

vendor, out of the usual or ordinary course of business or trade of the vendor, or whenever substantially the entire business or trade theretofore conducted by the vendor, shall be sold or conveyed or whenever an interest in or to the business or trade of the vendor is sold or conveyed, or attempted to be sold or conveyed, shall be deemed a sale and transfer in bulk in contemplation of this act: *Provided, however,* That if such vendor produces and delivers a written waiver of the provisions of this act from his creditors as shown by such verified statements then and in that case the provisions of this section shall not apply.

"Sale in bulk"
defined.

Passed the Senate February 25, 1913.

Passed the House March 12, 1913.

Vetoed as to Secs. 1, 2, and 3, inc.

Approved as to Sec. 4, by the Governor March 24, 1913.

CHAPTER 176

[S. H. B. 620.]

ESTABLISHING DRAINAGE IMPROVEMENT DISTRICTS.

AN ACT relating to the establishment of drainage improvement districts, providing for the construction, maintenance, extension and protection of drainage systems, the method of apportioning, assessing and collecting funds and paying for the construction and maintenance thereof, repealing chapter LXVI of the Laws of 1901 saving in certain particulars, providing the method of bringing certain existing districts and ditches under the provisions of this act, declaring the Legislative intent as to the effect of adjudications, providing penalties for the violation thereof, and declaring that this is necessary for the immediate preservation of the public health and shall take effect immediately.

(For drainage districts see Rem.-Bal. § 4137 *et seq.*; Pierce's Code, 1912, 155 § 1; as amended by ch. 86, *supra*.)

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

SECTION 1. Whenever one or more persons whose land will be benefited thereby shall desire to have a drainage system established and constructed or any part of an existing drainage system other than those organized under the provisions of chapter 115 of the Laws of 1895 straightened, widened, altered, deepened or otherwise improved,

One or more may petition.

Rem.-Bal., § 4137 *et seq.*; Pierce's Code, 1912, 155 § 1.

and shall not desire to incorporate as a drainage district under the provisions of chapter 115 of the Laws of 1895 and the acts amendatory and supplemental thereto, or there shall not be a sufficient number to be benefited by such system to form a drainage district as in said chapter and the acts amendatory and supplemental thereto provided, proceedings for the construction or improvement of such system shall be as provided for in this act.

Drainage system defined.

SEC. 2. "Drainage system" as used in this act shall be held to include a ditch, drain or water course and any side, lateral, spur or branch ditch, drain or water course necessary to secure the object of the improvement. Two or more ditches, drains or water courses with their laterals, spurs, and branches with separate outlets may be included in one system and constructed as a part thereof when such separate systems will draw wholly or in part from the same body of soil water. But no system shall be established or constructed unless sufficient outlet or outlets are provided, which outlet or outlets may be either within or without the boundaries of the improvement district hereinafter provided for. Any natural water course may be improved in accordance with the provisions of this act.

System must have outlets.

"Damages," "Property benefited" and "property damaged."

"Damages" as used in this act shall be held to include the value of property taken and injury to property not taken, or either, as the case may be. "Property benefited" and "property damaged" as used in this act shall be held to include land, platted or unplatted, whether subject to or exempt from general taxation and roads other than public roads. "Public roads" as used in this act shall be held to include state and county roads, streets, alleys and other public places; and "other roads" as used in this act shall be held to include railroads, street railroads, interurban railroads, logging roads, tramways and private roads, and the rights of way, roadbeds and tracks thereof.

"Public roads."

"Other roads."

"Public utilities."

"Public utilities" as used in this act shall be held to include irrigation, power and other canals, flumes, conduits and ditches, telegraph, telephone and electric transmission and pole lines, and oil, gas and other pipe lines.

“County engineer” as used in this act shall be held to include any engineer specially employed by the board of county commissioners or the board of supervisors to report upon and prepare plans for or to superintend the construction of a drainage system under the provisions of this act. “Prosecuting attorney” as used in this act shall be held to include any attorney specially employed by the board of county commissioners in connection with the carrying out of the provisions of this act to advise or carry on proceedings in court with reference to a drainage system initiated and constructed under the provisions of this act.

“County engineer.”

“Prosecuting attorney.”

SEC. 3. Application for any such improvement shall be made by petition to the board of county commissioners of the county or counties in which such system of drainage or proposed system or any part thereof may be, signed by one or more of the owners of property which will be benefited thereby. The petition shall be filed with the clerk of the board of county commissioners, and shall set forth the necessity for the improvement, and shall describe with reasonable certainty the route and termini thereof; and there shall be filed therewith a bond payable to the county, with good and sufficient surety, to be approved by the board of county commissioners, in a sum of not less than two hundred dollars, conditioned for the payment of all expenses which may have been incurred in the proceedings, in case the prayer of the petition be not granted or the petition be dismissed for any cause. If at any time it shall appear to the board of county commissioners that the bond filed with the petition is not sufficient in amount to cover the expenses which will be necessarily incurred in the proceedings, the board may order an additional bond in such an amount as it shall direct to be given.

Petition for system.

Route described.

Bond of petitioners.

Additional bond.

SEC. 4. Upon the filing of the petition and the approval of the bond, the clerk of the board shall deliver a copy of said petition to the county engineer, who shall at once proceed to view the line of the proposed improvement and the property to be affected thereby and determine whether the

Engineer to view and report.

improvement is in his opinion necessary or will be conducive to public health, convenience or welfare and whether in his opinion the line or lines described constitute the best route, what, if any, branches mentioned in the petition are in his judgment unnecessary, and what, if any, additional branches should be added thereto or changes made therein, and shall report to and file his findings in writing with the board of county commissioners.

Petition dismissed if engineer reports adversely.

SEC. 5. If the report of the county engineer shall be against the improvement, the board of county commissioners shall dismiss the petition at the cost of the petitioners, and shall cause an itemized bill of all the costs to be made up by the clerk for its examination and approval, including the per diem of the county engineer, and all other costs necessarily incurred except the fees of the clerk and the compensation of the county commissioners, and if such costs are not paid by the petitioners on demand they shall be recovered in an action on the bond.

Favorable report.

SEC. 6. If the report of the county engineer shall be in favor of said improvement, the board of county commissioners shall give the improvement district a number, being its serial number in the order of time of its formation among the improvement districts of the county formed under this act, beginning with the next number following the last serial number of any drainage district organized and existing in said county, if any and thereafter such district shall be designated as Drainage Improvement District Number of County, and the board shall cause to be entered on its journal an order directing the county engineer to go upon the lines described in the petition, or as changed by him in his report, and survey, and take levels on the same and set a stake at every hundred feet, numbering down stream, and note the intersection of property lines and boundaries, township, city and county lines, and road crossings, and make a report, profile and plat of the same; also to make an estimate of the cost of construction of such drainage system itemized so as to be reasonably specific as to the various parts thereof: *Pro-*

Drainage improvement district formed.

Survey.

Plat.

vided, That such estimate of the cost shall be held to be preliminary only and shall not be binding as a limit on the amount that may be expended in constructing such drainage system. The clerk of the board shall prepare and keep a special index in which he shall note all proceedings had and all papers filed in connection with such drainage improvement district.

Estimated
cost.

SEC. 7. The board shall also by order entered on the journal, direct the county engineer to make and return a schedule and estimate of all property that will be damaged, or both damaged and benefited by the proposed improvement, and to estimate and report the total number of acres that will be benefited by the proposed improvement and to specify the manner in which the proposed improvement is to be made and the number, kind, location and dimensions of all water-ways, ditches, outlets, flood-gates, bridges and crossings. Schedules of property to be damaged or damaged and benefited shall be arranged in parallel columns, with appropriate headings, and shall show the description of the property, and if land, give the legal subdivision, section, township and range, and number of acres; and if platted, the name of the plat and lot and block number; the name of the owner or owners or reputed owner or owners; the estimated gross damages that will be sustained by reason of the proposed improvement; the estimated gross benefits that will accrue; and the right hand column of the schedule shall be sufficiently wide for the signature of the owner, and shall bear the heading: "I, the undersigned owner of the property opposite which I have signed my name, accept and agree to the estimated amount of benefits and damages that will accrue to my property by reason of the proposed improvement."

Engineer to
estimate
property
damaged.

Schedule of
property
damaged.

Form.

SEC. 8. The plat provided for in section 6 shall be drawn upon a scale sufficiently large to show all the meanderings of the proposed improvement, and shall distinctly show the boundaries of each lot or tract of land and the location of each public or other road and sewer sys-

Plat to
show details.

tem to be benefited thereby, and so far as known, the name of the owner of each lot or tract of land and the authorities or corporation having in charge or owning or controlling each public or other road and sewer system affected, the distance in feet through each tract or parcel of land crossed by the proposed improvement, together with such other matters as the county engineer shall deem material, and the profile shall show the surface, and grade lines and the gradient fixed. The county engineer shall make and file with his report an itemized bill of costs incurred in the proper discharge of his duties under this act and the preceding sections, and shall report the same to the clerk of the board of county commissioners within ten days after the completion of the survey.

Hearing
on report of
engineer.

Notice,
publication of,
what to show.

SEC. 9. Upon the filing of the report of the county engineer, the board of county commissioners shall immediately fix a date for a hearing on such report, and the clerk of the board shall give notice thereof by publication in three successive weekly issues of the official newspaper of the county, and also, if so directed by the board, in one other weekly newspaper to be designated by the board, published in or near the proposed improvement district and of general circulation therein. Said notice shall fix the time and place for said hearing and shall specify the territory to be included in the proposed improvement district, both by boundaries and also by sections or fractions thereof. Such notice shall also designate with reasonable certainty the route and termini of the proposed improvement, and shall state that the plat, report and schedule on file in the office of the board of county commissioners show the property to be taken or damaged, and the amount of damages proposed to be allowed therefor. The last publication of such notice shall be not less than seven or not more than fourteen days before the date of said hearing. Said hearing, and also the hearing hereinafter provided, for fixing the apportionment of the cost of said improvement, may either or both of them be held at a place other than the county seat, and more convenient to the

Hearings
had at most
convenient
place.

lands affected, if the board of county commissioners shall so order. The county engineer shall attend and have at such hearing his plats, plans, reports and schedules in relation to the proposed improvement, and the clerk of the board of county commissioners shall also attend and have at such hearing all petitions, claims, objections and other papers and documents relating to said improvement on file in his office.

Engineer
to attend
hearings.

SEC. 10. On the date set for said hearing the board of county commissioners shall meet at the place designated in the notice, and if it appear that due notice of such hearing has been given, shall proceed with the hearing on the report of the county engineer, and any objections thereto, and may adjourn said hearing from time to time. At said hearing, the board shall hear all pertinent evidence, including any evidence offered concerning the probable cost of the system and the probable benefits to accrue therefrom, and may change, add to or modify the plans for such drainage system and the boundaries of the improvement district, and change the estimate of damages and benefits in any case, and may review, change and modify any of the findings and estimates of the county engineer, and may, in its discretion, employ another engineer to make separate findings on any or all of the matters hereinbefore required to be included in the report of the county engineer, and may adjourn said hearing and await such report; or may discontinue proceedings in regard to the proposed improvement, at the cost of the petitioners therefor, if the board shall determine that the construction of the proposed improvement is not warranted by the benefits to be derived therefrom. In case any change in the plans of the proposed improvement is made at said hearing, and such change will cause additional damages to any property, or will damage any property not damaged under the original plans, the county engineer shall prepare and file a schedule, showing the estimated damages and benefits under such changed plans, and notice of the filing of such schedule shall be served upon the owners of the prop-

Hearing.

Evidence.

May amend
report of
engineer.

New
schedule
of property
damaged.

erties affected, and settlements made as hereinafter provided.

Deeds to be executed.

SEC. 11. In case any owner of property to be damaged by the proposed improvement shall agree to accept the damages estimated by the engineer, or as fixed by the board of county commissioners, the board shall direct and the clerk of the board shall prepare a deed to be approved by the county engineer and the prosecuting attorney, conveying to the county for the benefit of the proposed district the property to be taken and the right to damage property not taken. If the damages agreed upon are equalled or exceeded by the agreed estimated benefits, the grantors in the deed shall execute and deliver the same without consideration other than the right to have the damages offset against the benefits in the apportionment of the cost of the improvement as hereinafter provided. If the damages agreed upon are damages to property not benefited, or if such damages exceed the agreed benefits, the grantors in the deed shall execute and deliver the same upon the receipt of a warrant drawn by the county auditor under the direction of the board of county commissioners upon the current expense fund of the county, for the amount of damages or the amount of excess of damages over benefits, as the case may be. No such deed shall be accepted, either with or without consideration, until the title conveyed thereby has been approved by the prosecuting attorney.

Consideration.

SEC. 12. If at the conclusion of the hearing provided for in section 10 it shall appear to the board of county commissioners that the owner of any property to be damaged by the proposed improvements has not accepted and agreed to the damages estimated by the engineer or fixed by the board, the board may, in its discretion, appoint an agent to secure acceptances and deeds from such owners and shall, within a reasonable time, direct the prosecuting attorney of the county to institute proceedings in the superior court of the county in which the property affected is located, for the determination of the damages to be

Agent to secure deeds.

sustained and the condemnation of any property the title to which or the right to damage which has not been acquired, and shall direct the clerk of the board to furnish the attorney with a certified copy of such proceedings of the board as he shall require.

Condemnation.

SEC. 13. For the purpose of taking or damaging property for the purposes of this act, counties shall have and exercise the power of eminent domain in behalf of the proposed improvement district, and the mode of procedure therefor shall be as provided by law for the condemnation of lands by counties for public highways.

Eminent domain by county.

SEC. 14. The jury in such condemnation proceedings shall find and return a verdict for the amount of damages sustained: *Provided*, That the jury, in determining the amount of damages, shall take into consideration the benefits, if any, that will accrue to the property damaged by reason of the proposed improvement, and shall make special findings in the verdict of the gross amount of damages to be sustained and the gross amount of benefits that will accrue. If it shall appear by the verdict of the jury that the gross damages exceed the gross benefits, judgment shall be entered against the county, and in favor of the owner or owners of the property damaged, in the amount of the excess of damages over the benefits, and for the costs of the proceedings, and upon payment of the judgment into the registry of the court for the owner or owners, a decree of appropriation shall be entered, vesting the title to the property appropriated in the county for the benefit of the improvement district. If it shall appear by the verdict that the gross benefits as found by the jury equal or exceed the gross damages, judgment shall be entered against the county and in favor of the owner or owners for the costs only, and upon payment of the judgment for costs a decree of appropriation shall be entered, vesting the title to the property appropriated in the county for the benefit of the improvement district. The verdict and findings of the jury as to damages and benefits shall be binding upon the board appointed to apportion the cost

Benefits offsetted.

(Municipal corporations may offset. See § 16, art. I, Constitution.)

Decree for costs only.

of the improvement upon the property benefited as herein-after provided.

Warrant for damages.

SEC. 15. Upon the settlement of the claims for damages as provided in section 11, or upon the entry of judgment as provided in section 14, the county auditor shall, under the direction of the board of county commissioners, draw his warrant upon the county treasurer for the payment of the amount of damages agreed to or the amount of the judgment, as the case may be, to be paid out of the current expense fund of the county.

Construction of system.

SEC. 16. When the board of county commissioners shall have finally determined and fixed the route and plans for the proposed drainage system and the boundaries of the improvement district, and when it shall appear that the damages for property to be taken or damaged have been settled in the manner hereinabove provided, or when it shall appear that such damages have been settled as to a particular portion of the proposed improvement, and that construction of such portion of such proposed improvement is feasible, the board of county commissioners shall proceed with the construction of the improvement or of such portion thereof, as the case may be.

Cost of improvement paid by property benefited.

SEC. 17. The cost of the improvement shall be paid by assessment upon the property benefited. The assessments shall bear interest until paid at such rate, not to exceed eight per cent. per annum, as the board of county commissioners shall determine. At the hearing provided for in section 10 of this act the board of county commissioners shall determine in what manner and within how many years said assessment shall be paid, and shall also at said meeting determine whether the evidences of indebtedness for the cost of said improvement shall be warrants or bonds. If warrants, it shall fix not to exceed five yearly instalments for the payment of said assessments, and if bonds, it shall fix either ten or fifteen years for the payment thereof. Such assessments may be graduated so that the heavier instalments shall fall in the later years. In case warrants are to be issued, no yearly in-

Five-year payments on warrants; ten to fifteen on bonds.

stalment shall be less than one-tenth nor more than three-tenths of the entire assessment; and in case bonds are to be issued for ten years, the instalments shall be as follows:

For the 1st year.....	5%	10-year bond installments.
For the 2nd year.....	5%	
For the 3rd year.....	5%	
For the 4th year.....	10%	
For the 5th year.....	10%	
For the 6th year.....	10%	
For the 7th year.....	10%	
For the 8th year.....	10%	
For the 9th year.....	15%	
For the 10th year.....	15%	

and in case bonds are to be issued for fifteen years the instalments shall be as follows:

For the 1st and 2nd years, interest only.		15-year installments.
For the 3d year.....	3%	
For the 4th year.....	4%	
For the 5th year.....	5%	
For the 6th year.....	5%	
For the 7th year.....	6%	
For the 8th year.....	7%	
For each succeeding year.....	10%	

Such bonds shall be interest-bearing coupon bonds, and of such denominations of not less than \$100 nor more than \$500 as the county commissioners shall by resolution prescribe, and shall recite that they are secured to be paid by assessments upon the property of Drainage Improvement District No....., of..... County, and that they are not a general obligation of such county. They shall be payable in their serial order on the call of the treasurer, whenever at any coupon date there shall be sufficient money in the fund of the district against which they are issued over and above that necessary for the payment of interest on all outstanding bonds, to pay the principal of one or more bonds. The treasurer shall give notice of such call by publication in the county official newspaper, in two successive weekly issues thereof, the second of which shall be

Form of
bonds.

Call of bonds.

not less than seven nor more than fourteen days before the annual interest date, stating that bonds Nos. (giving their serial number or numbers) will be paid on the date the next interest coupons on said bonds shall become due, and interest upon such bonds shall thereupon cease upon such date. Each warrant and bond shall bear the date of its issuance, and recite that it is payable on or before the day of, 19. . . , which shall be . . . months after the last instalment of the assessment shall become due, and shall be signed by a majority of the board of county commissioners and attested by the county auditor under his seal, and each coupon shall have printed thereon a fac-simile of the signatures of such officers. The county treasurer shall register said warrants and bonds in a book kept for that purpose and shall certify on each thereof under his seal that it has been so registered and that the signatures thereon are the genuine signatures of said county commissioners and the county auditor, and that the seal attached is the seal of the county auditor. Such warrants and bonds shall not be issued in any amount in excess of the cost and expense of the improvement.

Bonds to state when payable.

Registry.

Certificate of genuineness.

Sale of bonds or warrants.

SEC. 18. The board of county commissioners may, under such regulations and on such notice as they may determine, sell the warrants and bonds or any part thereof, issued under the provisions of this act, and pay the proceeds thereof into a fund to be used for the purpose of paying the cost and expenses of the improvement. Any warrants or bonds issued under the provisions of this act or such portions thereof as shall remain unsold or undisposed of may be issued to the contractor constructing the improvement or any part thereof in payment therefor, and in case the improvement or any part thereof shall be constructed by the board of supervisors as in this act provided, may be issued in payment for work, labor and material performed and furnished therefor.

Election.

SEC. 19. Upon the determination by the board of county commissioners to proceed with the work of construction, said board shall order an election to be held in some place

within the district to be designated by the board, and shall appoint an election board to consist of one inspector and two judges, who shall qualify in like manner and receive like compensation as election officers at general elections. Notice of said election shall be given by the clerk of the board of county commissioners by publication in two consecutive weekly issues of a newspaper to be designated by the board and of general circulation in the district, the last of which publications shall be not less than seven nor more than fourteen days prior to the date of said election, and such notice shall also be posted by the sheriff of the county not less than fourteen days prior to the date of said election, in three of the most public places in the district. All electors of the county owning land in the district shall be entitled to vote at said election and at the annual elections hereinafter provided for.

Notice.

Who may vote.

SEC. 20. At the election provided for in the preceding section, two qualified electors of the county owning land in the district shall be elected, who, with the county engineer, shall constitute the first board of supervisors of said district. The board of supervisors shall have charge of the construction and maintenance of the drainage system of the district, subject to the limitations hereinafter set forth, and may employ a superintendent of construction and maintenance, who may be one of the two elected supervisors. The supervisor receiving the highest number of votes shall hold office until one year after the first annual election of the district and until his successor is elected and qualified, and the other supervisor shall hold office until his successor is elected at the first annual election and shall have qualified. The elected supervisor shall qualify by taking the usual oath of office of county and precinct officers, and by giving a bond in an amount to be fixed and with surety to be approved by the board of county commissioners. On the second Tuesday of December in the year following the election hereinabove provided for and annually thereafter, there shall be elected one supervisor of such district, who shall hold office for the term of two years and

Two supervisors elected; county engineer third.

Terms of office.

Oath and bond of supervisor.

Annual elections.

Rem.-Bal.,
§§ 4226-4250;
Pierce's
Code, 1912,
155 §§ 99-
149.
(This is
repealed, see
§ 39 *infra*.)

until his successor is elected and qualified. Such annual election shall be held upon the same notice and under the same regulations and in the same manner as the first election hereinbefore provided for: *Provided*, That any drainage improvement districts established under this act, or heretofore established under chapter LXVI of the Laws of 1901, not including any city or town and not less than two thousand acres in extent including all additions thereto, notice of annual elections of supervisors shall be given by posting only.

Rem.-Bal.,
§§ 4226-4250;
Pierce's
Code, 1912,
155 §§ 99-
149.
(This is
repealed, see
§ 39 *infra*.)

Elections
in districts
heretofore
organized.

SEC. 21. In all drainage districts heretofore organized and now existing under the provisions of chapter LXVI of the Laws of 1901, in which an improvement or extension of the existing drainage system is initiated under the provisions of this act during the year 1913, an election of supervisors shall be held in the manner provided for the first election in drainage improvement districts organized under the provisions of this act, and in such districts in which no improvements are initiated during the year 1913, the first election shall be held on the second Tuesday in December, 1913. The supervisors of such districts now in office shall, unless sooner removed as provided by the act of 1901, hold office until their successors elected under this act shall have qualified.

Board to
construct
ditch.

SEC. 22. The said board of supervisors shall, immediately upon their election and qualification, begin the construction of such drainage system at the outlet or outlets thereof, and at such other points as may be deemed advisable from time to time, and shall proceed with the construction thereof in accordance with the plans adopted therefor: *Provided*, That in the construction of said drainage system the board of supervisors with the approval of the board of county commissioners may change the original plans, cross sections, gradients, depth and other features of the system, and may construct lining, bulk-heading or riprapping wherever the same may be found necessary or advisable in the course of actual construction; but no essential deviation from the route or alteration of the plans

Plans may
be changed.

Route must
be followed.

or mode of construction of the system shall be made that will increase the cost of the entire system by more than one-fifth, and no deviation of route requiring additional or different right of way shall be made until title thereto has been first obtained: *Provided further*, That the board of county commissioners may in its discretion let the construction of said drainage system or any portion thereof by contract, in the manner provided for letting contracts for other public works: *And provided further*, That the board of county commissioners may, upon such terms as may be agreed upon by the United States acting in pursuance of the National Reclamation Act approved June 17, 1902 (32 Statutes at Large 388), and the acts amendatory thereof and supplemental thereto, or in pursuance to any other act of congress appropriate to the purpose, contract for the construction of the drainage system or any part thereof, by the United States, or in co-operation with the United States therein. In such case, no bond shall be required, and the work shall be done under the supervision and control of the proper officers of the United States.

32 St. L.,
p. 388;
Pierce's
Fed. Code,
§ 10466;
7 Fed. St.
Ann. 1098.

Federal govern-
ment
may join.

Unless the work of construction is let by contract, as hereinbefore provided, or for such part of such work as is not covered by contract, the board of supervisors shall employ such number of men as shall be necessary to successfully carry on the work of such construction, and shall give preference in such employment to persons owning land to be benefited by the improvement.

Day labor.

SEC. 23. The compensation of the board of supervisors, superintendent of construction, the board of appraisers hereinafter provided for, and any special engineer, attorney or agent employed by the board of county commissioners in connection with the improvement, the maximum wages to be paid, and the maximum price of materials to be used, shall be fixed by the board of county commissioners. Each county commissioner shall receive pay at the rate of four dollars per day for the number of days he is engaged in the performance of any duty under this act, which sum shall be additional to his salary in case he re-

County com-
missioners
to fix com-
pensation.

County com-
missioner
to get
\$4.00 per day
additional.

ceive an annual salary; and none of the statutory provisions limiting the number of days that a county commissioner shall draw pay for or limiting the number of sessions for attendance upon which he shall be entitled to mileage shall apply to any proceedings under this act. All officers and members of boards performing duties under this act shall receive in addition to their fees or salaries their actual necessary expenses incurred in the performance of their duties hereunder. All costs of construction or maintenance done under the direction of the board of supervisors shall be paid upon vouchers or payrolls verified by two of the said supervisors. All costs of construction and all other expenses, fees and charges on account of such improvement shall be paid by warrants upon the county treasurer upon the proper fund, and shall draw interest at such rate not to exceed eight per cent per annum as the board of county commissioners shall fix, until paid or called by the county treasurer as other warrants of the county are called.

Claims,
how paid.

SEC. 24. Whenever in the progress of the construction of the drainage system it shall become necessary to construct a portion of such system across any public or other road or public utility, the board of supervisors, or in case the work is being done by contract the board of county commissioners, shall serve notice in writing upon the authorities, corporation or person having charge of, or controlling or owning such road or public utility, as the case may be, of the present necessity of such crossing, giving the location, kind, dimensions and requirement thereof, for the purpose of the drainage system, and stating a reasonable time, to be fixed by the county engineer, within which plans for such crossing must be filed for approval in case the authorities, corporation or person controlling or owning such road or public utility desire to construct such crossing. As soon as convenient, within the time fixed in the notice, the authorities, corporation or person shall, if they desire to construct such crossing, prepare and submit to the county engineer for approval duplicate detailed

Notice to
cross public
utility.

Public utility
company
may offer
suggestions.

plans and specifications for such crossing. Upon submission of such plans, the county engineer shall examine and may modify the same to meet the requirements of the drainage system, and when such plans or modified plans are satisfactory to the county engineer he shall approve the same and return one thereof to the authorities, corporation or person submitting the same, and file the duplicate in his office, and shall notify such authorities, corporation or person of the time within which said crossing must be constructed. Upon the return of such approved plans, the authorities, corporation or person controlling such road or public utility shall, within the time fixed by the county engineer, construct such crossing in accordance with the approved plans, and shall thereafter maintain the same. In case such authorities, corporation or person controlling or owning such road or public utility shall fail to file plans for such crossing within the time prescribed in the notice, the board of supervisors or of county commissioners, as the case may be, shall proceed with the construction of such crossing in such manner as will cause no unnecessary injury to or interference with such road or public utility. The cost of construction and maintenance of only such crossings or such portion of such cost as would not have been necessary but for the construction of the drainage system shall be a proper charge against the improvement district, and only so much of such cost as the board of county commissioners shall deem reasonable shall be allowed as a charge against the district in the case of crossings constructed by others than the authorities of the district. The amount of costs of construction by private corporations and persons allowed as a charge against the district by the board of county commissioners shall be credited on the assessments against the property on which the crossing is constructed, and any excess over such assessments shall be paid out of the funds of the district. The cost of construction and maintenance of crossings of public roads shall be paid by the county, city or town maintaining such public road.

Engineer to approve plans.

Public utility may construct across its property.

What may be charged to improvement district.

Cost of crossing to be credited on assessment.

Cost of im-
provement
to be filed.

SEC. 25. When the improvement is fully completed and accepted by the county engineer, the clerk of the board shall compile and file with the board of county commissioners an itemized statement of the total cost of the improvement, including engineering and election expenses, the cost of publishing and posting notices, damages and costs allowed or awarded for property taken or damaged, including compensation of attorneys, the cost of construction, including the cost of crossings constructed by the district and the cost of crossings constructed by others and allowed by the board of county commissioners, and including the sums paid or to be paid to the United States, and including all other costs and expenses, including fees, per diem and necessary expenses of non-salaried officers incurred in connection with the improvement, together with interest on such costs and expenses from the time when incurred at the rate of eight per cent. per annum. There shall also be included in said statement, in case the county engineer is a salaried officer, a statement of the services performed by him in connection with said improvement at a per diem of five dollars per day and his necessary expenses, and a reasonable sum to be fixed by the board of county commissioners on account of the services rendered by the prosecuting attorney. Upon the filing of such statement of costs and expenses the board of county commissioners shall revise and correct the same if necessary and add thereto a reasonable sum, not to exceed ten per cent. of the total thereof, to cover possible errors in the statement or the apportionment hereinafter provided for, and the cost of such apportionment and other subsequent expenses, and shall appoint a board of appraisers consisting of the county engineer *ex-officio*, and two other competent persons, to apportion the grand total as contained in said statement as hereinafter provided. Each member of said board of appraisers shall take, subscribe and file with the board of county commissioners an oath to faithfully and impartially perform his duties to the best of his ability in making said apportionment, and said board of

Extra
salaries as
part of cost.

Additions
for errors.

Appraisers
to apportion
cost.

Oath of
appraisers.

appraisers shall proceed to carefully examine the drainage system and the public and private property within the district and fairly, justly and equitably apportion the grand total cost of the improvement against the property and the county or counties, cities and towns within the district, in proportion to the benefits accruing thereto. The members of said board of appraisers shall be paid out of the funds of the district such compensation for their services as the board of county commissioners shall fix.

Apportioned according to benefits.

SEC. 26. Whenever any drainage system constructed under the provisions of this act will drain the whole or any part of any public road or will so affect such road that the same or the roadbed or track thereof will be benefited or protected thereby, or where any such drainage system will furnish an outlet for or facilitate the construction or maintenance of any sewer system in any city or town, there shall be apportioned against the county in which any such state or county road outside of any incorporated city or town is located or against the city or town in which any such public road is located, or against any such other road or part thereof so drained or affected, or against the city or town for which an outlet for sewage will be furnished or wherein the construction or maintenance of a sewer system will be facilitated, the proper amount of the total sum to be apportioned, and nothing in this section contained shall be so construed as to prevent the apportionment of the proper amount of the total sum to any property other than roads lying within any such county, city or town, in proportion to the benefits accruing thereto.

Who are beneficiaries.

Sewage systems benefited.

SEC. 27. In the plans for and in the construction of a drainage system in an irrigated region, under the provisions of this act, provision may be made for the prevention of, or affording an outlet for drains to prevent, injury to land from seepage of or saturation by irrigation water, and for the carrying off of necessary waste water from irrigation, and benefits resulting from such provision shall be considered in making the apportionment of the cost of such system.

Irrigation system benefited.

State lands. SEC. 28. There shall be apportioned against all state school, granted, and other lands, in the district the proper amount of the total sum to be apportioned in proportion to the benefits accruing thereto.

Apportionment certified to municipality. Other corporations. Acreage. Platted lands. SEC. 29. Upon the completion of the apportionment the board of appraisers shall prepare upon suitable blanks, to be prescribed by the bureau of inspection and supervision of public offices, sign and file with the clerk of the board of county commissioners a schedule giving the name of each county, city and town and the description of each piece of property found to be benefited by the improvement in the following order: First, counties, cities and towns and the respective amounts apportioned thereto for benefits accruing to public roads and sewer systems therein; second, other roads (a) railroads, (b) street railroads, (c) interurban railroads, (d) logging roads, and (e) tramways, giving the location of the particular portion or portions of each road benefited and the respective amounts apportioned thereto; third, unplatted lands giving a description of each tract arranged in the numerical order of the townships, ranges and sections, and giving the legal subdivisions and such other subdivisions and metes and bounds descriptions as may be necessary to show a different rate of apportionment, or different ownership, and giving the respective amounts apportioned to each tract; fourth, platted lands arranged by cities and towns and platted acreage in alphabetical order, giving under each the names of the plats in alphabetical order and the numbers of blocks and lots, and such other subdivisions and metes and bounds descriptions as may be necessary to show a different rate of apportionment, or different ownership, and giving the respective amounts apportioned to each plat, block, lot, or other description, as the case may be.

Notice of hearing on apportionment. SEC. 30. Upon the filing of the schedule of apportionment the board of county commissioners shall fix the time and place for a hearing thereon, which time shall be not less than thirty nor more than forty days from the date

of filing, and notice of such hearing shall be given in the manner provided for giving notice of hearing in section 9, which notice shall fix the time and place of said hearing and shall state that the schedule of the board of appraisers showing the amount of the cost of the improvement apportioned to each county, city, town and piece of property benefited by the improvement is on file in the office of the board of county commissioners and open to public inspection. At or prior to such hearing any person interested may file with the clerk of the board written objections to any item or items of said apportionment. At such hearing, which may be adjourned from time to time until finally completed, the board of county commissioners shall carefully examine and consider said schedule of apportionments and any objections filed or made thereto, and may add thereto any property benefited by the improvement against which no apportionment has been made, or strike therefrom any property not benefited, and change, modify or re-apportion any item thereof, and shall cause the clerk of the board to enter thereon all such additions, cancellations, changes, modifications and re-apportionments, all credits for damages allowed or awarded to the owner of any piece of property benefited, but not paid, as provided in section 14 of this act; also, a credit in favor of the county on any apportionment against the county, of all sums paid on account of said improvement, as provided in section 15 of this act; and all sums allowed the county on account of services rendered by the county engineer or prosecuting attorney, as provided in section 25 of this act; and all credits allowed to property owners constructing crossings as provided in section 24 of this act. When the board of county commissioners shall have finally determined that the apportionment as filed or as changed and modified by the board is a fair, just and equitable apportionment, and that the proper credits have been entered thereon, the members of the board approving the same shall sign the schedule and cause the clerk of the board to attest their signatures under his seal, and shall

Objections
to be filed.

Hearing.

Amendments
to appor-
tionment.

Order ap-
proving ap-
portionment.

enter an order on the journal approving the final apportionment and all proceedings leading thereto and in connection therewith. Thereupon, the county auditor shall prepare an assessment roll which shall contain, first, a map of the district showing each separate description of property assessed; second, an index of the schedule of apportionments; third, an index of the record of the proceedings had in connection with the improvement; fourth, a copy of the resolution of the board of county commissioners fixing the method of payment of assessments; fifth, the warrant of the auditor authorizing the county treasurer to collect assessments; and sixth, the approved schedule of apportionments of assessments; and shall charge the county treasurer with the total amount of the assessment and turn the roll over to the treasurer, for collection in accordance with the resolution of the board of county commissioners fixing the method of payment of assessments. The assessments contained in said assessment roll shall be liens upon the property assessed, and all such liens shall relate back to and take effect as of the date when the board of county commissioners determined to proceed with the construction of the improvement as provided in section 16 of this act.

Assessment roll.

Assessments are liens.

District fund.

Order of payments.

Assessments collected as general tax.

SEC. 31. There shall be established in the county treasury of any county in which any drainage improvement district is organized under the provisions of this act, a separate fund for the construction and a separate fund for the maintenance of the improvement in such district. All moneys collected on assessments for the construction or maintenance of any such improvement shall be paid into the proper fund and shall be applied first to the payment of any interest due, and second to the payment of any outstanding warrants or bonds in the order of their issuance. The respective instalments of assessments for construction or maintenance of drainage improvements made under the provisions of this act, shall be collected in the same manner and shall become delinquent at the same time as general taxes, and shall bear interest after delinquency

at the rate of ten per cent. per annum, and the lien thereof shall be enforced by foreclosure and sale of the property assessed, as in the case of general taxes. If any item of assessment shall be uncollectable by reason of any irregularity in any of the proceedings, a new hearing, as provided in section 30 of this act, and a reassessment of the property mentioned in such item, in proportion to the benefit received thereby, shall be had and made. If any item of assessment shall be uncollectable by reason of the fact that the property assessed does not sell for enough to pay the assessment against it, or by reason of the fact the property assessed was not subject to assessment, the board of county commissioners shall cause a supplemental assessment to be made on the property benefited by the improvement and against the county, cities and towns chargeable therewith in the manner provided for the original assessment, to cover the deficiency.

Reassessment.

Supplemental assessment.

SEC. 32. On or before the first day of October in each year the board of supervisors of each drainage improvement district shall make and file with the board of county commissioners of the county containing such district, a statement and estimate in writing of the amount required for maintenance of the drainage system of said district for the ensuing fiscal year, and the board of county commissioners shall, on or before the first day of November next ensuing, levy an assessment for the amount of said estimate, or such amount as it shall deem advisable, upon the property within the district and against the county, cities and towns chargeable therewith in the same proportion as the assessment to pay the original cost of construction of said drainage system was levied: *Provided, however,* That, upon petition filed by two or more assessed property owners of a district the county commissioners may, in their discretion, hold a hearing at the county seat for the purpose of reapportioning the maintenance charges in such district, to be held at the time of the equalization of the real property assessment in the even numbered calendar years. Preliminary to such hearing the county com-

Estimate of annual expenditures.

Levy to cover.

Hearing on maintenance charges.

missioners shall appoint a board of three appraisers, of whom the county engineer shall be one, who shall qualify and proceed as the board of appraisers appointed to apportion the original cost of the system, and shall report to and file with the board of county commissioners their recommendations in such matter not less than twenty days prior to the date of such hearing. Notice of the filing of such report and that such hearing will be held shall be given by publication in the official county newspaper and in such other newspaper published in or near such district as the county commissioners may in their discretion direct in two successive publications, the last of which shall not be less than seven or more than fourteen days prior to the date of said hearing. And at such hearing the commissioners may make such change in the basis of the apportionment of the levies for the maintenance of such drainage system as may seem just and equitable. In maintaining the drainage system of their district the board of supervisors may, with the approval of the board of county commissioners, make expenditures in excess of the annual maintenance fund herein provided for, which excess amount shall in such event be included in the maintenance levy for the succeeding year: *Provided*, That when, owing to floods or other causes an unusually high maintenance levy or expenditure in excess of the current levy shall be necessary the board of county commissioners may provide that such levy or the levy to meet such excess expenditure be spread over a term of years and warrants or bonds issued to meet the same as herein provided for the original construction cost of a drainage system.

Appraisers
to adjust
annual
assessment.

Notice.

Equalization.

Calamity
expense.

Cost to
municipal
corporation.

SEC. 33. The amount of the costs of construction or maintenance of any drainage system assessed against any city, town or county may be met by levies to be paid in similar instalments and extending over a like period of time as the assessments against property benefited are spread, or such amounts may be met by the issue and sale of the bonds of such city, town or county in the manner in which bonds to meet general indebtedness of such city,

town or county are issued. The proper authorities of such city, town or county shall make the necessary levies to meet such amounts thus apportioned thereto as a general levy on all property therein.

SEC. 34. Upon a petition and bond being filed by one or more land owners, either within or without the boundaries of a drainage improvement district, and like proceedings being had as in the case of the original establishment and construction of a drainage system, the county commissioners may declare any drainage system or any part thereof, abandoned and may strike from the district lands no longer benefited or served thereby, or they may cause the route of any established drainage system to be changed, in whole or in part, or the whole or any part thereof to be widened or deepened, or provided with lining or bulkheading, or other betterment to be made therein, or a new outlet or outlets, or one or more branches or extensions to be constructed, either within or without the boundaries of the original district. But the striking of any lands from a district shall not in any way affect any assessment theretofore levied against such lands. When such improvements shall have been completed the costs thereof shall be apportioned and assessed against the lands benefited thereby in the manner hereinbefore provided for such apportionment and assessment in the case of original proceedings in regard to a drainage system and drainage improvement district. New lands assessed for any such improvement shall become a part of such drainage improvement district. The construction and maintenance of such new improvement, unless let by contract by the board of county commissioners, shall be under the direction of the board of supervisors of the district in which they are made or to which said improvement is added.

Abandonment of system.

Assessment to hold.

Enlargement of district.

SEC. 35. When any extension or new branch of any existing drainage system is thus constructed there may be included in the apportionment and assessment of the costs thereof against the property, county, cities and towns benefited thereby, a proper and equitable share of the value

New territory to share part of original cost.

of the existing drainage system which serves as an outlet for such extension or new branch. In arriving at which amount the board which makes the apportionments in such case shall consider the amount, if any, which the property thus to be assessed has already paid toward the construction of such drainage system, the present value of said drainage system, to-wit: the cost of duplicating the same and all other matters that may be pertinent. The amount of the value of the existing drainage system thus apportioned to the property assessed for such new construction shall be rebated pro rata upon the assessments, if any, outstanding against the lands of the district on account of the construction of such drainage system: *Provided*, That if the original assessment for the cost of construction is already paid, or for such proportion thereof as is already paid, to-wit, in the case of lands whereon all the instalments for costs have been paid before coming due, then and in that event the amount of the value of such existing drainage system thus reapportioned to the property benefited by such new construction or such proper proportion thereof, shall be paid into the maintenance fund of said district; and such amount shall be a credit in favor of the respective property or all of the property, as the case may be, in such original district.

Old territory
to be credited
on assess-
ments.

Prosecuting
attorney
to prepare
blanks.

SEC. 36. It shall be the duty of the prosecuting attorney of each county to prepare suitable blanks for the use of the board of county commissioners under this act, not otherwise provided for, and to advise the board of county commissioners and other officers of the county and the boards provided for by this act in regard to the proceedings and in the performance of their duties under this act, and perform such other duties as in this act provided and required.

Drainage
system to be
kept efficient.

SEC. 37. The board of supervisors of each drainage improvement district shall make reasonable rules and regulations whereby any owner of land in the district may make connection for drainage purposes, with the drainage system thereof. They shall also keep the drainage sys-

tems in their districts clear and free of all obstructions, and upon complaint of any person they shall immediately remove any obstruction which interferes with the flow of the water through said system.

SEC. 38. When a drainage system is proposed which will require a location in more than one county application therefor shall be made to the board of county commissioners in each of said counties, and the county engineers shall make preliminary reports for their respective counties. The line of such drainage system shall be examined by the county engineers of the counties wherein said ditch will lie, jointly. The hearings provided for by sections 9 and 30 of this act shall be had by the boards of the counties wherein such drainage system shall lie, in joint session, at such place as the said boards jointly shall order. The county engineer of the county wherein the greatest length of the drainage system will lie shall have charge of the engineering work and be *ex-officio* a member of the boards in this act provided for: *Provided*, That in case a contract is let to private parties for the construction work, or in the event that the construction work necessary is proposed to be done by or with the co-operation of the United States, as in section 22 of this act provided, a contract for such purpose for the portions in the respective counties shall be executed by the boards of county commissioners of each of the counties, wherein the drainage system will extend, respectively.

SEC. 39. Chapter LXVI of the Laws of 1901 is hereby repealed, saving and excepting, however, that the provisions of said act shall continue in force and effect and shall be applicable to and shall govern all proceedings, rights and powers, in the case of ditches already contracted for, or under construction under said act, and in the case of the maintenance of the same for the current year 1913; and the method of supervision, construction, payment for the work, apportionment of costs, and assessment and collection thereof, delinquency and foreclosing thereof and penalties therefor, and all other proceedings in regard to

Districts in two or more counties.

Joint sessions of boards of county commissioners.

Rem.-Bal., §§ 4226-4250; Pierce's Code, 1912, 155 § 99-149, repealed, saving as to districts heretofore organized.

the same, shall be as in said chapter LXVI of Laws of 1901 prescribed: *Provided, however,* That with the consent of the holders of warrants heretofore issued or hereafter issued for work already begun or contracted for under said act, or with the consent of the contractor engaged in constructing any ditch or drainage system under said act, the provisions of this act in regard to the funding of such warrants with bonds, or the payment for work with bonds and the issuance and sale thereof, and all provisions in regard to such issuing of bonds, shall be applicable to such outstanding warrants or work already begun or contracts let for work. And in such event and to the extent of the costs so acquiesced in by warrant holders or contractors, all the provisions of this act in regard to the method of payment, form, issuing and sale, of bonds and warrants, extension of the assessment over a term of years, collecting, delinquency, interest and foreclosure of the assessments, and all other proceedings in regard thereto shall be as in this act provided. In such event the county commissioners shall prescribe the method and time of payment of the assessments and whether bonds shall be issued and perform any other proper act in regard to the same, at a special meeting called for that purpose, or at the hearing on the apportionment of costs provided for in section 30 hereof.

Provided, also, That in case any of the provisions of this act shall be applied to any proceedings in regard to any ditch begun under said chapter LXVI of the Laws of 1901 and the same shall be held not to be legally applicable thereto by a court of competent jurisdiction, then appropriate and proper proceedings for the performance of said acts or duties shall be had and done in regard thereto, as in said chapter LXVI of the Laws of 1901 provided. And from the time any such drainage district organized and existing under the provisions of said chapter LXVI of the Laws of 1901, shall be brought under the provisions of this act, said district shall be known and designated in all proceedings and records relating thereto, as Drainage

Rem.-Bal.,
 §§ 4226-4250;
 Pierce's
 Code, 1912,
 155 §§ 99-
 149.
 (This is
 repealed, see
supra.)

Improvement District No. of County, retaining its original serial number.

Nothing in this act contained shall be construed as in anywise modifying or repealing any of the provisions of chapter CXV of the Laws of 1895, or the acts amendatory thereof or supplemental thereto, or affecting any proceeding heretofore or that may hereafter be had under the provisions of said act.

SEC. 40. Except as specified in the foregoing section, all of the provisions of this act, instead of said chapter LXVI of the Laws of 1901, shall be applicable to and shall govern and be the law in all respects, in regard to all ditches and drainage systems now existing, initiated or applied for under said chapter LXVI of the Laws of 1901, and all powers hereby vested in or granted to all boards and officers under this act shall be vested in such boards and officers that shall hereafter have charge of the work, or administering of the affairs of such ditches and drainage systems, and the districts in which they lie.

Rem.-Bal., §§ 4226-4250; Pierce's Code, 1912, 155 §§ 99-149. (This is repealed, see § 39 *supra*.)

SEC. 41. An adjudication that any section, paragraph, or portion of this act, or any provision thereof, or proceeding provided for therein, is unconstitutional or invalid shall not affect or determine the constitutionality, or validity, of this act as a whole or of any other portion or provisions thereof, and all provisions of this act not adjudicated to be unconstitutional shall be and remain in full force and effect and shall be operative until specifically adjudicated to be unconstitutional or invalid.

Unconstitutionality of part not to affect whole.

SEC. 42. This act is necessary for the immediate preservation of the public health and shall take effect immediately.

Emergency.

Passed the House March 11, 1913.

Passed the Senate March 12, 1913.

Approved by the Governor March 24, 1913.