

shall not operate to revive such former act or part thereof so amended or repealed.

Emergency.

SEC. 139. This act is necessary for the immediate support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate December 31, 1925.

Passed the House December 30, 1925.

Approved by the Governor January 9, 1926.

## CHAPTER 131.

[S. B. 115.]

### PRIVATE OCCUPANCY OF RIGHTS OF WAY OF STATE HIGHWAYS.

AN ACT providing against private occupancy of rights of way of state highways, declaring such occupancy unlawful and providing penalty and for confiscation of encroaching property, prescribing court procedure to remove and dispose of such property or for redelivery thereof and declaring an emergency.

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

Resolution by highway committee to free right of way of obstructions.

SECTION 1. Whenever the state highway committee of the state of Washington shall by resolution specify that it is necessary in the opinion of such committee for the convenience and safety of public travel and use of any state highway to have the full width of right of way of any such highway or of any portion of such highway free from any and all obstructions, encroachments and occupancy, other than pole lines, pipe lines or other structures maintained thereon for public or quasi-public utilities by virtue of a valid franchise, and shall cause to be posted on any structure, building, improvement or other means of occupancy of any of the right of way of such highway or portion thereof within ten days after the date of such posting, exclusive of the date of posting, such obstructions,

Exceptions.

Notice to remove.

encroachments and means of occupancy, any such structure, building, improvement or other means of occupancy of any of the right of way of said highway not removed within such time shall become thereby and be an unlawful property and may be confiscated, removed and sold or destroyed by the state of Washington without any right in anyone to make any claim therefor, either by reason of the removal thereof or the sale or destruction thereof or otherwise. And any person who shall keep or maintain or occupy any such unlawful structure shall be guilty of a misdemeanor.

Confiscation and sale of encroachments.

Penalty for obstructing right of way.

SEC. 2. Whenever the state highway committee shall adopt a resolution as provided for by section 1 of this act, the state highway engineer shall forthwith cause to be posted by a competent person over twenty-one years of age upon any and all structures, buildings, improvements or other means of occupancy of such highway or portion thereof other than by poles, pipe lines or other structures maintained thereon for public or quasi-public utilities by virtue of a valid franchise a notice, with a copy of such resolution attached and dated as of the date of posting, to all whom it may concern to vacate such right of way and to remove all property therefrom forthwith and within ten days after the posting of such notice exclusive of the date of posting the same, and shall require the filing with him of duplicate affidavits in proof of such postings, showing upon what structures, buildings, improvements or other means of occupancy of such highway or portion thereof respectively copies of such notice were posted and the date of each such posting.

Duty of state highway engineer.

Posting notice to vacate.

SEC. 3. In case the property or any thereof described in such notice is not removed from such right of way within ten days after the date of such posting, exclusive of the date of posting, all such property upon the right of way of said highway or

Failure to remove.

Property becomes unlawful.

Attorney general to commence proceedings for removal.

portion thereof shall thereupon become unlawful and in case the state highway committee shall request the attorney general of the state to commence proceedings for the removal thereof by court action under the provisions of this act, the state highway engineer shall thereupon deliver to the attorney general two certified copies of such resolution together with two copies of such notice and affidavits in proof of posting thereof and duplicate copies of a certificate by said state highway engineer describing with reasonable certainty and with due reference to center line stationing of said highway and to proper legal subdivisional points, each structure, building, improvement, encroachment or other means of occupancy, other than pole lines, pipe lines or other structures maintained for public and quasi-public utilities, on the state highway or portion thereof specified in such resolution and remaining upon such right of way unlawfully as aforesaid. Thereupon the attorney general shall commence an action *in rem* for the purpose of removal of all such property so certified, in the superior court of the county in which such state highway or portion thereof is situated, entitled and in the name of the state of Washington as plaintiff and describing each such unlawful structure, building, improvement, encroachment or other means of occupancy as defendants.

Action in superior court.

Petition filed by attorney general.

SEC. 4. The attorney general shall file with the clerk of court and present to such superior court a petition in which the property unlawfully remaining upon the right of way of such highway or portion thereof shall be described with reasonable certainty by reference to the certificate of the state highway engineer, which certificate together with a certified copy of the resolution of the state highway committee as above prescribed shall be attached to and filed with said petition, and praying that order be entered for the removal from the right of way of

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such highway or portion thereof of all property unlawfully thereon and the disposal thereof as prescribed by this act.

SEC. 5. It shall not be necessary to issue summons or other notice for any personal service upon any person, firm, association or corporation claiming any such property or any interest therein, but instead notice shall be given by publication of notice once a week for two successive weeks in a newspaper printed, published and of general circulation then and for more than six months prior thereto in the county in which such action is commenced, which notice shall briefly state the objects of the petition and contain a description of each structure, building, improvement, encroachment or other means of occupancy sought to be removed from the right of way of the state highway or any portion thereof described in the petition and shall also state the time and place when and where the same will be presented to the court or judge thereof; and a copy of such notice shall also be posted at least ten days before the date of such hearing upon each structure, building, improvement, encroachment or other means of occupancy of such highway or portion thereof described in such notice. Such notice shall be signed by the attorney general of the state of Washington, and may be posted by any competent person more than twenty-one years of age. Due proof of posting by affidavit of the person posting the same, and due proof of publication by affidavit of publication as required by law, shall be filed with the clerk of such superior court before or at the time of presentation of such petition. Want of posting of such notice upon, or failure to describe in the published notice, any such structure, building, improvement or other encroachment or means of occupancy of any such highway or portion thereof shall render subsequent proceedings void as to any such property not posted

Personal service of summons not required.

Notice by publication.

Posting notice on obstructions.

Notice to be signed by attorney general.

Proof of posting.

Want of posting voids proceedings.

or described but all others described in such publication and posting as above prescribed shall be bound by the subsequent proceedings.

Continuance.

May order  
new or  
further  
notice.

SEC. 6. The court may, for reasonable cause shown, on the application of the attorney general or otherwise, adjourn the proceedings from time to time, and may order new or further notice to be given if deemed requisite.

Hearing.

Highway  
committee's  
resolution  
as evidence.

SEC. 7. At the time and place appointed for hearing said petition, if the court or judge thereof shall have satisfactory proof and shall find that due notice has been given by posting and publication as above prescribed and that the act of the state highway committee in passing the resolution above described was free from bad faith, arbitrary, capricious or fraudulent action, of which fact and of the passage of such resolution the certified copy of such resolution attached to such petition shall be *prima facie* evidence, and shall be further satisfied and shall find that the highway or portion thereof described in such petition is legally a state highway having the width of right of way specified in such resolution, of which facts the certified copy of such resolution shall be *prima facie* evidence, and that the structures, buildings, improvements or other means of occupancy of such highway or portion thereof as stated in the certificate of the state highway engineer attached to such petition, do in fact encroach, or that any thereof encroach, upon such highway right of way, of which fact of encroachment said certificate shall be *prima facie* evidence, the court or judge thereof shall thereupon make and enter an order establishing that each of the structures, buildings, improvements and other means of occupancy specified in such order is unlawfully maintained within the right of way and is subject to confiscation and sale and that the same be forthwith confiscated, removed from such right of way and

Court order  
of unlawful  
occupancy.

Property  
subject to  
confiscation  
and sale.

sold, and providing that six days after the entry of such order a writ shall issue out of said court directed to the sheriff of such county commanding such sheriff to seize and remove from the right of way of said highway each such structure, building, improvement or other means of occupancy specified in such order forthwith on receipt of writ based on said order and to take and hold the same in his custody for a period of ten days unless sooner redelivered as hereinafter provided for and if not then so redelivered to sell the same to the highest and best bidder for cash at public auction in the manner provided by law for sale of personal property under execution, and to make return of such writ together with notation of costs of removal, custody and sale and to pay the proceeds thereof into the registry of the court within sixty days after the issuance of such writ, and further in said order providing that the proceeds of such sales after payment of the costs taxed in such action, including the costs of posting original notices of the state highway engineer and the costs of posting and publishing notices of hearing as part thereof, be paid by the clerk into the general fund of such county. Such order shall be filed with the clerk of such court and recorded in the minutes of said court and shall be final unless review thereof to the supreme court of the state to be taken within five days after the filing thereof.

Sheriff to take property.

Public sale of property.

Sheriff's return.

Order for disposition of proceeds of sale.

Subject to court review.

SEC. 8. Six days after filing of the order above provided for, if no review thereof be taken to the supreme court of the state, the clerk of the court shall issue under seal of such court a writ directed to the sheriff of the county in which such court is held commanding him to remove, take into custody and dispose of the property described in such order and make return thereof as provided for such writ by said order. And on receipt of such writ it shall be the duty of such sheriff to obey the command

Duty of sheriff.

thereof, proceed as therein directed and make return within the time fixed by such writ; and said sheriff shall be liable upon his official bond for the faithful discharge of such duties. Upon filing of such return the clerk of court shall make payments as provided for in the order of court. And if by the sheriff's return any of the property seized and removed pursuant to such writ is returned as unsold and as of no sale value, and if the court or judge thereof be satisfied that such is the fact, the court or judge thereof may make further order directing the destruction of such property, otherwise directing the sheriff to give new notice and again offer the same for sale, when if not sold the same may on order of court be destroyed.

Property  
unsold or of  
no value to  
be destroyed.

May offer  
property  
second  
time  
for sale.

Owner's  
demand for  
possession.

SEC. 9. At any time within ten days after the removal by virtue of such writ of any such property from the right of way of such highway any person, firm, association or corporation claiming ownership or right to possession of any such property may have the right to demand and to receive the same from the sheriff upon making an affidavit that such claimant owns such property or is entitled to possession thereof, stating on oath the value thereof satisfactory to such sheriff, or which value shall be raised to a value satisfactory to said sheriff, shall be endorsed on said affidavit and signed both by said claimant and said sheriff before such sheriff shall be required to accept the bond hereinafter provided for, and delivering to the sheriff a bond with sureties in double the value of such property, conditioned that such claimant will appear in the superior court of such county within ten days after the bond is accepted by the sheriff and make good such claim of title thereto and pay all accrued costs of service of notice to remove, all costs and disbursements to be assessed to such property and the costs of removal and custody thereof and will hold said sheriff and

Delivery  
to owner.

Bond.

Claimant  
to prove  
property  
and pay all  
costs.

the state of Washington free from any and all claims on account of such property or will return such property or pay its value to said sheriff, and that such claimant will at all times thereafter keep such property off the right of way of the highway in question.

Sheriff and state not liable for any claims.

SEC. 10. The sureties on such bond shall justify as in other cases if the sheriff require it and in case they do not so justify when required, the sheriff shall retain and sell or dispose of the property; and if the sheriff does not require the bail to justify, he shall stand good for their sufficiency. He shall date and endorse his acceptance upon the bond, and shall return the affidavit, bond and justification, if any, to the office of the clerk of such superior court, whereupon such clerk shall set the hearing thereof as a separate case for trial, in which such claimant shall be plaintiff and the sheriff and the state of Washington defendants.

Sureties to justify as in other cases.

Acceptance of bond.

Hearing.

SEC. 11. If the claimant makes good such claimant's title to or right to possession of the property, upon payment into the registry of the clerk of the cost of service or posting of original notice issued by the state highway engineer with respect to such property, the cost of posting notice of hearing in such court on the petition of the attorney general and such proportion of the cost of publication of such notice as the court may fix and direct to be entered and the clerk's fees of filing such affidavit and bond as a separate action and of entry of judgment therein at the amounts provided for in civil actions, judgment shall be entered restoring such property to such claimant without any confirmation of title as to any other claimant thereto, relieving the sheriff from necessity of selling the same and making return thereon, and continuing the effect of such bond for a period of six years thereafter for the benefit of such adverse claimants to said property, if any, as may thereafter make claim to such

Claimant's title established.

Costs to be paid.

No confirmation of title.

Bond continued six years.



Claimant fails to establish.

property. If such claimant shall not make good such claim of title to or right to possession of such property, judgment shall be rendered against such claimant and the sureties of such claimant for the value of such property as finally shown by the affidavit as above provided for, together with such fees for filing such affidavit and bond as a separate [separate] action and for entry of judgment therein and the other costs and disbursements as taxed in any civil action including the statutory attorney fee as part thereof, for all of which execution may accordingly issue, and relieving the sheriff from necessity of selling such property or making return thereon.

Costs and fees payable.

Emergency.

SEC. 12. An emergency exists making the provisions of this act necessary for the immediate support of state government and its existing institutions and this act shall take effect immediately.

Passed the Senate December 2, 1925.

Passed the House January 4, 1926.

Approved by the Governor January 12, 1926.

## CHAPTER 132.

[S. B. 101.]

### JUDGES OF THE SUPERIOR COURT FOR THE COUNTIES OF COWLITZ, SKAMANIA AND KLICKITAT.

AN ACT relating to the superior court of the counties of Cowlitz, Skamania and Klickitat and the appointment and election of judges therein, and providing that this act shall take effect immediately.

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

Two judges authorized.

SECTION 1. From and after the taking effect of this act there shall be two judges of the superior court of the state of Washington in and for the counties of Cowlitz, Skamania and Klickitat.

Additional Judge; appointment.

SEC. 2. Upon the taking effect of this act the governor shall appoint one additional judge of said