

CHAPTER CXXIII.

[S. B. No. 190.]

PROVIDING FOR SYSTEM OF IMPROVED ROADS.

AN ACT providing for the establishment of a system of improved roads in counties, and providing for the manner of laying out, constructing and maintaining the same.

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

SECTION 1. The commissioners of any county may, at any regular or called session, cause to be established, located and constructed, improved, straightened, widened, altered or re-located any public road or highway as herein provided, when the same is conducive to the public convenience or welfare.

SEC. 2. The word "improvement" as used in this act shall mean a road as contemplated to be improved under this act. The word "road" as used in this act shall be construed to mean a public highway or thoroughfare. The words "territory (or property) particularly benefited" as used in this act shall be construed to include, in addition to the lands lying within two miles on either side of the improvement, all cities, road districts or townships which will be subject to special assessment for the improvement. The words "improvement boundary" as used in this act shall be construed to mean a line two miles distant from and parallel to the center line of the improvement on either side thereof, connected at the places of beginning or termini by a line at right angles thereto, unless such line enter the corporate boundary of a city, in which case the improvement boundary shall follow the meandering of the city boundary in so far as said boundary shall come within said two mile limit. Words used in the singular in this act shall include the plural, and the plural the singular.

SEC. 3. No road improvement shall be located or commenced under this act unless the same has its beginning at the boundary limits of an incorporated city, or trade center located on a railroad or navigable body of water, or connect with a road or road system already improved under

Definition
of terms.

Limitation of
improvement
under this act.

this act, or with a road which has been otherwise constructed of such a nature to permit of heavy freighting and rapid travel on the same at any time of the year.

Description of improved road under this act.

SEC. 4. An improved road contemplated under this act shall be constructed as near as practicable along the center line of the established highway, and shall be uniformly graded to a width of not less than sixteen feet; the profile thereof shall not have a greater incline at any point of more than one foot perpendicular to twenty feet horizontal; proper drains, culverts and bridges shall be constructed to convey off all surface and seepage water, and when the road is located along a hillside or incline, the drainage of the surface of the roadbed shall be toward the hillside or incline; a roadway shall be constructed upon the graded road in such a manner and of such material as will permit of heavy freighting by team and rapid driving during any time of the year, and if such construction be a macadam or Telford pavement, or a roadbed of equal durability of other material, it shall not be less than twelve feet wide; if of plank, gravel, crushed stone or other material equally or less permanent, it shall be not less than eight feet wide, and shall be constructed on the grade so that the right hand side of the roadway going out from the place of beginning shall as nearly as practicable conform to the center line of the grade.

Costs.

SEC. 5. The costs and expenses of the improvements made under this act shall be apportioned as near as may be to the corporations, companies, persons and property benefited thereby.

Application to commissioners.

SEC. 6. Application for such improvement shall be made to the commissioners of the county, signed by two or more owners of lots or lands which will be particularly benefited thereby: *Provided*, That such petitioners shall appear by the assessment rolls of the county to own property which will be particularly benefited, representing in value not less than ten thousand dollars for each mile of the improvement petitioned for, and the petitioners must represent property within the improvement boundary equivalent to

Proviso.

not less than five thousand dollars for each mile of the proposed improvement.

SEC. 7. The petition shall be filed with the clerk of the board of county commissioners, and shall set forth the necessity of the improvement, and describe the route and termini thereof; and there shall be filed therewith a bond payable to the county with at least two good and sufficient sureties in not less than one thousand dollars, conditioned for the payment of all costs if the prayer of the petition [petitioners] be not granted, or be dismissed for any cause.

Petition to be filed with clerk of county commissioners.

SEC. 8. If the bond be approved by the clerk of the board of county commissioners, he shall immediately deliver a copy of the petition to the commissioners, who shall thereupon appoint three freeholders of the county, at least two of whom shall reside within the territory particularly benefited by the improvements, and one of whom shall reside or own lands within the improvement boundary, who shall constitute a "board of construction."

Approval of bond.

Board of construction.

SEC. 9. Each member of the board of construction shall take and subscribe an oath for the proper and faithful performance of the duties imposed upon him, and file the same with the clerk of the board of county commissioners, and the board of county commissioners shall have power to remove any member thereof for cause. The board of construction shall give an account of its actions and proceedings to the county commissioners when requested by said commissioners so to do, and when the improvement is completed which they have been appointed to supervise, they shall file with the clerk of the board of county commissioners a final report of their doings. They shall be allowed the same mileage as is allowed county commissioners for necessary travel in the discharge of their duties, but shall not be otherwise paid for their services.

Duties of members of board of construction.

Compensation.

SEC. 10. The board of construction shall take to their assistance a competent and experienced road engineer, and they shall not employ any engineer who does not hold a diploma or other certificate from an accredited technical institute, or from a person of recognized standing as an ex-

Same.

perienced civil engineer. They shall at once proceed to view the line of the proposed improvement, and determine by actual view of the road and premises along and adjacent thereto, whether the improvement is feasible and advisable for the public convenience and welfare, and whether the line petitioned for is the best route; and they shall report their findings in writing to the clerk of the board of county commissioners.

Costs.

SEC. 11. If the commissioners find against the improvement, they shall dismiss the petition and proceedings at the cost of the petitioners; and they shall cause an itemized bill of all costs to be made up by the clerk for their examination and approval, which shall include the per diem of the engineer, together with all other costs necessarily made; the board of construction shall thereupon be discharged.

Manner of proceeding with construction.

SEC. 12. If the commissioners find for the improvement they shall cause to be entered on their journal an order directing the board of construction to proceed with the construction of said improvement in the following manner:

Duties of engineer.

1. The engineer shall go upon the road described in the petition or as changed in accordance with this act, and survey and level the same, and set a stake at every hundred feet, numbering from the place of beginning, out; note the intersection of lines and boundaries of lands, road district, or township lines, land marks and road crossings, and make a report, profile and plat of the same, and estimate the number of cubic yards of earth or other substance to be removed, cut or filled, necessary bridges, culverts and drains to be constructed, obstructions to be removed, the materials along or adjacent to said road which can be made available and used in construction of the same, the estimated cost thereof, and an estimate of the cost of each working section, as hereinafter provided, and of each section of 100 feet.

Same.

2. The engineer shall also make and return a schedule and plat of all the lots and lands lying within the improvement boundary, which plat shall be drawn upon a scale sufficiently large to represent all the meanderings of the road proposed to be improved, and shall distinctly show the

boundary lines of each lot or tract of land included in the improvement boundary, the name of the owner of each lot or tract of land as the same may appear upon the records at the time, and an estimate of the total cost of the entire improvement proposed, which estimate shall include all fees and salaries estimated to be paid for locating, supervising and appraising, together with such other matters as the engineer may deem material. The profile shall show the surface line, the grade line and gradient fixed, and the engineer shall make and file with his report an itemized bill of all costs made in the discharge of his duty under this section, and shall file his report with the clerk of the board of county commissioners within thirty days after making the survey and level.

SEC. 13. Immediately upon the filing of the engineer's Appraisers. report, the county commissioners shall appoint three disinterested appraisers, residing within the county, but not within the territory particularly benefited by the proposed improvement, whose duty it shall be to at once proceed to assess the benefits of such proposed improvement to the corporations, companies, persons and property particularly benefited thereby, and estimate the damages to property over or through which the road shall be established or re-located. and award the same to the owners thereof. Before entering upon their duties, the appraisers shall severally Oath of appraisers. take and subscribe to an oath to impartially and, to the best of their knowledge and ability, perform the duties required of them, and file said oath with the clerk of the board of county commissioners. Said clerk shall thereupon and forthwith deliver into the hands of the appraisers the engineer's report upon the proposed improvement, and all maps, charts and schedules pertaining thereto, taking a receipt from said appraisers therefor. The appraisers shall thereupon proceed to actually view in person all lands Duties of appraisers. as shall appear from the engineer's report to lie within the improvement boundary, and obtain from the duplicate assessment roll of the county the total assessed valuation at the time of all property within the limits of any road

Appraisers
to prepare
a schedule.

district or township through or into which the proposed improvement is located, and of all property within the limits of any incorporated city whose boundary lines shall be within ten miles of the proposed improvement, or of any part thereof. They shall then prepare a schedule, which shall set forth—

1. The benefits assessed to the county for such improvement, which shall be one-third of the whole estimated cost thereof.

2. The benefits assessed to each road district or township through or into which the improvement is located, which assessment shall be equal upon all the assessed property in the road district or township according to the value thereof as shall appear upon the duplicate assessment roll of the county at the time, and which benefits shall not be assessed at more than one-third of the whole estimated cost of the improvement within the boundary of the road district or township.

3. The benefits assessed to all property within each incorporated city within the county, which assessment shall be equal upon all the assessed property within the city according to the value thereof as shall appear upon the duplicate county assessment roll at the time, and which benefits shall not be assessed at more than one-sixth of the whole estimated cost of the improvements, or of that portion thereof which is located within a limit of ten miles from the corporate limits of the city, and the property within any city shall not be considered as territory particularly benefited for any improvement lying more than ten miles distant from the corporate boundary of said city.

4. The benefits assessed to the lots and lands lying within the proposed improvement boundary, listing each tract of land assessed, giving the number of acres thereof, the owner as shall appear of record, the estimated valuation of each tract exclusive of improvements, and the benefit assessed thereto, and the total amount of benefits assessed to lots and lands shall in no case exceed one-third of the whole estimated cost of the proposed improvement: *Provided,*

That lots or tracts of land within the improvement boundary whose natural outlet will not be in whole or in part over said road, when improved, shall not be separately assessed under the provisions of this clause.

5. A list of each tract or lot or portion thereof taken and damaged by the establishment or re-location of the road proposed to be improved and the lands contiguous or lying near thereto on which is located material necessary or available to be used in the construction of the proposed improvement, and of materials available for construction on contiguous or near lying lands, which list shall recite the number of acres of each of such lands so to be taken or damaged, and the amount of such contiguous or near lying materials estimated to be required, the owner thereof as shall appear of record, the estimated value thereof including improvements thereon, and the damages resulting therefrom, and the award made therefor.

SEC. 14. The appraisers shall, within sixty days after date of entering upon their duties, file a report of their findings, together with the engineer's report and all other papers to them delivered, with the clerk of the board of county commissioners; and the appraisers shall make and file with their report an itemized bill of all costs made in the proper discharge of their duties under this act; and in such bill the appraisers shall not charge for services in excess of three dollars per day for each appraiser for time actually employed, and no extra compensation shall be allowed for mileage; the clerk shall then without delay fix a date for the hearing of the reports of the engineer and appraisers; he shall prepare and deliver to the petitioners, or any one of them, a notice in writing, directed to the resident lot or land owners, officer or agent [of] any private corporation, and to the mayor or clerk of each city, and to the road overseer of each road district or board of overseers or clerk of each township affected by the improvement, setting forth the pendency, substance and prayer of the petition, together with a tabular statement of the assessments and award[s] of damages as made by the ap-

Appraisers to file report of findings.

Itemized bill of costs.

Compensation.

Notice to land owners, etc.

Copy of notice to be served.

Return.

Notice to non-resident owners.

Meeting of commissioners.

Commissioners may amend appraisers' report.

May adjourn hearing not exceeding twenty days.

praisers in their report; a copy of each notice shall be served upon each lot or land owner, officer or agent of private corporations, mayor or clerk of each city, each road district overseer, and the board of overseers or clerk of each township at least ten days before the day set for the hearing; and the person who serves the same shall make return on the notice under oath, of the time and manner of service, and file the same with the clerk of the board of county commissioners on or before the day set for hearing; and the clerk shall at the same time give like notice to each non-resident lot or land owner, or by publication in the official newspaper of the county for at least two consecutive weeks before the day set for the hearing, which notice shall be verified by the affidavit of the printer or other person knowing the fact and filed with the clerk on or before that day.

SEC. 15. The county commissioners shall meet at the clerk's office on the day so fixed by the clerk, and shall first determine whether the required notice has been given. If they find that due notice has not been given, they shall continue the hearing to a day to be fixed by them, and order the notices to be served as hereinbefore provided, and when they find that due notice has been given, they shall examine the reports of the appraisers and the assessment made and the damages awarded, and if such apportionments are in all respects fair and just according to the benefits and damages, they shall approve and confirm the same.

SEC. 16. If the commissioners find that the apportionment of assessments and awards of damages made by the appraisers is unfair and unjust, and ought not to be confirmed, they shall so order and amend the appraisers' report as to make it fair and just; and if necessary, in their opinion, they may adjourn the further hearing not exceeding twenty days, to a day to be fixed by them, and go upon the premises, and by actual view apportion the entire cost of location and construction, or any part thereof, as may seem just and proper, and award damages as may seem just and proper, and on the day so fixed by

them they shall again meet at the clerk's office and determine the assessment of benefits and awards of damages. Award of damages.

SEC. 17. Any person, company or corporation party to the proceedings may file exceptions to the apportionment of benefits or compensation for damages at any time before the time set for the final hearing of the report and apportionment; the commissioners may hear testimony and examine witnesses upon all questions made by the exceptions, and for that purpose may compel the attendance of witnesses by subpoena, which the clerk of the superior court shall issue on demand; and their decisions on the exceptions shall be entered on the journal, and if they sustain the exceptions, the cost of hearing thereon shall be paid out of the county treasury, and if they overrule the same, such costs shall be taxed against the person, company or corporation filing the exceptions. Who may file exceptions to apportionment. Cost of hearing.

SEC. 18. Any person or corporation aggrieved thereby may appeal from any final order or judgment of the commissioners made in the proceedings and entered upon their journal for determining either of the following matters — *First*, whether said improved road will be conducive to the public needs, convenience and welfare; *second*, whether the route thereof is practicable; *third*, the compensation for land or construction materials appropriated; *fourth*, the damages awarded to the owners of property affected by the improvement. And the appellant shall file with the commissioners, at the final hearing before them, a notice in writing of his intention so to do, and specifying therein the matter appealed from. The commissioners shall fix the amount of the bond to be given by the appellant, and cause an entry thereof and of the notice to be made upon their journal. The party appealing shall, within ten days thereafter, file with the clerk a bond in the amount so fixed, with at least two sufficient sureties, to be approved by the clerk, conditioned to pay all the costs made on the appeal in case the appellant fails to sustain the same, or the appeal to be dismissed for any cause; and the clerk shall make a complete transcript of the proceedings had Appeal.

before the commissioners, and certify the same, together with all original papers, except bonds filed by appellant, filed in his office, and transmit them to the superior judge of the county within twenty days from the day of the final hearing.

Superior judge to fix a day not more than five days thereafter, for hearing.

SEC. 19. The superior judge shall file the transcript and original papers, and docket the case, styling the appellant plaintiff, and the county commissioners and petitioners defendants, and thereupon he shall fix a day, not exceeding five days thereafter, for the hearing of all preliminary motions and the examination of the papers so filed; on the day so fixed all preliminary motions shall be heard and determined, as well as all questions arising upon the record, and if he find that the proceedings are irregular in substance, or that the appeal has not been perfected according to law, he shall dismiss the appeal at the cost of the appellant, and certify such dismissal, with his findings thereon, back to the commissioners; but the judge may, in his discretion, order and allow the correction of any technical defect, error, or omission in such proceedings.

Costs.

SEC. 20. Appeals may be tried as in cases of appeals from justices of the peace to the superior court.

Jurors' oath.

SEC. 21. The superior court shall administer to the jurors an oath, faithfully, impartially, and to the best of their ability, and from actual view of the premises along the whole route of the improvements, to examine and determine the particular matters appealed from, and to render a true verdict according to the facts appearing to them from actual view of the premises, and the evidence under the charge of the court.

Who may or may not accompany the jury.

SEC. 22. The sheriff or his deputy, together with the engineer who surveyed, leveled, apportioned and platted the improvement, may accompany the jury and point out its route; no other person shall be permitted to interfere in any way with the jurors in the discharge of their duties, and after the jury has fully examined the premises and returned to court, either party may be heard in person or by counsel, and may offer evidence to the jury, under the di-

rections of the court, upon any matter given it especially in charge.

SEC. 23. The jury shall find and return a verdict ^{Verdict.} determining the matter or matters appealed from, being one or more of the following propositions, viz.: *First*, Whether said improved road will be conducive to the public needs, convenience or welfare; *second*, whether the route thereof is practicable; *third*, the compensation due each appellant for land or construction materials appropriated; *fourth*, the damage due each appellant for property affected by the improvement. The jury shall return their verdict in writing, signed by the jurors. As to said proposition, it shall be necessary for only nine jurors to agree.

SEC. 24. Upon the return of the verdict the same shall be recorded, and together with all papers and records, duly certified, forwarded to the office of the clerk of the board of county commissioners.

SEC. 25. If the verdict of the jury be in favor of the appellant the commissioners shall cause to be made on their journal an entry carrying out the findings of the jury; and if the jury find that the improvement is not necessary, or will not be conducive to the public need, convenience or welfare, or is not practicable, the commissioners shall cause ^{Costs.} an entry to be made upon their journal dismissing the proceedings at the cost of the county, which shall be paid out of the general county fund on the order of the county commissioners.

SEC. 26. If the jury find that the improvement is neces- ^{Same.} sary and that the same will be conducive to the public needs, convenience and welfare, and is practicable, the commissioners shall assess the costs to the appellant.

SEC. 27. If the jury find that the allowance of compen- ^{Same.} sation and damages, as made by the commissioners, fully compensate for all land and construction materials appropriated and damages sustained, the commissioners shall assess the costs made by the appeal to the appellant.

SEC. 28. If more than one party appeal, the superior judge may order the cases to be consolidated and tried to-

gether, and the rights of each party as to compensation and damages shall be separately determined by the jury in its verdict.

Bids for construction.

Notice of time and place of awarding contracts.

What notice for bids shall contain.

SEC. 29. After the transcript of the proceedings before the superior judge, and all other papers in the case, are returned to the clerk of the board of county commissioners, the commissioners shall cause such entry to be made on their journal as may be necessary to give effect to the verdict and findings of the jury, and shall fix a time for the receiving and opening of sealed bids for the construction of the proposed improvement, and if in the opinion of the board of county commissioners the interest[s] of the public will be advanced thereby, they shall divide the improvement into sections of a more or less number of lineal feet, and call for bids on each of said sections, or they may call for bids for each kind of work to be done or material to be furnished, or any one or more of such kinds of labor and material as they may believe to be advisable, but in every case all of the construction shall be performed by contract, duly awarded, as provided in this section. They shall cause notice to be given, as hereinafter provided, of the time and place of awarding contracts, and direct the board of construction and the engineer who made the survey and estimates, or other competent engineer, to attend at the time and place of opening bids. The board of construction shall superintend and conduct the same, receive all bids for the construction of the improvement, and enter into agreements in the name of the county. The notice for bids shall state the location and general nature of the improvements to be done, and where the plans and specifications are filed for examination, and shall be signed by the clerk of the board of county commissioners by order of the board. The commissioners may provide in such notice, if convinced that the interests of their county will be protected or advanced thereby, that no foreign, alien or pauper labor shall be employed in the construction to be let. The notice shall be published for at least two consecutive weeks previous to the date of letting, in one or more daily or weekly papers

published and of general circulation in the county, and in such other manner as the board may see fit to direct.

SEC. 30. Every bid shall be accompanied by a certified check or bond in the sum of five hundred dollars, or not less than one-tenth of the amount of the bid, with security satisfactory to the board of construction, conditioned that if the contract be awarded to him he will, when required by the board of construction, execute an agreement in writing to perform the work according to the plans and specifications. No bid shall be received by the board of construction or any member thereof except at such meeting, and all bids then received shall be immediately, when opened, publicly read. The board of construction shall reject any or all bids if in their opinion good cause exists therefor, or if the total amount of such lettings shall exceed the estimated cost of construction, but otherwise they shall award the contract or contracts to the lowest responsible bidder, who shall give satisfactory evidence of his ability to perform the contract. The bidder to whom contracts shall be awarded shall execute to the board of construction, for the benefit of the county, a bond to accompany each separate agreement, conditioned for the faithful performance of the contract, in a sum equal to one-half the amount of the contract, and with sureties satisfactory to the board of construction.

Every bid to be accompanied with certified check or bond.

Board may reject any or all bids.

Bond of the successful bidder.

SEC. 31. When the amount of any contract is less than one thousand dollars, no payment shall be made thereon until the contract is fully completed to the satisfaction of the board. When partial payments are provided for in the agreement, as each payment becomes due and before payment shall be made, the board of construction shall file with the clerk of the board of county commissioners their certificate, stating as near as may be the total amount of work done or material furnished, and that such work appears to have been done in all respects as required by the contract. The clerk of the board of county commissioners shall thereupon draw a warrant on the county treasurer in favor of the contractor for the amount due: *Provided,*

No payment until contract is completed.

Manner of allowing and making partial payments.

Proviso.

That no partial payment made during the progress of the work shall exceed eighty per centum of the estimated value of the work done: *And provided further*, That before final payment is made on any contract, the work shall first be examined by the engineer who prepared the estimate, or other competent engineer, and his certificate be filed with the clerk of the board of county commissioners that the work has been fully performed and completed in accordance with the contract.

Re-advertising for bids.

SEC. 32. If, at the time of letting, satisfactory bids are not received for the whole or any part of the improvement, a future time and place shall be fixed for again receiving bids, notice of which shall be given and the same conducted in every manner as hereinbefore provided; or, if any contractor shall fail to perform his work or complete the same, the contract shall be re-let in manner as hereinbefore provided.

Board of construction to inspect work.

SEC. 33. It shall be the duty of the board of construction to inspect all work of construction from time to time and see that the same is being done according to contract, and in case any disa[gree]ment arise[s] as to the manner of doing the same or of the kind of material used, they shall have authority to suspend the construction in question and call in the engineer who prepared the specifications, whose decision shall be final and shall be abided by.

Cost of improvement.

SEC. 34. When not otherwise provided for in the petition the cost of the improvement shall be entered by the clerk of the board of county commissioners upon the duplicate assessment roll against the persons and property as shown on the schedule of appraisement, first deducting from any assessment against a person, company or corporation to whom awards of damages have been made the amount of the same, and in case of any excess of damages over the assessment, a warrant shall be drawn on the county treasurer in favor of the person, company or corporation to whom such damage has been awarded for the balance due after deducting the assessment. And the assessment so made shall be a tax upon the persons and property, and the same shall be collected as other taxes are collected.

SEC. 35. When the petition shall so request, the im-
 improvements provided for under this act shall be paid for in Payment in
 annual in-
 stallments. annual installments by an annual tax levied upon the prop-
 erty assessed for benefits. The petition shall set forth
 "that the improvement be paid for on the years
 installment plan," and the number of years shall not be
 more than ten. When the improvement is done under the
 provisions of this section the clerk of the board of county
 commissioners shall divide the total estimated cost of the
 improvement, including interest on deferred payments, into
 as many equal parts as there are installments, and shall
 each year when an installment is payable, enter the amount
 of the same upon the duplicate assessment roll against the
 persons and property assessed for benefits, and it shall be
 the duty of the county treasurer to collect the same the
 same as other taxes are collected.

SEC. 36. Construction done under the yearly installment
 plan shall commence at the place of beginning and be com-
 pleted without intermission toward the place of ending,
 and the payment of improvements under such installment
 plan shall not in any year exceed the benefit assessments
 for that year. The board of construction shall let con- Contracts.
 tracts from time to time during the progress of construc-
 tion in like manner as hereinbefore provided, and the
 engineer shall divide the road into as many annual con-
 struction sections of equal cost as there are years for con-
 struction, and any excess of funds appropriated to one
 section shall be applicable to the succeeding section.

SEC. 37. The petition may set forth that public welfare Petition.
 requires that the construction of the *whole* line of improve-
 ment petitioned for be begun without delay. If upon the
 hearing of the petition the board of county commissioners
 determine that public welfare calls for the construction of
 the whole line of improvement as soon as possible, they
 shall provide for paying the cost thereof out of the general When pay-
 ment may be
 made out of
 general fund.
 road fund of the county, and if the county has not suffi-
 cient funds on hand or in process of collection they may,
 by resolution passed at any regular or special session, di-

rect that an election be called and held for the purpose of submitting to the legal voters of such county the question whether the bonds of the county shall be issued to provide funds for such construction. Notice of such election shall be given by publication in some newspaper published in this state, and having a general circulation in such county, and to be designated by the board of county commissioners, at least once in each week for four successive weeks, but the first publication shall be at least thirty days prior to the day of election, and if such notice be not published in a newspaper printed in the county where such election is to be held, the notice shall be posted in twenty of the most public places in said county at least thirty days prior to the date of said election. The election notice shall state the amount of bonds proposed to be issued, and shall be signed by the county auditor. The ballots used at such election must contain the words, "Bonds, yes," and "Bonds, no," and the elector receiving the same shall cross out therefrom part of the ballot in such manner that the remaining part shall express his vote upon the question of issuing bonds. In all other respects the general election laws of the state shall control. If three-fifths of the legal voters of such county voting at such election shall deposit a ballot bearing the words "Bonds, yes," it shall thereupon be lawful for the board of county commissioners to issue the bonds of such county, not exceeding the amount so authorized, to be styled, "Road bonds of county." Such bonds shall be issued in denominations of not less than one hundred nor more than one thousand dollars, and shall be numbered from one up consecutively; shall bear the date of their issue; shall be made payable to the bearer at a time to be specified therein not more than twenty years from their date; and shall bear interest at the rate of not to exceed six per cent. per annum, payable semi-annually, and such interest shall be evidenced by coupons attached to such bonds, and the principal and interest shall be payable at the office of the treasurer of such county, and cause the same to be specified in such bonds; subject, however, to

Notice of election to provide for issue of bonds.

What election notice shall state.

Form of ballot.

Denominations of bonds.

Time to run.

Interest.

any general law of this state regulating the place of payment of county bonds. Such bonds shall be printed, engraved or lithographed on good bond paper, and shall be signed by the chairman of the board of county commissioners, and countersigned by the county auditor, and shall have the seal of the board of county commissioners thereto affixed; and the coupons shall be executed by the autograph signatures or by engraved or lithographed *fac similes* of the autograph signatures of the chairman of the board of county commissioners and the county auditor, and need not be sealed. Nothing in this act contained shall be construed to authorize the issue of any bonds which would make the aggregate indebtedness of such county exceed one and one-half per cent. of the value of the taxable property therein, to be ascertained by the last assessment for state and county purposes.

Manner of printing bonds.

Limit of bond issue.

SEC. 38. When bonds are issued to defray the whole or any part of any improvement provided for under this act the entire estimated cost of the improvement shall be divided into as many equal parts as the bonds have years to run, and each part thereof placed annually upon the duplicate assessment roll for collection as other taxes, as hereinbefore provided, and such taxes when collected shall be credited to the general road fund of the county.

Annual tax levy to meet bonds.

SEC. 39. The board of county commissioners of any county issuing bonds under this act are authorized to sell any such bonds to the highest bidder at a price not less than the par or face value of the same, after inviting proposals by advertising the sale thereof in such paper or papers for such period of time as such board shall direct. The proceeds of the sale of such bonds shall be paid over to the county treasurer, and remaining proceeds shall be applied only to the construction of such roads and bridges in such county as are mentioned in section ten of this act, and the construction and repair of such roads and bridges shall be deemed to be and are hereby declared to be strictly county purposes for which indebtedness of such county may lawfully be incurred as in this act provided.

Sale of bonds.

Proceeds.

SEC. 40. The board of county commissioners of any county issuing bonds under this act are authorized and required annually to levy and collect a tax sufficient in amount to pay when due the interest on such bonds, and in case such bonds are issued to run longer than ten years they are further authorized and required annually to levy and collect, beginning with the annual tax levy next succeeding the expiration of ten years from the date of such bonds, an additional tax to provide a sinking fund for the payment of the principal of such bonds. Such annual sinking fund levy shall be at least equal to ten per cent. of the amount of bonds issued. Such sinking fund may be invested in any bonds of the State of Washington or of any county, city, town or school district therein, or may be used to pay off the bonds issued under this act as hereinafter provided.

Sinking fund.

Investment of sinking fund.

County treasurer to call in bonds.

Publication of call.

Proviso.

SEC. 41. Whenever the sinking fund provided for by the last preceding section shall amount to the sum of two thousand dollars or more, not previously applied as in this section provided, it shall be lawful for the county treasurer to designate sufficient bonds, bearing the lowest numbers among those outstanding, to absorb the amount of said fund on hand, as near as may be, and he shall call such bonds by publishing a notice, giving the numbers of the bonds so called for payment, and fixing a day, not less than thirty days after the first publication of the notice, when the bonds will be paid with accrued interest at the place of payment of said bonds, which notice shall be published in a daily newspaper published in the county seat once in each week for four consecutive weeks. And in case the bonds so called for payment are not presented on the day fixed therefor in such notice, interest thereon shall thereupon cease: *Provided*, The money for the payment thereof shall at all times thereafter be retained at the place of payment of the bonds, in readiness for payment of the same on presentation, until such bonds are presented for payment. All bonds and coupons received by the county treasurer under the provisions of this section shall be at

once canceled by him and filed as vouchers with the county auditor as *ex officio* clerk of the board of county commissioners.

SEC. 42. If an engineer, clerk of the board of county commissioners, member of the board of construction, or appraiser, neglect or refuse to perform any duty imposed upon him by the provisions of this act, he shall forfeit and pay a fine of twenty-five dollars for every such neglect or refusal, to be recovered before any officer having competent jurisdiction, in the name of the state, for the benefit of the common schools of the county, at the suit of any person aggrieved thereby. Penalty.

SEC. 43. The court in which any proceeding is brought to recover any tax or assessment paid, or declare void the proceedings to locate or establish any road, or to enjoin any tax or assessment levied or ordered to be levied to pay for the labor and expense as aforesaid shall, if there is manifest error in the proceedings, allow the plaintiff in the action to show that he has been injured thereby, and may on application of either party, appoint such person or persons to examine the premises or to survey the same, or both as may be deemed necessary, the court in which any such proceedings are begun shall allow parol proof that said improvement is necessary and will be conducive to the public needs, convenience and welfare, and that any steps required by law for any improvement have [been] substantially complied with, notwithstanding any defects or omissions in the records required to be kept by any board or officer; and with or without finding error, the court may correct any gross injustice in the apportionment made by the commissioners; the court shall, on final hearing, make such order in the premises as shall be just and equitable, and may order that such tax and assessment remain on the duplicate assessment roll for collection, or the same to be levied, or may perpetually enjoin the same or any part thereof; or if the same has been paid under protest may order the whole or any part thereof as is just and equitable to be refunded, and the costs of such proceedings Court may correct error.

shall be apportioned among the parties or paid out of the county treasury as justice requires.

Commissioners to hear and determine petition for locating improvements.

SEC. 44. The county commissioners may hear and determine at the same time and under the same petition the necessity of locating any new improved road, or of a road already partly improved, or of widening, straightening, re-locating or altering any road previously improved, or in process of improvement under this act, as the necessity of the case requires, and shall cause such entry to be made on their journal as in their judgment is required. All estimates shall be made in the manner provided in this act. No assessment shall be made to any land, person, or property upon any principal other than that of benefits derived and in proportion thereto.

Assessment to be made in proportion to benefits.

SEC. 45. The board of county commissioners shall require each engineer and appraiser appointed by them under the provisions of this act to enter into a good and sufficient bond, with surety to be approved by them, conditioned for the faithful performance of his duties, in a sum to be fixed by the county commissioners, and an action may be brought on such bond by any person aggrieved by a failure of any such person so appointed to do his duty, in the name of such party, and recovery may be had for his benefit.

District road officers to take charge of roads.

SEC. 46. Upon the completion of any improved road or any section thereof, for which final payment has been made, the charges and care thereof shall be assumed by the district road overseer or township road officers in each district or township in which the improvement is located, and it shall be the duty of such road officers to keep the improved roads in their respective districts or townships in constant and good repair, and any failure so to do shall justify the county commissioner in the commissioner's district in which the neglect occurs, to cause such repairs to be made at the expense of the road district or township in which repairs are done.

SEC. 47. In case the road proposed to be improved be located so as to connect with two or more trading points located upon a railroad or body of navigable water, or

with a road already improved under this act, or with a road over which heavy freighting and rapid travel can be done at any time in the year, then each of said points shall be construed as "places of beginning" under this act, and construction may be commenced at one or more of them as the board of construction shall direct.

SEC. 48. The county commissioners may, on the proper petition and bond being filed, and the same notice being given as required in cases of the location of an improved road, declare any such road vacated and abandoned and its location and establishment to be held for naught, if in their judgment the same has ceased to be of public utility, and the public need, convenience and welfare no longer demand the maintenance thereof; but private rights of persons acquired by reason of the location and establishment of such road shall not be interfered with nor in any way impaired thereby unless due compensation be made therefor.

Commissioners may declare road vacated.

SEC. 49. All state, county, school, school district or other lands shall be subject to the provisions of this act, and the proper authorities having charge of said lands may institute proceedings to enjoin assessment of benefits hereunder or for damages herefrom as in the case of private persons: *Provided*, That such public authorities shall not be required to give any bond in such proceedings.

SEC. 50. The clerk of the board of county commissioners shall make, in a suitable book to be provided for that purpose, at the expense of the county, a complete record of each road in his county improved under the provisions of this act, which record shall include the petition and all bonds, reports of the engineer, appraisers and board of construction and all journal entries made, together with all plats and other papers necessary to show a complete history of all that is done in each case up to and including the final order made by the board.

Record of roads to be made by clerk of board of commissioners.

SEC. 51. The commissioners of any county wherein a road improvement is ordered shall provide a suitable book in which to keep the improved road accounts of the county. The clerks shall open therein an account with each im-

Road accounts, how kept.

provement in the name by which the same is known, and charge all assessments and credit all payments made in the case. The money collected on each improvement shall constitute a special fund unless the cost of the improvement shall have been advanced out of the general road fund, in which case the money collected shall be credited to the general road fund.

Fees. SEC. 52. Fees for services of officers under this act shall be the same as for like services in civil cases, or as is or may be provided by law.

Per diem. SEC. 53. In performing their duties under this act, the county commissioners shall be entitled to a per diem allowance equal to that allowed by law for other services.

Blanks. SEC. 54. It shall be the duty of the prosecuting attorney in each county to prepare suitable blanks for the use of the board of county commissioners, under this act.

SEC. 55. All fees under this act, when not otherwise provided for herein, shall be paid out of the county treasury as soon as the bills and items thereof are examined and allowed by the commissioners; and for all amounts so paid, except to the commissioners and clerk, the commissioners shall order the general county fund to be reimbursed from the money raised for the respective improvements.

SEC. 56. All balances remaining unexpended of any road improvement fund arising from excess of assessments made after the expenses thereof have been fully paid, shall be transferred to the general road fund of the county.

Approved March 15, 1893.