 50. If any city or town shall desire to take possession of any property or do any damage or proceed

City may advance assessments and take possession.

with any improvement, the compensation for which is to be paid for in whole or in part by the proceeds of special assessment under this act, it may advance from its general funds, or any moneys available for the purpose, the amount of the assessments aforesaid, and pay the same to the owner or into court, as herein provided, reimbursing itself for moneys so advanced from the special assessments aforesaid. If there be no funds available for the purpose, such city may contract indebtedness for the purpose of raising funds therefor, which indebtedness shall be contracted and such proceedings taken therefor as is provided by law for indebtedness contracted for other internal improvements.

Waiver of jury.

SEC. 51. In any proceedings under this act wherein a trial by jury is provided for, the jury may be waived as in other civil cases in courts of record in the manner prescribed by law, and the matter may be heard and determined without the intervention of a jury. Whenever an attempt is made to take private property, for a use alleged to be public under authority of this act, the question whether the contemplated use be really public shall be a judicial question and shall be determined as such by the court before inquiry is had into the question of compensation to be made. When a jury is required for the determination of any matter under this act, such jury may be the same jury summoned for the trial of ordinary civil actions before the court, or the court may, in its discretion, issue a venire to the sheriff to summon as jurors such number of qualified persons as the court shall deem sufficient. Except as herein otherwise provided, the practice and procedure under this act in the superior court and in relation to the taking of appeals and prosecution thereof, shall be the same as in other civil actions, but all appeals must be taken within thirty days from the date of rendition of the judgment appealed from. Proceedings under this act shall have precedence of all cases in court except criminal cases.

Procedure as in civil actions.

Words defined.

SEC. 52. Whenever the word "person" is used in this act the same shall be construed to include any company,

corporation or association the State or any county therein and the words "city" or "town" wherever used shall be construed to be either.

SEC. 53. If any city has heretofore taken or shall hereafter take possession of any land or other property, or has damaged or shall hereafter damage the same for any of the public purposes mentioned in this act, or for any other purpose within the authority of such city or town, without having made just compensation therefor, such city or town may cause such compensation to be ascertained and paid to the persons entitled thereto by proceedings taken in accordance with the provisions of this act, and the payment of such compensation and costs as shall be adjudged in favor of the persons entitled thereto in such proceedings shall be a defense to any other action for the taking or damaging of such property.

Compensation for property taken or damaged.

SEC. 54. That an act entitled "An Act to enable cities of the first, second and third classes, and other cities and towns working under special charters, having sufficient population to authorize them to re-incorporate under the laws of the State of Washington, as cities of the first, second or third class to exercise the right of eminent domain for the taking and damaging of said land and property for public purposes, providing a method for making compensation therefor, and providing for special assessments in certain cases upon property benefited, and declaring an emergency," approved March 3, 1905, be and the same is hereby repealed.

Repeal.

SEC. 55. All actions which may now be pending in any court under existing laws, which this act in any manner supersedes or repeals, if the same, at the time of the taking effect of this act, shall not have been tried, shall proceed under the provisions of this act. In all actions in which the supplementary petition of the city shall not have been filed at the time of the taking effect of this act, all proceedings for the levying and collection of assessments shall proceed under the provisions of this act. All other actions and proceedings which may now be pending in court under existing laws which this act in any manner

Saving clause.

supersedes or repeals, shall proceed without being in any manner affected by the passage of this act.

Cities
of second
class.

SEC. 56. In so far as this act relates to cities of the second class, this act shall not be deemed to be exclusive or as repealing or superseding any existing law relative to such cities, covering any subject covered by this act, but as to such cities, this act shall be construed as conferring additional powers and additional remedies, to those now provided by law.

Passed the Senate February 26th, 1907.

Passed the House March 6th, 1907.

Approved by the Governor March 13th, 1907.

CHAPTER 154.

[H. B. 183.]

PROTECTION OF CLAMS.

AN ACT to amend section 1 of "An act relating to the protection of clams; providing penalties for its violation and declaring an emergency," approved March 11, 1905.

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

SECTION 1. That "An Act relating to the protection of clams; providing penalties for its violation and declaring an emergency," approved March 11th, 1905, being section 6811 of Pierce's Washington Code, 1905, be and is hereby amended to read as follows: Section 1. It shall not be lawful for any person or persons, firm or corporation, or any person whatsoever, to take, or dig clams from the sands on the ocean beach of the Pacific Ocean, in the State of Washington, or to have in their possession after the same have been taken, for the purpose of canning or for the purpose of sale, between the 1st day of June, and the 31st day of August, of each year.

Unlawful
to dig on
ocean beach
—when.

Passed the House March 1st, 1907.

Passed the Senate March 7th, 1907.

Approved by the Governor March 13th, 1907.