

county with a view to establishing and maintaining a state trout hatchery thereon. Survey.

SEC. 2. That if the fish commissioner finds Lake Crescent, in Clallam county, a suitable lake for the location of a trout hatchery he is hereby authorized and directed to establish and maintain a state trout hatchery on Lake Crescent in Clallam county, State of Washington, and there is hereby appropriated out of the general fund, not otherwise appropriated, the sum of seven thousand dollars (\$7,000) to erect, equip and maintain the same for two years.

Establishment.

Appropriation \$7,000.00.

Passed the Senate March 4, 1913.

Passed the House March 12, 1913.

Approved by the Governor March 17, 1913

CHAPTER 89.

[S. B. 148.]

RELATING TO DIKES AND DRAINS.

AN ACT relating to dikes and drains, providing for assessments according to benefits, authorizing the incurring of additional obligations in cases of emergency, and validating certain warrants heretofore issued for such purposes, and amending sections 4107 and 4121 of Remington & Ballinger's Annotated Codes and Statutes of Washington.

(For consolidation of diking districts, see ch. 43 *supra*. For bonding district in case of emergencies, see ch. 156.)

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

SECTION 1. That section 4107 of Remington & Ballinger's Annotated Codes and Statutes of Washington is hereby amended to read as follows:

[Amends Rem. Bal., § 4107; Pierce's Code, 1912, 151 § 33.]

Section 4107. If at any time it shall appear to the board of diking commissioners that any lands within or without said district as originally established are being benefited by the diking system of said district and that said lands are not being assessed for the benefits received, or that any lands within said district are being assessed out of or not in proportion to the benefits which said lands are receiving from the maintenance of the diking system of said district, and said board of diking commissioners shall

Lands within or without district may be assessed.

Assessments
to be
equalized.

Petition
court for
changes.

determine that certain lands, either within or without the boundaries of the district as originally established, should be assessed for the purpose of raising funds for the future maintenance of the diking system of the district, or that the assessments on land already assessed should be equalized by diminishing or increasing the same so that said lands shall be assessed in proportion to the benefits received, said commissioners shall file a petition in the superior court in the original cause, setting forth the facts, describing the lands not previously assessed and the lands the assessments on which should be equalized, stating the estimated amount of benefits per acre being received by each tract of land respectively, giving the name of the owner or reputed owner of each such tract of land, and praying that such original cause be opened for further proceedings for the purpose of subjecting new lands to assessment or equalizing the assessments upon lands already assessed, or both.

Service
of process.

Upon the filing of such petition, summons shall issue thereon and be served on the owners of all lands affected, in the same manner as summons is issued and served in original proceedings, as near as may be, and if such new lands lie within the boundaries of any other diking district, said summons shall also be served upon the commissioners of such other diking district.

Other diking
districts may
come in.

In case any of the new lands sought to be assessed in said proceeding lie within the boundaries of any other diking district, and the diking commissioners of such other district believe that the maintenance of the dike or dikes of such other district is benefiting lands within the district instituting the proceedings, said diking commissioners of such other districts shall intervene in such proceedings by petition, setting forth the facts, describing the lands in the district instituting the proceeding which they believe are being benefited by the maintenance of the diking system of their district, and praying that the benefits to such lands may be determined and such lands subjected to assessment for the further maintenance of the diking system of their

district, to the end that all questions of benefits to lands in the respective districts may be settled and determined in one proceeding, and such petitioners in intervention shall cause summons to be issued upon such petition in intervention and served upon the commissioners of the diking district instituting the proceeding and upon the owners of all lands sought to be affected by such petition in intervention.

In case the owner of any such new lands sought to be assessed in said proceedings shall be maintaining a private dike against salt or fresh water for the benefit of said lands, and shall believe that the maintenance of such private dike is benefiting any lands within or without the district instituting the proceedings, or in case any such new lands sought to be assessed are included within the boundaries of some other diking district and are being assessed for the maintenance of the dikes of such other district, and the owner of such lands believes that the maintenance of the dike or dikes of such other district is benefiting lands included within the district instituting said proceedings, such owner or owners may by answer and cross-petition set forth the facts and pray that at the hearing upon said petition and cross-petition the benefits accruing from the maintenance of the respective dikes may be considered, to the end that a fair and equitable adjustment of the benefits being received by any lands from the maintenance of the various dikes benefiting the same, may be determined for the purpose of fixing the assessments for the future maintenance of such dikes, and may interplead in said proceeding such other diking district in which his lands sought to be assessed in said proceeding are being assessed for the maintenance of the dike or dikes of such other district.

No answer to any petition or petition in intervention shall be required, unless the party served with summons desires to offset benefits or to ask other affirmative relief, and no default judgment shall be taken for failure to answer any petition or petition in intervention, but the

Private dikes.

Private claims set out by cross-petition.

No answer in pleadings required.

petitioners or petitioners in intervention shall be required to establish the facts alleged by competent evidence.

Jury impaneled to assess benefits.

Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons, the court shall impanel a jury to hear and determine the matters in issue, and the jury shall determine and assess the benefits, if any, which the respective tracts of land are receiving or will receive from the maintenance of the dike or dikes to be maintained, taking into consideration any and all matters relating to the benefits, if any, received or to be received from any dike, structure or improvement, and to credit, or charge, as the case may be, to each tract so situated as to effect any other tract or tracts, or having improvements or structures thereon or easements granted in connection therewith effecting any other tract or tracts included in such proceedings, and shall specify in their verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. Upon the return of the

Verdict.

Judgment.

Appeals.

verdict of the jury, the court shall enter its judgment in accordance therewith, as supplemental to the original decree, or in case a petition in intervention be filed by the diking commissioners of some other district than that instituting the proceeding, such judgment to be supplemental to all such original decrees, and thereafter, all assessments and levies for the future maintenance of any dike or dikes described in said judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in said judgment. Every person or corporation feeling himself or itself aggrieved by any such judgment may appeal to the supreme court within thirty days after the entry thereof, and such appeal shall bring before the supreme court the propriety and justness of the verdicts of the jury in respect to the parties to the appeal. No bonds shall be allowed on such appeals. Nothing in this section contained shall be construed as affecting the right of diking districts to consolidation in any manner provided by law.

SEC. 2. That section 4121 of Remington & Ballinger's Annotated Codes and Statutes of Washington be, and the same is hereby amended to read as follows: The board of commissioners of any diking district organized under the provisions of this act shall, on or before the first day of November, of each year, make an estimate of the cost of maintenance of the diking system in such district, which estimate shall include the cost of making any necessary repairs that it might become necessary to make in the maintenance of such system. Such estimate shall be for the succeeding year, and the amount so estimated shall be certified by the board of commissioners to the auditor of the county in which such district is located, on or before said date, and the amount thereof shall be levied against and apportioned to the land in such district benefited by said improvement, in proportion to the maximum benefit originally assessed, and such amount shall be added to the general taxes against said lands and collected therewith: *Provided, however,* That in case of emergency not in contemplation at the time of making such annual estimate the diking commissioners may incur additional obligations and issue valid warrants therefor in excess of such estimate, and all such warrants so issued shall be valid and legal obligations of such district; and all warrants heretofore issued for such purposes under the provisions of this act, are hereby declared to be valid and legal obligations of the district so issuing the same.

[Amends Rem.-Bal., § 4121; Pierce's Code, 1912, 151 § 61.]

Estimate of cost of maintenance.

Levy.

Emergencies.

Passed the Senate February 17, 1913.

Passed the House March 7, 1913.

Approved by the Governor March 17, 1913.