

CHAPTER 152.

[S. B. No. 136.]

PROVIDING FOR ACCEPTANCE BY THE STATE OF CERTAIN ARID LANDS FROM THE UNITED STATES.

AN ACT to provide for the acceptance by the State of Washington from the United States of certain desert lands and providing for the reclamation, occupation and disposal of the same and declaring an emergency.

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

SECTION 1. That the State of Washington hereby ac-^{Acceptance of condition.}cepts the condition of section four (4) of an act of Congress, entitled: "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30th, 1895, and for other purposes," approved August 18th, A. D., 1894, and all acts subsequent and relating thereto together with all the grants of land to the State under the provisions of the aforesaid acts.

SEC. 2. The selection, management and disposal of said lands shall be vested in the Commissioner of Public Lands of the State of Washington. He shall receive and file all proposals for the construction of irrigation works to reclaim lands selected under the provisions of this act; prepare and keep for public inspection, maps or plats, on a scale of two inches to the mile, of all lands selected, receive entries of settlers on these lands, and hear or receive the final proof of their reclamation; and do any and all work required to be done in carrying out the provisions of this act. ^{Commissioner of Public Lands vested with power.}

SEC. 3. Any person, company or association of persons, or incorporated company, constructing, having constructed or desiring to construct ditches, canals or other navigation works, to reclaim land under the provisions of said act, shall file with the Commissioner of Public Lands a request for the selection on behalf of the State by the Commissioner of Public Lands of the land to be reclaimed, designating said land by legal subdivision. This request shall be accompanied by a proposal to construct the ditch, canal or other irrigation works necessary for the complete reclamation of the lands to be selected. ^{Filing of request and proposal.} The proposal shall be pre-

pared in accordance with the rules of the Commissioner of Public Lands and with the regulations of the Department of the Interior. It shall state the source of water supply, the location and dimensions of the proposed works, the price and terms per acre at which perpetual water rights will be sold to settlers on the land to be reclaimed. In the case of incorporated companies it shall state the name of the company, the purpose of its incorporation, the names and places of residence of its trustees and officers, the amount of its authorized and of its paid up capital. If the applicant is not an incorporated company the proposal shall set forth the name or names of the party or parties, and such other facts as will enable the Commissioner of Public Lands to determine his or their financial ability to carry out the proposed undertaking.

Incorporated
companies.

Private
parties.

Certified
check to
accompany.

SEC. 4. A certified check for a sum not less than two hundred and fifty dollars (\$250) nor more than two thousand and five hundred dollars (\$2,500) as may be determined by the rules of the Commissioner of Public Lands shall accompany each such request and proposal, the same to be held as a guarantee of the execution of the contract with the State, in accordance with its terms, by the party submitting such proposal; in case of the approval of the same and the selection of the land by the Commissioner of Public Lands, and to be forfeited to the State in case of the failure of said party to enter into a contract with the State in accordance with the provisions of this act.

Duty of Com-
missioner of
Public
Lands.

SEC. 5. Immediately upon the receipt of any request and proposal as designated in section 3, it shall be the duty of the Commissioner of Public Lands to examine the same and ascertain if it complies in form with the rules of his office and the regulations of the Department of the Interior. If it does not it is to be returned for correction, and, if not corrected within sixty days, it may be rejected by the Commissioner. The Commissioner of Public Lands shall determine whether or not the proposed works are feasible and the water appropriated and provided for is adequate and whether the maps filed in his office comply with the requirements of his office and the regulations of the Department of the Interior; also whether the lands proposed to be irrigated are desert in character, and such as may be prop-

erly set apart under the provisions of the aforesaid acts of Congress and the rules and regulations of the Department of the Interior thereunder. When a request or proposal as to substance is not approved by the Commissioner he shall notify the party making such request or proposal of his disapproval thereof and the reason therefor, and the party so notified shall have sixty days in which to make a satisfactory proposal but the Commissioner may, at his discretion, extend the time to six months.

When request is not approved—
procedure.

SEC. 6. On receipt of the request and proposal, and the approval of the same by the Commissioner of Public Lands, he shall file in the local United States Land Office a list in triplicate, describing the land embraced in said proposal with a request for the withdrawal of the land described in said list.

Commissioner of Public Lands to file triplicate list in United States Land Office.

SEC. 7. Upon the withdrawal of the land by the Department of the Interior, it shall be the duty of the Commissioner of Public Lands to enter into a contract with the party submitting the proposal, which contract shall contain complete specifications of the location, dimensions and character of the proposed ditch, canal and other irrigation works; the price and terms per acre at which perpetual water rights shall be sold to the settler; the amount of water to be supplied; the price of an annual maintenance fee per acre, and the price and terms upon which the State is to dispose of the land to settlers: *Provided*, That such price and terms for irrigation works, water rights, maintenance fee and for lands to be disposed of by the State to settlers, shall in all cases be reasonable and just. This contract shall not be entered into on the part of the State until withdrawal of these lands by the Department of the Interior and the filing of a satisfactory bond on the part of the proposed contractor for irrigation works, which bond shall be in penal sum equal to five per cent. of the estimated cost of the works, and to be conditioned for the faithful performance of the provisions of the contract with the State: *Provided*, That no contract under the provisions of this act shall be entered into by the Commissioner of Public Lands until the same shall have been approved by the Attorney General and the Governor.

Withdrawal by Department of Interior. Duty of Commissioner.

Bond.

Contracts—approved by Governor and Attorney General.

Limit of
contract
time.

SEC. 8. No contract shall be made by the Commissioner of Public Lands which requires a greater time than ten (10) years for the construction of the works and such additional time as may be granted by the Interior Department as provided by the aforesaid acts of Congress and amendments thereto, and all contracts shall state that the work shall begin within six months from the date of the contract; at least one-tenth of the construction work shall be completed within two years from the date of said contract; and the construction of said works shall be prosecuted with reasonable diligence to completion.

Upon fail-
ure to begin
work—duty
of Com-
missioner.

SEC. 9. Upon the failure of any party having a contract with the State for the construction of irrigation works, to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the State, it shall be the duty of the Commissioner of Public Lands to give such party written notice of such failure and if, after a period of sixty days from the giving of such notice such party shall have failed to proceed with the work or to conform to the specifications of his contract with the State the bond and contract of such party and all work constructed under such contract shall be at once and thereby forfeited to the State, and it shall be the duty of the Commissioner of Public Lands at once so to declare and to give notice once each week for a period of four weeks in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the State capitol in like manner and for a like period, that upon a day fixed, proposals will be received at the office of the Commissioner of Public Lands at Olympia, Washington, for the purchase of the incompletd works and for the completion of said contract, the time for receiving said bids to be at least sixty days subsequent to the issuing of the last notice of forfeiture. The money received from the sale of partially completed works, under the provisions of this section shall first be applied to the expenses incurred by the State in their forfeiture and disposal, to satisfy the bond, and the surplus, if any exists, shall be paid to the original contractor with the State. Whenever after the completion of said irrigation works any contractor or his successors or assigns shall fail to furnish an adequate amount

Moneys re-
ceived—
how applied.

of water to irrigate the lands of water right owners or there shall exist other cause as provided by law for the appointment of a receiver, the Attorney General may apply for the appointment of a receiver to take possession of the irrigation works and canal and other property of such party, and manage, operate, sell or dispose of the same. Such application shall be made to the superior court of the county in which the whole or some portion of the irrigation works or canal of such party is situated; and the court or its receiver by order of the court shall have and may exercise such powers as to the possession, management, operation, sale or disposition of the property and works of such party as is provided by law relating to receivers: *Provided*, That nothing herein contained shall be taken or construed as limiting the right of any party to have a receiver appointed as is in other cases provided by law.

Appointment
of receiver.

SEC. 10. Nothing in this act shall be construed as authorizing the Commissioner of Public Lands to obligate the State to pay for any work constructed under any contract or to hold the State in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the State.

State not
obligated to
pay for
work.

SEC. 11. Immediately upon the withdrawal of any land for the State by the Department of the Interior and the inauguration of work by the contractor, it shall be the duty of the Commissioner of Public Lands, by publication once a week in one newspaper of the county or counties in which said land is situated, and such further notice as he may deem necessary, for a period of four weeks, that said land is open for settlement; the price for which said land will be sold to settlers by the State, the contract price at which settlers can purchase a perpetual water right, and the cost of an annual maintenance fee.

Commis-
sioner to
publish lands
open for set-
tlement.

SEC. 12. Any citizen of the United States, or any person having declared his intention to become a citizen of the United States (excepting married women not the heads of families) over the age of twenty-one years, may make application under oath, to the Commissioner of Public Lands, to enter any of said lands in any amount not to exceed one hundred and sixty acres for any one person; such application shall set forth that the person desiring to make such

Who may ap-
ply to enter
upon such
lands.

entry does so for the purpose of actual reclamation, cultivation and settlement in accordance with the act of Congress and the laws of this State relating thereto, and the applicant has never received the benefit of the provisions of this act, to an amount greater than one hundred and sixty acres, including the number of acres specified in the application under consideration. Such application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application with the person, company or association of persons, or incorporated company who have been authorized by the Commissioner of Public Lands to furnish water for the reclamation of said land; and if said applicant has at any previous time entered land under the provisions of this act, he shall so state in his application, together with the description, date of entry and location of said lands. The Commissioner of Public Lands shall thereupon file in his office the application and papers relating thereto, and, if allowed, issue a certificate of location to the applicant. All applications for entry shall be accompanied by a payment of one dollar per acre, which shall be paid as a partial payment on the land if the application is allowed, and all certificates when issued shall be recorded in a book to be kept for that purpose. If the application is not allowed, or the contractor fails to complete the work according to contract the one dollar per acre accompanying the application shall be returned to the applicant. The Commissioner of Public Lands shall dispose of all lands accepted by the State under the provisions of this act at a uniform price of not less than ten dollars per acre, one-tenth to be paid at the time of entry and the remainder in nine equal annual installments, with interest at six per cent. per annum payable annually, provided a settler may make payment in full at any time upon or after making final proof.

SEC. 13. All moneys received by the Commissioner of Public Lands from the sale of lands selected under the provisions of this act shall be deposited with the State Treasurer and shall constitute a trust fund in the hands of said treasurer to be used in the reclamation of other arid lands.

Certified
copy of
contract.

Filing of
above appli-
cation.

Fee of \$1.00
per acre.

Disposal of
lands.

Deposit of
funds re-
ceived.

SEC. 14. Within one year after any person, company or association of persons or incorporated company authorized to construct irrigation works under the provisions of this act, shall have notified the settlers under such works that they are prepared to furnish water under the terms of their contract with the State, each settler shall enter into a contract with the State for the purchase of the land described in his certificate of location, complete the first annual payment thereon, and shall cultivate and reclaim not less than one-sixteenth part of the land filed upon by him, and within two years after the said notice, the settler shall have actually irrigated and cultivated not less than one-eighth of the land filed upon, and within ten years from the date of said notice the settler shall appear before the Commissioner of Public Lands or the clerk of the superior court, within the county wherein said land is situated and make final proof of reclamation, settlement and occupation, which proof shall embrace evidence that he has a perpetual water right for his entire tract of land sufficient in volume for the complete irrigation and reclamation thereof; that he is an actual settler thereon and has cultivated and irrigated not less than one-eighth of said tract, and such further proof, if any, as may be required by the regulations of the Department of the Interior, and the Commissioner of Public Lands. The officer taking this proof shall be entitled to receive a fee of two dollars (\$2.00), which fee shall be paid by the settler and shall be in addition to the price paid for the land. All proofs so received shall be submitted to the Commissioner of Public Lands and shall be accompanied by the last and final payment for said land, and approved by the Commissioner of Public Lands, and such proceedings had that a patent of said land shall be issued: *Provided*, That when the Commissioner of Public Lands shall take such final proof all fees received by him shall be turned in to the State Treasurer.

SEC. 15. After the issuance of a patent to any land by the United States to the State, notice thereof shall be forwarded to the party, if any entitled to said land, and, upon full payment having been made, it shall be the duty of the Commissioner of Public Lands to certify such fact to the Governor, whereupon he shall cause a patent to be issued

Settlers to
contract to.

Final proof—
what to
show.

Fee for and
submission
of proofs.

Patents—
signed by
Governor—
where re-
corded.

to the purchaser, the patent to be signed by the Governor and attested by the Secretary of State with the seal of the State thereto attached, and shall be recorded in the office of the Commissioner of Public Lands, and no fee shall be required other than the fee provided for in this act.

Water rights
to attach.

SEC. 16. The water right to all land acquired under the provisions of this act shall attach to and become appurtenant to the land as soon as title passes from the United States to the State. Any person, company or association

Prior liens.

of persons, or incorporated company furnishing water for any tract of land shall have a prior lien on said water right and land upon which said water is used for all deferred payments for said water right and for any maintenance fee due, said lien to be in all respects prior to any other lien or liens created or attempted to be created by the owner or possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired and until all delinquent maintenance fees are fully paid. The contract for the water right upon which the aforesaid lien

Recording of
water right
contracts.

is founded shall be recorded in the office of the County Auditor of the county where the land is situated. Upon default of any of the deferred payments secured by any lien under the provisions of this act and any maintenance fee, the person, company, or association of persons, or incorporated company holding or owning said lien, may foreclose the same according to the conditions and terms of the contract granting and selling to the settler the water right and providing for a maintenance fee. All sales shall be advertised in a newspaper of general circulation, published in the county where said land and water right is situated, once a week, for four consecutive weeks, and shall be sold to the highest bidder at the front door of the court house of the county, or such place as may be agreed upon by the terms of the contract. And the sheriff of said county shall in all such cases give notice of sale and shall sell such land and water right and shall make and deliver a certificate of sale to the purchaser, and at such sale no person, company, or association or persons, or incorporated company, owning or holding any lien shall bid in or purchase any land or water right

Sales to be
advertised.

Sheriff to
give notice
of sale.

at a greater price than the amount due on deferred payment or payments for said water right and land and maintenance fee due and the costs incurred in making the sale of the land and water right. At any time within nine months after the foreclosure sale by the sheriff of the land and water right as aforesaid, the original owner against whom the lien has been foreclosed, or any other party entitled to redeem land sold under execution may redeem land and water right so sold in the same manner and order and under the same procedure as is or may be provided by law for the redemption of land sold under execution. The party reclaiming said land and water right shall pay to the sheriff the amount for which said land and water right was sold and costs and increased costs, together with interest thereon at the legal rate, and all taxes and payments maturing subsequent to such foreclosure as well as all maintenance fees due at the time of redemption with interest at like rate. If there be more than one redemption each successive redemption shall be made within six (6) weeks after the last preceding redemption. And where the lien holder becomes the purchaser at such foreclosure sale, and in no other case, if such land and water right be not redeemed by the original owner or other person entitled to redeem as above provided within nine (9) months then at any time within three (3) months after the expiration of such nine (9) months any person desiring to settle upon and use such land and water right may redeem the said land and water right in the manner hereinbefore provided for redemption by the owner or other redemptioners. Where such land and water right are not purchased by the lien holder at such foreclosure sale the sheriff shall pay out the proceeds of such sale as follows:

First. He shall retain all charges, costs and fees for his services and account for the same as in civil cases.

Second. To the lienholder or his assigns the amount of the lien together with all interest, costs and fixed charges thereon.

Third. The balance of any remaining, to the person against whom such lien was foreclosed or his assigns. When the period of redemption shall have expired the sheriff or his successor in office shall execute a proper conveyance of the

Redemption.

Succeeding redemptions.

Sheriff to pay proceeds.

land and water right sold, to the party entitled thereto. The foreclosure herein provided for may be transferred to the superior court of the proper county in the same manner and with like effect as foreclosure of chattel mortgages on notice may be transferred.

Maps—
what to
show.

SEC. 17. The maps in the office of the Commissioner of Public Lands, of the land selected under the provisions of this act, shall show the location of the canals or other irrigation works approved in the contract with the Commissioner of Public Lands, and all land filed upon shall be subject to the right of way of such canals, distribution system and irrigation works. Such right of way to embrace the entire width of the canal, distribution and irrigation works and such additional width as may be required for their proper operation and maintenance.

Width of
right-of-
way.

Rules for
filing.

SEC. 18. The Commissioner of Public Lands shall provide suitable rules for the filing of proposals for constructing irrigation works, and for the forfeiture of entry by settlers, upon failure to comply with the provisions of this act. There shall be kept in the office of the Commissioner of Public Lands for public inspection, copies of all maps, plats, contracts for the construction of irrigation works, and of the entries of the land by settlers. He shall require from each person, company or association of persons, or incorporated company engaged in the construction of irrigation works under the provisions of this act, an annual report, to be submitted to him on or before November 1st of each year. This report shall show the number of water rights sold, the number of users of water under said irrigation works, the legal subdivisions of land for which water is to be furnished, the names of the officers of the company, the acreage of land which the said irrigation works are prepared to supply with water, and such other data as the Commissioner of Public Lands may see fit to require. The rules required by this section may be waived in the case of irrigation works being constructed by any person, colony or association of persons to furnish water for land settled upon and being reclaimed by themselves.

Annual re-
ports to Com-
missioner.

Waiver of
rules.

Fees of Com-
missioner of
Public
Lands.

SEC. 19. The Commissioner of Public Lands shall collect the following fees: For filing each application one (1) dollar; for filing each final proof one (1) dollar; for issuing

each patent two (2) dollars; for making certified copies of papers or records, the same fee as is provided for to be charged by the Secretary of State for like services. All moneys collected and fees received under this act shall be paid by the Commissioner of Public Lands to the State Treasurer and credited by him to the trust fund created by said act of Congress.

SEC. 20. The Commissioner of Public Lands shall issue on or before November 30th of each year a report setting forth in detail the names, location and character of the irrigation works in process of construction, the acreage and legal subdivision of land intended to be reclaimed, and the terms of payment for both water rights and land. Not less than one thousand copies of such report shall be printed for gratuitous distribution. Commissioner's annual report.

SEC. 21. Any contract for the reclamation of arid land under this act shall provide that a water right be extended to all state, school and granted lands owned by the State of Washington, under the canal and irrigation works to be constructed under such contract at the same rates and upon the same terms and conditions as apply to the lands granted under said act of Congress. Contracts for reclamation.

SEC. 22. The State of Washington shall, out of the money arising from its disposal of any lands selected under this act, first reimburse itself for any and all costs and expenditures incurred, and heretofore incurred, by it in selecting, irrigating and reclaiming said land. State to first reimburse itself.

SEC. 23. All suits or actions brought by the Commissioner of Public Lands, under the provisions of this act, shall be instituted by him in the name of the State of Washington. Commissioner of Public Lands to institute suits.

SEC. 24. That section 2 of an act entitled "An act accepting the terms of the act of Congress, approved August 18th, 1894, providing for the reclamation, settlement and disposition of the one million acres of said land granted therein, making appropriation therefor and declaring an emergency, approved March 22nd, 1895," creating the office of commissioner of arid lands, be and the same is hereby repealed. Repeal.

Emergency.

SEC. 25. An emergency exists and this act shall take effect immediately.

Passed the Senate February 26, 1903.

Passed the House March 11, 1903.

Approved by the Governor March 16, 1903.

CHAPTER 153.

[H. B. No. 396.]

AMENDING CODE OF PUBLIC INSTRUCTION.

AN ACT to amend Section 117 of an act entitled "An act to establish a general, uniform system of public schools in the State of Washington, and repealing Chapter VI of Title III, Chapter VII of Title V, all of Title X except Chapter XVII, Chapter IV of Title L, all being of Volume 1 of Hill's Annotated Statutes and Codes of Washington; also repealing all amendments thereto; also repealing an act entitled 'An act concerning the formation of new school districts, changing the boundaries and transferring territory from one district to another,' approved March 9, 1893; also repealing an act entitled 'An act to provide for the management and control of State normal schools in the State of Washington,' approved March 10, 1893, and all amendments thereto; also repealing an act entitled 'An act granting to school districts the right to purchase school house sites of school lands belonging to the State of Washington, of not less than one acre, and not more five acres, and granting to school districts the preference right to purchase such sites, and declaring an emergency,' approved February 26, 1895; also repealing an act entitled 'An act relating to the indebtedness of school districts, providing means and methods for paying and funding the same, and means for validating the same or any part thereof incurred in excess of one and one-half per centum of the taxable property of the school district without the assent of three-fifths of the voters of the school district voting at an election held for that purpose, and declaring that an emergency exists for the taking effect of this act on its passage and approval by the governor,' approved March 1, 1895; also repealing an act entitled 'An act to provide for the formation of joint school districts, and to prescribe the minimum number of school children required for the formation of new school districts and declaring an emergency,' approved March 13, 1885;" *said act of which this act is amendatory, being known and cited as the Code of Public Instruction of the State of Washington, and being Chapter CXVIII of the Session Laws of 1897, approved March 19th, 1897.*

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

SECTION 1. That section 117 of the Code of Public In-