

and in full force and effect, and to be collectible in the manner which is now or may hereafter be provided by law for the collection of assessments for local improvements for the purposes specified in this act.

Passed the Senate February 23, 1905.

Passed the House March 8, 1905.

Approved by the Governor March 9, 1905.

CHAPTER 151.

(S. B. No. 163)

RELATIVE TO EXPENSES INCURRED IN CONSTRUCTION OF DIKES AND DAMS.

AN ACT to provide for the payment of expenses incurred in compliance with an act entitled, "An act to provide for the construction and maintenance of dikes and dams in certain cases," approved February 2, 1888, or of any acts amendatory thereof.

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

Construction
and
maintenance.

SECTION 1. That where any dike or any portion thereof, has been constructed and maintained in compliance with the provisions of an act of the Legislative Assembly of the Territory of Washington, entitled, "An act to provide for the construction and maintenance of dikes and dams in certain cases," approved February 2, 1888, or any acts amendatory thereof, and where any warrants or orders, issued in connection with the expense of the construction and maintenance thereof, remain outstanding and unpaid, it shall be the duty of the board of county commissioners of the county in which the same are located to assess the lands benefited thereby for the purpose of paying said outstanding warrants, or orders together with interest thereon from the date of their issuance until paid, at the rate of six per cent annum: *Provided*, That no such assessment shall be made, nor shall any proceeding under this act be had, unless such dike or system of dikes shall have been so constructed and maintained and be at the time of the initiation of such assessment proceeding in such a condition as to constitute an actual substantial

Assess the
lands.

benefit to the land included within the limits of said diking district, by so protecting said lands from overflow as to render them suitable for cultivation.

SEC. 2. That the county auditor of any county in which such dike or dam is located upon the written request of any holder or owner of any such warrant or order, shall forthwith cause to be published in the newspaper doing the county printing, if any such there be, and if not, then in some newspaper of general circulation in the county, a notice directing any and all holders or owners of any such warrants or orders to present the same to him, at his office for registration within ninety days from the date of the first publication of such notice; and such notice shall be published once a week for six consecutive weeks. Upon the presentation to him of such warrants or orders, the county auditor shall register the same in a separate book to be kept for that purpose, showing the date of registration, the date of issuance, the name of the person by whom presented and the face value thereof; *Provided, however,* That warrants or orders on the several diking districts organized under said act or any act amendatory thereof, shall be registered separately. Any such warrant or order not presented within the time prescribed in such notice, shall not share in the benefits of this act, and no assessment or reassessment shall thereafter be made for the purpose of paying the same.

SEC. 3. That where the land included within the boundaries of any diking district established in accordance with the said act approved February 2, 1888, or of any acts amendatory thereof, are included within the boundaries of any diking district or districts organized in accordance with the provisions of an act of the Legislature of the State of Washington entitled, "An act to provide for the establishment and creation of diking districts, and the construction and maintenance of a system of dikes, and to provide for the means of payment thereof, and declaring an emergency," approved March 20, 1895, no condemnation proceedings for the purpose of acquiring title to the lands upon which such dikes or dams are located shall be necessary. But where the lands included within the boundaries of any diking district organized under said act approved February 2, 1888, or any acts amendatory thereof, are not included within the boundaries of any diking district or districts organized under said act approved March 20, 1895, it shall be the duty

County
auditor
to publish
notice.

County
auditor
to register
warrants.

County
commissioners
to acquire
lands by
condemnation.

of the board of county commissioners of any county in which said dike or dams are located to purchase the lands occupied by, or necessary to said dikes or dams, and of any spurs, offshoots or appurtenances thereto, or acquire the same by condemnation proceedings, whether title to such land has not already been acquired, and to that end are hereby authorized to institute and maintain, in the name of the county, the proceedings provided by Chapter V, Title XXXI of Volume II of Ballinger's Annotated Codes and Statutes of Washington.

Levy of
assessment.

SEC. 4. That where the lands within the boundaries of any diking district or districts organized under said act approved March 20, 1895, the board of county commissioners at the end of ninety days after the date of the first publication of the notice provided for in section 2 of this act, shall forthwith proceed to levy an assessment against such lands for the purpose of paying such outstanding warrants or orders, with interest thereon as referred to in Section 1 of this act. And where such lands are not so included, the board of county commissioners shall forthwith proceed to acquire by purchase or condemnation proceedings the necessary lands as provided for in section 3 of this act. Said board of county commissioners shall establish a fund for each diking district organized under said act approved February 2, 1888, or acts amendatory thereof, to be called, "Old Diking Fund No." (here insert No. of diking district established under said act approved February 2, 1888, or any acts amendatory thereof) and for the purpose of paying for the lands to be acquired as provided in section 3 of this act, shall borrow money wholly on the faith of and to be repaid wholly from the money in said fund by issuing bonds payable out of said fund in denominations of not to exceed twenty dollars each due on or before five years from date and drawing not to exceed six per cent interest per annum. Where any such dike or dam is uncompleted and the lands for the benefit of which the same was constructed, are not included within the boundaries of any diking district or districts organized under said act approved March 20, 1895, said board shall proceed to finish said dike or dam according to the survey and report of said improvement made in accordance with the provisions of said act of February 2, 1888, or of any act amendatory thereof, and to pay for the same by warrants duly

Complete
unfinished
work.

issued on said dike fund and the total cost of said improvement, including the expenses heretofore issued for the location of right-of-way and construction or maintenance of said dike or dam shall be paid as hereinafter provided.

SEC. 5. That for the purpose of paying outstanding warrants or orders together with interest thereon, issued in connection with the expense of constructing or maintaining any dike or dam of any diking district organized under said act approved February 2, 1888, or any acts amendatory thereof, and also for the purpose of paying for acquiring the title to lands as provided for in section 3 of this act, and for the completion of any dike or dam as provided for in section 4 of this act, where the acquiring of such title, or the completion of such dike or dam is required under the provisions of this act, the board of county commissioners shall determine the aggregate cost of such dikes or dams and shall apportion the same to each lot or tract of land, road or railroad, according to the benefit which has resulted, or will result to each from said improvement, not exceeding the amount of such benefits: *Provided*, That such new assessment shall be for an amount which shall not exceed the actual cost and value of the improvement, together with interest thereon as provided for in this act, and costs, and that such amount shall be equitably apportioned upon the property benefited thereby, according to the provisions of the laws in force at the time such re-assessment is made notwithstanding the proceedings of the county commissioners or of any of the officers of the county in which such improvement may be located may be found irregular or defected, whether jurisdictional or otherwise. When such re-assessment is completed all sums paid on the former attempted assessments shall be credited to the property on account of which the same was paid. The board of county commissioners shall cause the clerk of the board to make out a list of the lands benefited, giving a description of each tract or lot separately, and showing the sum apportioned to each of such tracts or lots, but said list need not contain the names of the owners of said tracts or lots. Said list shall be filed with the county auditor, and upon the filing thereof he shall forthwith cause to be published in the newspaper doing the county printing, if any such there be, and if not, then in such newspaper as he may select, a notice that said list is on file in his office

Payment of
warrants.

Lands
benefited.

and is open to inspection. Said notice shall give the number of the diking district organized under said act approved February 2, 1888, or any act amendatory thereof, state the total face value of warrants or orders registered in compliance with section 2 of this act, and contain a description by sections, townships and range, and by blocks where land has been platted, of the land claimed to be benefitted. Where an entire section or block is not benefitted a description of the part of such section or block claimed to be benefitted shall be given. Said notice shall direct any and all persons or corporations interested, who desire to do so, to file with the county auditor exceptions to the apportionment made to lands claimed to be benefitted, or to warrants or orders registered, the exceptions, if any, to the latter, to be on the ground that the same were not issued in connection with the expense of the construction or maintenance of dikes or dams, or were fraudulently issued, and all exceptions herein provided shall be filed within sixty days after the date of the first publication of said notice. Said notice shall also give the date on which the board of county commissioners will meet to hear and pass upon such exceptions, which shall be on the sixtieth day after the date of the first publication of said notice; said notice shall be published once a week for six consecutive weeks.

File
exceptions.

Board pass
upon
exceptions.

SEC. 6. Upon the day stated in said notice the board of county commissioners shall meet at their regular place of meeting and proceed to hear and pass upon exceptions filed with the county auditor as provided in section 5 of this act. If they find that the apportionment is unfair and unjust, and ought not to be confirmed, they shall so order and amend it to make it fair and just in proportion to benefits, and if necessary, in their opinion, they may adjourn the further hearing not to exceed 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 maintenance, or any part thereof, according to benefits as may seem just and proper, and on the day so fixed by them they shall again meet and determine the apportionment. The cost of the publication of the notice in this act provided for shall be considered as a part of the costs to be apportioned to said lands. The commissioners may hear testimony and examine all witnesses upon questions made by the exceptions, and for that purpose may compel the attendance of wit-

nesses, by subpoena, which the clerk of the superior court shall issue or demand, and their decision on the exceptions shall be entered on the journal, and if they sustain the exceptions the cost of the hearing thereof shall be paid out of the county treasury, and if they overrule the same such costs shall be taxed against the person or corporation filing the exceptions: *Provided, however,* That if exceptions to warrants or orders registered with the auditor are sustained the costs of the hearing thereof shall be taxed against the owner of such warrants or orders. Where costs are taxed against any person or corporation it shall be the duty of the prosecuting attorney, to institute action in the superior court for the recovery of the same.

SEC. 7. That where exceptions are filed to warrants or orders registered with the auditor of the board of county commissioners, on the day of their meeting provided for in section 6 of this act, shall set the same down for hearing at a day not later than thirty days thereafter and shall direct the auditor to notify the person or corporation who presented said warrants or orders to him for registration of such exceptions, and shall state the time when and place where such exception shall be heard; and said notice shall be deposited by the county auditor in the post office at the County seat at least twenty days before the day set for such hearing, postage prepaid, and addressed to such person or corporation at his last known address, or at its principal place of business. The affidavit of the auditor shall be proof of such service.

SEC. 8. That any person or corporation feeling aggrieved by the ruling of the board of county commissioners upon exceptions filed as hereinbefore provided for, may appeal to the superior court. Upon such appeal no bond shall be required and no stay shall be allowed. If the appeal be from the ruling of the board of county commissioners in relation to the apportionment of costs or assessments of benefits to land, such appeal shall bring before the superior court the justness of the amount of benefits in respect to the parties to the appeal. Such appeal shall be made by filing a written notice of appeal with the clerk of the board of county commissioners within ten days after such new assessment or re-assessment roll shall have been approved and confirmed by the board of county commissioners; and said notice shall describe the property and the objections of

such appellant to such assessment or re-assessment, and such appellant shall also file with the clerk of the superior court aforesaid within twenty days from the approval and confirmation of such roll by the board of county commissioners a copy of said notice, appeal, re-assessment roll and proceeding thereon, certified by the clerk of such board of county commissioners; and the case shall be docketed by the clerk of such court in the name of the person taking such appeal against said county as "an appeal from assessments." Said cause shall then be at issue, and shall have preference over all civil cases pending in said court, except proceedings under the acts relating to eminent domain by cities and towns, and actions of forcible entry and detainer. Such appeal shall be tried in said court as in the case of equitable causes, except that no pleadings shall be necessary. The judgment of the court shall be either to confirm, modify, or annul the assessment in so far as the same affects the property of the appellant, from which judgment an appeal shall lie to the supreme court as in other cases. In case the assessment is confirmed, the fees of the clerk of the board of county commissioners for copies of the record shall be taxed against the appellant with other costs. If the appeal be from a ruling of the board of county commissioners in relation to exceptions filed to warrants or orders registered with the county auditor, such appeal shall be taken in the manner provided by law for appeals from the action of the board of county commissioners in other cases.

Preference
over all
civil cases.

Apportion-
ment of costs.

SEC. 9. That when the improvement protects or benefits the whole or any part of any public or corporate road or railroad there shall be apportioned to the county, if the road is a State, county or free turn pike road, or to the corporation if a corporate road or railroad, a share of the cost and expenses thereof proportionate to the benefits to said road or railroad. All lands of the State or any county school district or other municipal corporation shall be subject to the provisions of this act.

Time and
manner of
payments.

SEC. 10. That when said apportionment or assessment of benefits shall have been approved as hereinbefore provided, the commissioners shall determine at what time and in what number of assessments, not to exceed four, they will require the same to be paid, and order that the assessments, as made by them, be placed upon the tax roll accord-

ingly against the lots or lands assessed. When the commissioners make an assessment they shall cause an entry to be made directing the clerk of the board of county commissioners to make and furnish to the treasurer of the county a special tax roll with the assessment arranged thereon as required by their order, and the clerk of the board of county commissioners shall retain a copy thereof in his office, and all assessments shall be liens upon the property against which they are assessed, and shall be collected and accounted for by the treasurer as taxes: *Provided*, That the treasurer shall accept in payment of assessments the bonds issued under the provisions of section 4 of this act, and said treasurer shall place the assessment so collected in said dike fund. The list thus prepared must remain in the office of the treasurer for thirty days or longer if ordered by the board of county commissioners, and during the time it so remains any person may pay the amount of charges against any tract to the treasurer without costs, or if so ordered by the board of county commissioners said payments may be by installments, and if at the end of thirty days or the longer period fixed by said commissioners, any of the charges or any of the installments ordered by them already due have not been paid, the treasurer must transmit a list to the prosecuting attorney, who must at once proceed by civil action to collect such charges and foreclose the liens therefor, and such charges or liens shall draw interest at the same rate as the delinquent taxes for State and county purposes.

SEC. II. That where exceptions to the apportionment or assessment are sustained by the county commissioners the costs of the hearing thereof shall be paid out of the county general fund, and where upon any appeal provided for in this act costs are taxed against the county, such costs shall be paid in the same manner, and the county shall be reimbursed therefor out of the first moneys paid into the said diking fund provided for in this act. If by reason of the payment of such costs, or the reduction or annulment of any assessment on appeal, the apportionment or assessment made by the board of county commissioners shall be found insufficient to make the payments required by this act, then said board shall increase such apportionment or assessment in the same proportion as such apportionment or assessment was made: *Provided, however*, That the

To pay costs
of hearing.

total apportionment to and assessment against any tract or lot shall not exceed the benefits derived by the same.

Action brought in name of county.

SEC. 12. That all actions authorized by this act to be brought by the prosecuting attorney shall be brought in the name of the county.

Lists to be filed.

SEC. 13. That the county treasurer of any county in which any diking district or districts were organized under said act approved February 2, 1888, or any acts amendatory thereof, shall within ninety days after the date of the first publication of the notice provided for in section 2 of this act, make out and file with the board of county commissioners a list for each of such diking districts; said list to contain a description of each tract or lot of land against which assessments were made under said act approved February 2, 1888, or any acts amendatory thereof, and to show any and all assessments made against the same and what payments were made upon the same.

SEC. 14. That no costs shall be taxed for the work required to be done according to the provisions of this act by the county treasurer or the county auditor or the clerk of the board of county commissioners except as herein otherwise provided.

Outstanding warrants.

SEC. 15. That outstanding warrants or orders, together with interest thereon, issued in connection with the expenses of the construction or maintenance of dikes or dams constructed or maintained under the provisions of said act approved February 2, 1888, or of any acts amendatory thereof, shall be paid first and shall be paid in the order of their issuance; and thereafter indebtedness such as is authorized by this act, incurred by said board of county commissioners, shall be paid in the order of the issuance of the evidence of such indebtedness. Warrants issued by the said board shall draw interest at the rate of six per cent per annum.

Assessments not prevented.

SEC. 16. That the fact that a contract has been let, or such improvement shall have been made and completed in whole or in part shall not prevent such assessments being made; nor shall the omission, failure or neglect of any officer or officers to comply with the provisions of law governing such county or county commissioners as to petition, notice, resolution to improve, estimate, survey, diagram, manner of letting the contract or section of work, or any other matter whatsoever connected with the im-

provement and the first assessment thereof, operate to invalidate or in any way to affect the making of the new assessment or reassessment as provided for herein, charging the property benefitted with the expense thereof: *Provided*, That such new assessment shall be for an amount which shall not exceed the actual cost and value of the improvement, together with the interest and costs as herein provided for, and that such amount be equitably apportioned upon the property benefitted thereby according to the provisions of the laws of this State relative to municipal corporations.

SEC. 17. If any section, subdivision, sentence or clause of this act is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of the act.

Passed the Senate February 23, 1905.

Passed the House March 9, 1905.

Approved by the Governor March 9, 1905.

CHAPTER 152.

(S. B. No. 80)

AMENDING ACT RELATIVE TO ADMISSIONS TO STATE SOLDIERS' HOME.

AN ACT to amend Section 2 of an act approved March 18, 1901 (Laws of 1901, p. 344), amending Sections 2632 of Ballinger's Annotated Codes and Statutes of Washington (Laws of 1890, p. 269, Sec. 2), relating to the State Soldiers' Home.

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

SECTION 1. That section 2 of an act entitled, "An act to amend sections 2631 and 2632 Ballinger's Annotated Codes and Statutes of Washington relating to the State Soldiers' Home, approved March 18, 1901," be amended to read as follows:

REGULATIONS.

Section 2. All honorably discharged Union soldiers, sailors, marines, soldiers of the Spanish-American war, and also members of the State militia disabled while in the line