

CHAPTER XCIX.

[H. B. No. 349.]

EXCAVATION OF WATERWAYS BY PRIVATE CONTRACT.

AN ACT prescribing the ways in which waterways for the uses of navigation may be excavated by private contract, providing for liens upon tide and shore lands belonging to the state, granting rights-of-way across lands belonging to the state.

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

SECTION 1. The commissioner of public lands of the State of Washington may, when in his judgment the interests of commerce would be subserved thereby, enter into contract with any person or persons, or incorporated companies doing business in the State of Washington, for the excavation of any waterway or waterways through any lands belonging to the State of Washington, or to any citizen or corporation of said state, and for the filling in and raising above high tide of any tide or shore lands belonging to the State of Washington, and upon the completion of such contract such person or persons or incorporated company shall become entitled to and shall have a lien, as in this act provided, upon all tide and shore lands belonging to the State of Washington, adjacent to such waterway, and remaining unsold at the date of the approval of this act, that they may fill in and raise above high tide, and all purchasers of said tide and shore lands from the State of Washington shall take the same subject to said lien: *Provided, however,* That Proviso. such contract shall not become binding or operative until approved by the governor, nor until such person or persons or incorporated company shall have filed with the commissioner of public lands, a bond in the penal sum of not less than twenty-five hundred, nor more than twenty-five thousand dollars, as in the judgment of said commissioner of public lands shall be considered necessary in a particular case, with sureties to be approved by said commissioner of public lands, said bond to be conditioned for the faithful performance of said contract: *Provided further,* That no lands shall be affected thereby except lands

within or in front of incorporated cities or towns, or within one mile thereof on either side, or lands between any inner and outer harbor lines established by proper authority.

What contract to specify.

SEC. 2. Said contract with the commissioner of public lands shall specify the waterway or waterways proposed to be excavated, and the lands to be affected thereby, and shall be accompanied by a map of the locality or localities showing said waterway or waterways, and their relation to the harbor lines and reservations in front of the cities or towns where the same are located, and shall show the tide and shore lands to be filled in and raised above high tide, properly designated and subdivided as nearly in accordance with the existing subdivisions of abutting uplands as the proper location of said waterway or waterways will permit, and shall specify and exhibit the waterway or waterways proposed to be excavated as to their depth and width and extent: *Provided*, That when harbor lines and waterways have been established by the harbor line commission of the state, no other waterways shall be excavated except the waterways exhibited on the final maps of said harbor line commission, except with the consent and approval of such harbor line commission; and where no harbor lines and waterways have been so established then the plan mentioned in said contract must, before being adopted by said commissioner, be submitted to and approved by the harbor line commission: *And provided further*, That if no harbor line commission be in existence, then the commissioner of public lands shall establish waterways which may be excavated as herein provided.

No waterways excavated except those shown on map of harbor line commission.

Commissioner may establish waterways, when.

Contract to specify.

SEC. 3. Said contract shall specify the time of beginning work on said waterway or waterways, and the time when such work shall be completed: *Provided*, That the time set for the beginning of said work shall be within six months of the signing of said contract, and the time set for the completion of said work shall be a reasonable time, to be determined in each case by the commissioner of public lands, according to the difficulties to be encountered: *And provided further*, That said commissioner of public lands, upon showing of due diligence on the part of the

Commissioner may extend time.

contracting parties may grant an extension of the time for the beginning or completion of said work.

SEC. 4. Upon the completion of the work, provided for by said contract, or any part thereof, capable of separate use for the purposes of navigation, according to the terms and conditions of said contract, and within the time provided therein, or such further extension of time as may have been granted by virtue of the preceding section, the commissioner of public lands shall issue his certificate to the contracting parties, or their assigns, showing the actual cost of the filling in and raising above high tide of all tide and shore lands so filled in and raised above high tide by such completion of said work, or such separate portion thereof, and specifying and describing, with reasonable certainty, the lands so filled in and raised above high tide. Upon the filing in the office of the county auditor of the county or counties in which such lands are situated, of such certificate of the commissioner of public lands, said contracting parties shall acquire a lien, and the same shall thereupon attach, for the amount specified in such certificate, with fifteen per cent. additional thereon, and with interest on such amount and additional percentage from the date of such certificate at the rate of eight per cent. per annum until payment: *Provided, however,* That such lien shall not be operative for an amount exceeding the cost of the work as stated in the contract, or, as the case may be, such portion of said stated cost as shall be proportionate to the part of the work with reference to which the certificate has issued, upon the bonds specified in such certificate. Such lien shall not be *in solido*, and upon the sale by the state to any person, or by any owner claiming under the state to any other person, of any of the tide and shore lands specified in such certificate, the lien herein granted may be discharged, as hereinbelow provided, as to any such part of said lands separately granted or owned, upon the payment of such part of the amount for which the lien upon the lands was given in the first instance as shall bear the same proportion to said whole amount which the area of such separate part of such lands bears to the area of the whole thereof. The amount due on such lien, or any pro-

Commissioner's certificate.

Lien.

Proviso.

Manner of
foreclosure
of lien.

portionate part thereof separately payable as above provided, shall be payable by any owner of said lands, or any part thereof separately owned, as the case may be, other than the state, in ten equal annual installments, the first installment at the end of the first year after the sale of such lands, or of such separate portion thereof, by the state; and the remaining installments, one at the end of each year thereafter, with accompanying interest on each of such installments, as hereinbefore provided, to the time of the payment thereof, and such lien may be foreclosed in the manner provided by law for the foreclosure of other liens on real estate for non-payment of the whole amount due, or of any separate installment or installments thereof which shall have become due. If such lands specified in any such certificate shall not be sold by the state, within one year after the date of such certificate, the parties in whose favor such certificate was issued, or their assigns, shall have the option during the next succeeding six months to purchase such lands, or any part thereof, from the state in the manner provided by then existing laws for the sale of tide lands of the state. This act shall not be so construed as to create any obligation on the part of the state to pay or discharge any lien which may attach to such lands by virtue of the provisions thereof.

Time for pre-
paring maps,
specifications,
contracts, etc.

SEC. 5. Any person or persons, or any corporation, doing business in this state may give notice in writing to the commissioner of public lands of his or their intentions to comply with the provisions of this act at any given locality or localities, describing the same in general terms, and thereafter they shall have ninety days after the completion of the publication hereinafter mentioned within which to prepare the maps, specifications and contracts herein provided for. And the giving of said notice shall place the lands described therein subject to the operation of this act until the making and signing of the contracts herein provided for, and the making and signing of said contract shall make the lands described therein subject to the operating of this act pending its execution, and all persons or corporations purchasing said lands from the state in the meantime shall take the same subject to the ultimate lien

upon the same, provided for herein: *Provided, however,* That this section shall not be so construed as to require the commissioner of public lands to enter into any contract whatever, or the governor to approve any contract whatever; and said commissioner of public lands shall have the right to refuse to make any contract, and the governor shall have the right to refuse to approve any such contract which in their judgment or in the judgment of either of them would be detrimental to the interests of the state: *And provided further,* That the commissioner of public lands shall publish for thirty days, at the expense of the applicant, in some newspaper of general circulation, in the county where said lands are situated, notice of the pendency of such application; and request all interested parties to appear before him at the time and place mentioned in said notice and state their objections; and no contract shall be entered into by the commissioner of public lands for the improvement of any such waterway or waterways until after the date fixed in said notice at which interested parties may appear and be heard.

Right to refuse to approve.

Publication of notice of pendency of application.

SEC. 6. A right-of-way is hereby granted for any waterway or waterways herein provided for through any lands belonging to the State of Washington of sufficient width to accommodate said waterway or waterways; the width and definite location of such right-of-way, however, shall be plainly and completely specified in the contract herein provided for.

Right-of-way granted through the public lands

SEC. 7. All contracts provided for herein shall specify the character of all bulkheads and other restraining works and be accompanied by drawings and specifications of the same, and the commissioner of public lands shall be the judge of the sufficiency thereof, and of the minimum depth to which any waterway shall be excavated, in order to make the same useful for the purposes of commerce and navigation.

SEC. 8. In ascertaining the cost of filling in and raising above high tide of any tide or shore lands, the cost of all bulkheads, and other restraining works, and the cost of filling in and raising above high tide of all streets, alleys and public squares or places, shall be apportioned to the

Apportionment of cost.

lands benefited thereby, in addition to the cost of filling in such lands.

All waterways excavated under the provisions of this act, open to public alike.

SEC. 9. All waterways excavated through any tide or shore lands belonging to the state of Washington by virtue of the provisions of this act, so far as they run through said tide or shore lands, are hereby declared to be public waterways, free to all citizens upon equal terms, and subject to the jurisdiction of the proper authorities, as provided by law: *Provided*, That where tide gates or locks are considered, by the contracting parties excavating any waterways, to be necessary to the efficiency of the same, the commissioner of public lands may, in his discretion, authorize such tide gates or locks to be constructed and may authorize the parties constructing the same to operate them and collect a reasonable toll from vessels passing through said tide gates or locks: *Provided further*, That the State of Washington or the United States of America can, at any time, appropriate said tide gates or locks upon payment to the parties erecting them, of the reasonable value of the same at the date of such appropriation, said reasonable value to be ascertained and determined as in other cases of condemnation of private property for public use.

Appraisalment of tide lands proposed to fill.

SEC. 10. If the commissioner of public lands shall determine to let any contract for the excavation of a waterway, as hereinbefore provided, the tide land appraisers appointed in the county in which said tide lands lie, shall forthwith appraise the tide lands which it is proposed to fill in by the excavation of such waterway, at their actual value at the time of letting such contract, and the said lands so appraised shall never be disposed of by the state for less than such appraised value.

Approved March 9, 1893.