

ganized, established and created. And all debts, contracts and obligations heretofore made or incurred by or in favor of any such commercial waterway district so attempted to be organized, established and created, and all official bonds or other obligations executed in connection with or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect: *Provided*, That nothing herein shall be construed to legalize or validate any attempted assessment or condemnation which may have been had or initiated by such district prior to the passage of this act.

Declared  
legal.

SEC. 2. An emergency exists and this act shall take effect immediately.

Emergency.

Passed the Senate January 30, 1911.

Passed the House February 2, 1911.

Approved by the Governor February 8, 1911.

## CHAPTER 11.

[S. B. 77.]

### RELATING TO COMMERCIAL WATERWAY DISTRICTS.

AN ACT relating to all commercial waterway districts, providing for their establishment, organization and creation, prescribing the powers, duties and authority of all commercial waterway districts, whether organized or validated under this act or organized or validated by virtue of any other act, authorizing all steps and proceedings or organizations which may have been had or taken under the commercial waterway act of 1909 approved August 17, 1909, to be continued and carried out under the provisions hereof, providing for the construction and maintenance of and means of payment for a system of commercial waterways, including the straightening, deepening and widening of rivers, water courses and streams, providing for the protection of the banks thereof, and disposing of the interests of the state in the beds and shores of navigable waters, authorizing municipal corporations to advance funds in aid of commercial waterway districts, validating and legalizing the organization and establishment of commercial waterway districts organized or established, or attempted to be organized or established under the act of the legislature ap-

[This act is supplemental to chap. 10 *supra*, and is intended to cover defects in Act of Aug. 17, 1909, §§8166-8212, Rem.-Bal., as found in State ex rel. Bussell v. Abraham et al., decided Jan. 12, 1911.]

proved August 17, 1909, on the subject of commercial waterways, and legalizing and validating existing contracts and obligations of such districts, and official bonds and other obligations executed in connection with, or in pursuance of, such attempted organization, and declaring an emergency.

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

[See note to title.]

SECTION 1. Any county or portion of a county requiring commercial waterways may be organized into a commercial waterway district, and when so organized such district, and the board of commissioners hereinafter provided for, shall have and possess the power herein conferred, or that may hereafter be conferred by law upon such district and board of commissioners, and said district shall be known and designated as commercial waterway district No. . . . . of the county of . . . . ., the State of Washington, and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession, and shall adopt and use a seal.

Commissioners possess power.

Right to sue.

The commissioners hereinafter provided for, and their successors in office, shall, from the time of the organization of such commercial waterway district, have the power, and it shall be their duty to manage and conduct the business and affairs of the district; make and execute all necessary contracts, employ and appoint such agents, officers and employes as may be required, and prescribe their duties, and perform such other acts as hereinafter provided, or that may hereafter be provided by law.

Commissioners make all contracts.

SEC. 2. For the purpose of the formation of such waterway district a petition shall be presented to and filed with the board of county commissioners of the county in which said proposed commercial waterway district is located, which petition shall set forth the object for the creation of said district; shall designate the boundaries thereof and set forth therein the area of land to be benefited by the proposed commercial waterway system, and shall also contain the names of all freeholders residing within said proposed district, so far as known, and shall contain a brief description of the proposed system of waterways, route over which

Petition presented and filed.

Route of construction.

the same is to be constructed, together with the proposed spurs or branches, if any there may be, and the termini thereof, and set forth the further fact that the establishment of said district and the proposed system of commercial waterways will be of special benefit to the property included therein, and will be conducive to the public health and sanitation and increase the public revenue. Said petition shall be signed by the owners of at least a majority of the area of land in the proposed district, or by their agents, and shall pray that the same may be organized under the provisions of this act. Said petitioners shall at the time of the filing of said petition file a bond with such county commissioners, running to the State of Washington, in the penal sum of five hundred dollars, with two or more sureties, to be approved by the board of county commissioners, conditioned that they will pay all costs in case said district, for any reason, shall not be established.

[See note to title.]

Signed by owners of majority of area.

SEC. 3. Said petition shall be heard at a regular or special meeting of the board of county commissioners of said county, and said board of county commissioners shall give notice of said hearing by publishing such notice for at least two weeks in two successive issues of some weekly newspaper printed and published in said county, and in case no such newspaper be printed or published in said county, then in some such newspaper of general circulation therein, before the time at which the same is to be heard. Said notice shall give a general description of the nature of the improvement petitioned for, the boundaries and approximate area of the proposed district, the number of freeholders residing therein, so far as known, as shown by said petition, the number of petitioners on said petition, together with the total estimated amount of acreage represented to be owned by said petitioners. Said notice shall further state that said petition is on file at the office of said county commissioners, where the same may be examined or inspected by any person interested in said proposed district. When such petition is presented for hearing, the board of county commissioners shall hear the same, or may adjourn said

Publish notice two weeks.

Petition open to inspection.

[See note  
to title.]

Final hearing.

Privilege  
accorded  
corporations.

Petition for  
the extension  
of bound-  
aries.

hearing from time to time, not exceeding one month in all; and any person or corporation may appear before said board of county commissioners and make objections to the establishment of said district, or the proposed boundary lines thereof, and upon a final hearing said board of county commissioners shall make such changes in the proposed boundaries as they may deem to be proper, and shall establish and define such boundaries, and shall ascertain and determine the area of land that will be benefited by said proposed system of commercial waterways, and shall find whether the proposed commercial waterways will be conducive to the public health, sanitation, welfare and convenience, increase the public revenue, and be of special benefit to the majority of the land included within said boundaries of said proposed district so established by said board of county commissioners: *Provided*, That no changes shall be made by said board of county commissioners in said boundary lines so as to include territory outside of the boundaries described in said petition: *Provided further*, That any person or corporation owning lands within the proposed boundaries and who did not sign said petition, or any person, or corporation owning land not included within the proposed boundaries may file a petition with the board of county commissioners asking that the proposed boundaries be extended so as to include other lands described therein; setting forth in said petition the reason therefor, but no person, persons or corporations not owning land included within the boundaries, as originally petitioned for, shall have the right to file such petition unless they ask therein to have their own lands included within the proposed boundaries: *Provided*, Any corporation owning land within the boundaries described in the original petition may also petition the board of county commissioners for an extension of the proposed boundaries: *Provided further*, That the boundaries of any commercial waterway district heretofore or hereafter established may be extended by the board of county commissioners so as to include other lands in said county, upon petition signed by the owners of a

majority of the area of said lands in the proposed extension; which said petition for extension shall set forth and contain, with reference to the extension, such matters and things and data so far as applicable, as is provided for in the petition required for presentation to the board of county commissioners for the purpose of the formation of the original waterway district: *Provided further*, That all necessary expenses incident to making such extension, together with the proportionate share of the first cost of any system of commercial waterways existing in the original commercial waterway district at the time of making said extension, shall be levied against and apportioned to the land included in such extension as in this act provided. In such case, the board of county commissioners shall give like notice as provided for in this section of the hearing of the original petition, and the final hearing thereof may in such case be continued from time to time for a period of not exceeding sixty days, and if on final hearing the board of county commissioners deem it advisable and for the best interest of all concerned, they may grant the prayer of said petitioners in whole or in part, and said board of county commissioners of such county shall enter an order on the records of their office setting forth all facts found by them upon the final hearing of said petition, and which may be adduced by them from the evidence heard upon the final hearing thereof.

[See note to title.]

Providing or necessary expenses.

Made of record.

SEC. 4. Upon the entry of the findings of the final hearing of said petition as set forth in the last preceding section, said board of county commissioners of said county, if they find said proposed system of commercial waterways will be of special benefit to the majority of the area of lands included within said boundaries and will be conducive to the public health, sanitation, welfare and convenience, and will increase public revenue, shall give notice of an election to be held in such proposed commercial waterway district for the purpose of determining whether the same shall be organized under the provisions of this act as a commercial waterway district of the

Give notice of election.

[See note  
to title.]

State of Washington, and for the further purpose of choosing at such election three commissioners, who shall be known and designated as "Commercial Waterway Commissioners" for said district proposed to be organized, which said three commissioners shall, upon their election, be the district authorities of said commercial waterway district, and such notice shall describe the boundaries as established by the board of county commissioners on its final hearing of said petition and shall state the name of such proposed commercial waterway district, and approximately, the area of land in said district to be benefited thereby, and the same shall be published for, at least, two weeks prior to such election in a weekly newspaper printed and published within the county within which said district is located, and in case no such newspaper be printed or published in such county, then in such newspaper of general circulation therein for two successive issues thereof, and shall be posted for the same period in at least four public places within the boundaries of said proposed district, which notice shall designate the places within the proposed district where the said election shall be held and require the voters to cast ballots which shall contain the words, "Commercial Waterway District, Yes" or "Commercial Waterway District, No," and also names of the persons voted for for commissioners for said commercial waterway district. The board of county commissioners shall also appoint two judges, one inspector and two clerks for each of said election places and the compensation shall be the same as hereinafter provided for, and shall be a charge upon said district in case the same be established and shall be paid in the same manner as other expenses are paid which are incurred in the establishment and construction of said improvement. In case said district be not established, then all costs and expenses shall be collectable from the bond hereinafter provided for, and any person having a charge against said district shall have a right of action thereon.

Published  
for two  
weeks.

Posting in  
lieu of  
publication.

Provision  
for election.

SEC. 5. Said election shall be held on the day designated in such notice and shall be conducted as hereinafter provided for, and no person shall be entitled to vote at such election unless he shall be a qualified elector of the county in which such district is located, and shall have resided within the boundaries of said proposed district for a period of not less than ninety days next preceding the date of such election, or, unless he shall be the owner of real estate situated within said proposed district. The board of county commissioners shall on the Monday next succeeding said election count and canvass the votes cast thereat, and if on said canvass and count it appears that the majority of votes cast are for the "Commercial Waterway District, Yes," the board shall immediately enter an order upon its records declaring the proposed territory duly organized as a commercial waterway district, giving to such district a proper number, followed by the name of the county and state, and shall, also, declare the three persons who received the highest number of votes duly elected commercial waterway commissioners of such commercial waterway district. Said board shall cause a copy of the order entered of record duly signed to be filed in the office of the secretary of state, and from and after the date of such filing said organization shall be deemed complete, and the members of said board of commissioners so chosen at such election, before entering upon the discharge of their duties shall qualify as county commissioners are required to qualify, and to enter into a bond payable to the State of Washington for the benefit of said district with two or more sureties in the penal sum of not less than one thousand (\$1,000) dollars nor more than five thousand (\$5,000) dollars, conditioned for the faithful performance of their duties as commercial waterway commissioners, to be approved by the board of county commissioners and to be filed with the county clerk of the county in which said district is situated. The said commercial waterway commissioners shall hold office until the

[See note to title.]

Qualification of voters.

Number district.

Order of record.

Commissioners shall give bond.

[See note  
to title.]

next general election at which officers of said commercial waterway district are to be elected and until such further time as their successors are elected and qualified. The members of each successive board of commercial waterway commissioners, whether elected or appointed, shall before entering upon their duties take an oath and enter into a bond, as herein provided, and after being approved by the board of county commissioners shall be filed in the office of the county clerk of the county in which said district is situated.

File bond  
with county  
clerk.

Elections—  
when held.

SEC. 6. A general election for the election of a board of commercial waterway commissioners for such district shall be held upon the first Tuesday after the first Monday in December of each year after the year in which said district shall have been established and organized, and the term of office shall begin the second Monday of the following January. Said election shall be held in accordance with the school laws of the State of Washington. No official ballot shall be required at the first or any subsequent election, and the law known as the direct primary law of this state shall have no application to the election held under this act, and the expense thereof shall be defrayed by said district, and the judges, clerks and inspectors of said election shall each receive as compensation for the services rendered at such election the sum of three (\$3) dollars per day: *Provided*, That at least thirty days' notice immediately preceding any such general election shall be given thereof by the board of commissioners of such commercial waterway district by posting the same in four public places within the said district. Said notice shall designate the voting places and contain the names of two electors of said district for each of said voting places as judges of said election, and the name of one elector of said district for each of said voting places as inspector thereof, the same to be chosen by said board of commissioners. Said board of commissioners shall act as a canvassing board to canvass the votes of each election, and they shall meet the day following such election and

Compensa-  
tion for  
election  
officials.

Commis-  
sioners  
canvassing  
board.

canvass said votes and declare the result thereof and issue certificates of election. [See note to title.]

SEC. 7. Any commercial waterway district organized or validated under the provisions of this act, or attempted to be organized under the provisions of any previous act and validated under the provisions of any other act, shall have the following powers and authority:

(a) The right of eminent domain, with power by and through its board of commissioners to cause to be condemned and appropriated private property for the use of said organization in the construction and maintenance of a system of commercial waterways and make just compensation therefor: *Provided*, That the property of private corporations may be subjected to the same rights of eminent domain as that of private individuals: *Provided further*, That the said board of commissioners shall have the power to acquire by purchase all the property necessary to make the improvements herein provided for.

Power of waterway district.

(b) Said board of commissioners herein provided shall have the right, power and authority to straighten, widen, deepen and improve any and all rivers, watercourses, streams, whether navigable or otherwise, flowing through or located within the boundaries of said district.

Power of commissioners of waterway district.

(c) To construct all needed and auxiliary ditches, canals, flumes, locks, dykes, and all other artificial appliances in the construction of a commercial waterway system, and which may be necessary or advisable to protect the land in any commercial waterway district, from overflow, or to assist and become necessary in the preservation and maintenance of such commercial waterway system.

(d) In the accomplishment of the foregoing objects, the commissioners of such waterway district are hereby given the right, power and authority by purchase or the exercise of the power and authority of eminent domain, or otherwise, to acquire all necessary and needed rights-of-way in the straightening, deepening, or widening, or otherwise improving of such rivers, watercourses or streams, and such auxiliary ditches, canals, flumes and dykes herein above

Right of eminent domain.

[See note  
to title.]

mentioned, and when so acquired shall have and are hereby given the right, power and authority by and with the consent and approval of the United States government in cases where such consent is necessary, to divert, alter and change the bed or course of or otherwise improve any such river, watercourse or stream aforesaid, or to deepen, widen and straighten the same: *Provided*, That such diversion, alteration or change shall not be had without payment of compensation or damages for any property rights, riparian or otherwise, that may be taken or damaged thereby.

Compensa-  
tion to be  
made.

(e) The right, power and authority to acquire the necessary and needed rights-of-way for any and all purposes created by this act may be acquired by the commissioners of any waterway district over and across or upon any land or interest therein of the State of Washington, or any county of this state, and streets, alleys, and avenues, or public places of any city, town or municipal corporation of this state: *Provided, however*, That the construction of such commercial waterway or commercial waterways shall not have the effect of impairing any right, power or authority now existing on the part of any city or town to construct in, upon, underneath, above or across such commercial waterway or commercial waterways, sewers, water pipes, mains, the granting of any franchise thereon, or improve by the way of planking, replanking, paving, repaving or any other power, right and authority which, but for this act, such city or town would have in or to such street, avenue, alley or public place, except, however, that such right, power and authority on behalf of such city or town shall not be exercised either by such city or town or by any person or persons, firms or corporations, to whom it might grant any right or franchise which will materially impair the efficiency of said commercial waterway or commercial waterways. The provisions of this section as regards such system of commercial waterway or commercial waterways, to be constructed within the boundaries of any in-

Shall not  
conflict with  
existing  
authority.

Provisions  
inside of  
corporate  
limits.

corporated city or town, shall apply to the extension or enlargement of any commercial waterway or commercial waterways already existing upon, over and across any street, avenue, alley or public place of any city or town, as well as the original construction thereof. [See note to title.]

SEC. 8. All the right, title and interest of the State of Washington in and to so much of the beds and shores of any navigable river, stream, waterway or watercourse located within the boundaries of any commercial waterway district up to and including the line of ordinary high tide in waters where the tide ebbs and flows and up to and including the line of ordinary high water within the banks of any navigable rivers and lakes, to the extent that the same, under any proceedings to be had under this act, shall cease to become part of such river, stream, waterway or watercourse by reason of the diversion of such river, stream, waterway or watercourse, under any proceedings had under this act, are hereby given and granted and vested in the respective commercial waterway districts now existing, or hereafter to be formed, and the commissioners of such respective commercial waterway districts are hereby given the right, power and authority to sell such beds and shores in such manner and upon such notice and proceedings as govern, under the existing laws of the state, the board of county commissioners in the sale and disposition of any real estate belonging to the counties of this state. The proceeds of such sales are to be used for the benefit of such commercial waterway districts, and the payment of any expenses connected with the construction of such commercial waterways or maintenance thereof: *Provided, however,* That the commissioners of such commercial waterway district may, in their discretion, exchange such abandoned beds and shores, for other property needed in the straightening, deepening or widening of such rivers, watercourses or streams, and which exchange may be made upon such terms and conditions and in such areas as, in the discretion of such commissioners, they may deem advisable and Right to sell beds and shores.

May exchange for other property.

[See note  
to title.]

for the best interests of such commercial waterway district without any notice or other formality or proceedings whatever.

County audi-  
tor may sign  
petition.

SEC. 9. (a) Whenever the county owns any lands situated within the boundaries of the proposed commercial waterway district, the county auditor, when so directed by the board of county commissioners of the county in which such lands are situated, is hereby authorized to sign the petition praying for the formation of such commercial waterway districts for and on behalf and as the act and deed of such county, and when so signed the same shall be considered in determining the question of majority signature in the area of the land to the petition for a formation of such district.

Comptroller  
may sign  
for city.

(b) Whenever any city or town owns any land situated within the boundaries of a proposed commercial waterway district, the city comptroller, when so directed by the council of said city or town in which such lands are situated, is hereby authorized to sign the petition praying for the formation of such commercial waterway districts for and on behalf and as the act and deed of such city or town, and when so signed the same shall be considered in determining the question of majority signature in the area of land to the petition for the formation of such district.

Commissioner  
of public  
land may  
sign.

(c) Whenever the State of Washington owns any land situated within the boundaries of the proposed commercial waterway district the commissioner of public lands of the State of Washington, when so directed by the board of said land commissioners of said state, is hereby authorized to sign the petition praying for the formation of such commercial waterway district for and on behalf and as the act and deed of such state, and when so signed the same shall be considered in determining the question of majority signature in the area of the land to the petition for the formation of such district.

(d) Whenever any highway, roads or bridges are maintained by the county in which a commercial waterway dis-

trict may be established, as herein provided, and it shall appear that the construction and maintenance of such commercial waterway system will be beneficial to such highways, roads, and bridges or which will be beneficial to such highways, roads and bridges as may hereafter be constructed or maintained by the county in which such system of commercial waterways is situated, then the board of county commissioners of such county may, and it shall be the duty of such board to appropriate to such commercial waterway district an amount of money sufficient to pay the proportionate share of such county in accordance with the benefits received or to be received; whenever it may appear to the board of county commissioners of any county that any improvements made or to be made in any commercial waterway district under the provisions of this act shall, on account of the health of the people of the county, be beneficial in respect thereto, the board of county commissioners may make an appropriation of money to such commercial waterway district in such an amount to such board as may seem proper.

[See note to title.]

County commissioners may make appropriation.

(e) Whenever it shall appear to the city or town council of any incorporated city or town, not included or wholly or partly included within the limits of any commercial waterway district that the construction and maintenance of such commercial waterway system will be of special commercial benefit and will be beneficial to the health and sanitation of the inhabitants of such incorporated city or town and to the general welfare of the said city or town, then the said city or town council is hereby empowered and authorized to appropriate such amount of money out of the general funds of the said city or town as may to the said city or town council seem proper and just to such commercial waterway system, or the city or town council may for such purpose levy an assessment upon all the property in said city and town subject to taxation by said city or town, which shall not exceed one-half mill for each dollar of property.

City may make appropriation.

(f) Public highways, streets and alleys shall not be considered in computing the area of said district.

[See note to title.]

Charge of construction.

SEC. 10. Said board of commercial waterway commissioners hereinbefore provided for shall have the exclusive charge of the construction and maintenance of all commercial waterways or commercial waterway systems which may be constructed within the said district, and shall be the executive officers thereof, with full power to bind said district by their acts in the performance of their duties as provided by law. In case of vacancy or vacancies occurring in said board by the death, failure to elect, failure to qualify, resignation, such vacancy or vacancies shall be filled at once from the freeholders and qualified electors of said district by the judge of the superior court of said county, and said appointee shall serve the unexpired term, or until the next general election or until a successor is elected and qualified: *Provided*, That in counties where there may be more than one superior judge, the judge eldest in age shall make such appointment.

Vacancy to be filled.

Judge make appointment.

File petition in superior court.

SEC. 11. Whenever it is desired to prosecute the construction of a system of waterways within said district, said district, by and through its board of commissioners, shall file a petition in the superior court of the county in which said district is located, setting forth therein the route or routes over which the same is to be constructed, with a reasonably accurate description thereof, together with the estimated cost of such proposed improvement, showing therein the names of the land owners whose lands are to be benefited by such proposed improvement, the description of the land owned by each such land owner, and the maximum amount of benefits to be derived by each such lot, tract or parcel of land set forth therein from the construction of said proposed improvement, and that the same will be conducive to the public health, sanitation, convenience and welfare and increase the value of all of said property for purposes of public revenue. Said petition shall further set forth a reasonably accurate description of the tracts or parcels of land or property which will be taken or damaged by said improvement, and the names of the owners and occupants thereof, and all

Description of tracts shall be given.

persons having any interest therein so far as known to the officers filing the petition or appearing from the records in the office of the county auditor, the total amount of land necessary to be taken therefor, and an estimate of the value of said land so sought to be taken. The said petition shall set forth as defendants therein all persons or corporations whose lands would be benefited by said improvement, or whose lands are sought to be appropriated for said improvement, or whose lands will be damaged thereby, or who have any interest in any of said lands or property as mortgagee, or otherwise appearing on the records of the county auditor's office. Said petition shall also set forth that said proposed system of waterways is necessary, and that all lands sought to be appropriated for rights-of-way or other purposes are necessary to be used in the construction and maintenance of said improvement.

[See note to title.]

Necessity for proposed system.

SEC. 12. In the preparation of the facts and data to be inserted in said petition and filed therewith for the purpose of presenting the matter to the said superior court, or any other time, the said board of commissioners of said commercial waterway district may employ one or more good and competent engineers, surveyors and draftsmen to assist them in compiling data required to be presented to the court with said petition as hereinbefore provided, and such legal and other assistance as may be necessary, with full power to bind said district for the compensation of such assistance or employes employed by them, and such services shall be taxed as costs in the suit.

May employ engineers, draftsmen.

SEC. 13. A summons stating briefly the objects of the petition and containing a description of the land, real estate, premises or property sought to be appropriated or damaged, and those which it is claimed to be benefited by such improvement, and stating the court wherein said petition is filed, the date of the filing thereof and when the defendants are required to appear (which shall be ten days, exclusive of the day of service, if served within the county in which the petition is pending, and if in any

Legal time of service.

[See note  
to title.]

Serving  
summons.

other county, then twenty days after such service, and if served by publication, then within thirty days from the date of the first publication), shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein. Said summons must be subscribed by the commissioners, or their attorney, running in the name of the State of Washington and directed to the defendants; and service thereof shall be made by delivering a copy of such summons to each of the persons or parties so named therein, if a resident of the state, or in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode, or in case of a foreign corporation, at its principal place of business in this state, with some person more than sixteen years of age; in case of domestic corporations, said service shall be made upon the president, secretary or other director or trustee for such corporation; in case of minors, on their guardians; or in case no guardian shall have been appointed, then on the person who has the care and custody of such minor; in case of idiots, lunatics or insane persons, on their guardian; or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises or other property sought to be appropriated or damaged, or which it is claimed will be benefited by such improvement, is state, tide, school or county land, the summons shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated or damaged, or which it is claimed will be benefited, is situated. In all cases where the owner or person claiming an interest in such real or other property is a non-resident of this state, or where the residence of such owner or person is unknown, an affidavit of one or more of the commissioners of said district shall be filed that such owner or person is a non-resident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained

Service by  
publication.

by such deponent, service may be made by publication thereof in a newspaper published in the county where such lands are situated, once a week for three successive weeks; and in case no newspaper is published in such county, then such publication may be had in a newspaper published in the county nearest to the county in which lies the land sought to be appropriated or damaged, or which it is claimed will be benefited by said improvement. Such publication shall be deemed service upon each non-resident person or person whose residence is unknown. Such summons may be served by any competent person over twenty-one years of age. Due proof of service of such summons by affidavit of publication shall be filed with the clerk of such court before the court shall proceed to hear the matter. Want of service of such notice shall render the subsequent proceedings void as to the person not served; but all persons or parties having been served with summons as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all cases not otherwise provided for service of notice, order and other papers in the proceedings authorized by this chapter may be made as the superior court, or the judge thereof, may direct: *Provided*, That personal service upon any party outside of the state shall be of like effect as service by publication.

[See note to title.]

Proof of service filed with clerk of court.

SEC. 14. Any or all of said defendants may appear jointly or separately at the time and place appointed for hearing said petition, or to which the same may have been adjourned. If the court or judge thereof shall have satisfactory proof that all of the defendants in said action have been duly served with said summons, as above provided, and shall be fully satisfied by competent proof that said improvement is practicable and conducive to the public health, sanitation, welfare and convenience, and will increase the value of said lands for the purpose of public revenue, and that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, and that the land,

Defendants may appear for hearing.

[See note  
to title.]

Jury to fix  
compensation.

Summons of  
special jury.

Award  
amount of  
damages.

real estate, premises or other property sought to be appropriated are required and necessary for the establishment of said improvement, the court or judge thereof shall cause a jury of twelve qualified persons to be impaneled to fix the compensation and to assess the damages and benefits, as herein provided, if in attendance upon his court, unless a jury is waived; and if not he may, if satisfied that the public interests require the immediate construction of said improvement, direct the sheriff of his county to summons from the citizens of the county in which the petition is filed as many qualified persons as may be necessary in order to form a jury of twelve persons, unless a jury be waived. If necessary, to complete the jury in any case, the sheriff, under the directions of the court or the judge thereof, shall summons as many qualified persons as may be required to complete the jury from the citizens of the county in which the petition is filed. In case a special jury is summoned the cost thereof shall be taxed as part of the cost in the proceedings and paid by the district seeking to appropriate said land, the same as other costs in the case; and no person shall be competent as a juror who is a resident of, or land owner in, the district seeking to appropriate said land. The jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, by reason of the appropriation and use of such land, real estate, premises or other property for said improvement and shall ascertain, determine and award the amount of damages to be paid to said owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the establishment of said improvement; and shall further find a maximum amount of benefits per acre or per lot or tract to be derived by each of the land owners. And upon a return of the verdict into court the same shall be reported as in other cases; whereupon, a decree shall be entered in ac-

cordance with the verdict so rendered, setting forth all the facts found by the jury, and decreeing that said property be appropriated, and directing the commissioners of the district to draw their warrant on the county treasurer for the amount awarded by the jury to each person for damages sustained by reason of the establishment of said improvement, payable out of the funds of said district.

[See note to title.]

Warrants drawn on county treasurer.

SEC. 15. Such jury shall also ascertain the just compensation to be paid to any person claiming an interest in any lot, parcel of land or property which may be taken or damaged by such improvement, whether or not such person's name or such lot, parcel of land or other property is mentioned or described in such petition: *Provided*, Such person shall first be admitted as a party defendant to said suit by such court and shall file a statement of his interest in and description of the lot, parcel of land or other property in respect to which he claims compensation.

Statement of interest.

SEC. 16. The court may, upon the motion of such district or of any defendant, direct that said jury (under the charge of any officer of the court and accompanied by such person or persons as may be appointed by the court to point out the property sought to be taken or damaged) shall view the lands and property affected by said improvement.

Jury shall view lands.

SEC. 17. If there be any building standing, in whole or in part, upon any land to be taken, the jury shall add to their finding of the value of the land taken the damages to said building. If the entire building is taken, or if the building is damaged so that it cannot be readjusted to the premises, then the measure of damages shall be the fair market value of the building. If part of the building is taken or damaged and the building can be readjusted or replaced on the part of the land remaining, then the measure of damages shall be the cost of readjusting or moving the building, or the part thereof left, together with the depreciation in the market value of said building by reason of said readjustment or moving.

Damages to buildings.

[See note  
to title.]

Segregate  
damage on  
request.

SEC. 18. If the land and buildings belong to different parties, or if the title to the property be divided into different interests by lease or otherwise, the damages done to each of such interests may be separately found by the jury on the request of any party. In making such findings, the jury shall first find and set forth in their verdict the total amount of the damage to said land and buildings and all premises therein, estimating the same as an entire estate and as if the same were the sole property of one owner in fee simple; and they shall then apportion the damages so found among the several parties entitled to the same, in proportion to their several interests and claims and the damages sustained by them respectively, and set forth such apportionment in their verdict. No delay in ascertaining the amount of compensation shall be occasioned by any doubt or contest which may arise as to the ownership of the property, or any part thereof, or as to the extent of the interest of any defendant in the property to be taken or damaged, but in such case the jury shall ascertain the entire compensation or damage that should be paid for the property and the entire interests of all the parties therein, and the court may thereafter require adverse claimants to interplead, so as to fully determine their rights and interests in the compensation so ascertained. And the court may make such order as may be necessary in regard to the deposit or payment of such compensation.

May require  
adverse  
claimants to  
interplead.

Providing for  
omissions.

SEC. 19. If the board of waterway commissioners shall, at any time, discover that any lands within said district will be benefited by the waterway system, and the same were by mistake, inadvertence or other cause omitted from the assessment of benefits as provided for herein, or which were omitted for the reason that they were not at the time of assessing the benefits provided for herein, for any cause, subject to a legal assessment, said commissioners shall file a petition in the superior court in the original cause setting forth the facts of such benefits, describing the lands omitted, the reason the same were omitted in

said original proceedings and giving the names of the owners or reputed owners thereof and praying that said original cause, as to such lands, be opened up for further proceedings for the assessment of the alleged benefits, and upon the filing of said petition summons shall issue thereon and be served on the defendants named in said petition the same as summons is served and issued in original proceedings, and the jury, in assessing the benefits, shall take into consideration the length of time said lands are to receive the benefits from said improvement and its future maintenance, estimating said time from the date when said lands first became legally assessable, which date must be found by the jury in their verdict as to each tract or parcel found to be benefited: *Provided*, That a jury may be waived as in other proceedings herein: *And provided, further*, That in case the expense and the cost of the improvements has been paid for by assessments levied against the land assessed in the original proceedings before the lands provided for in this section are assessed, as provided herein, then, in such case, the assessments levied from time to time on said last mentioned land shall be paid into the maintenance fund of said district.

Levy be paid  
in mainte-  
nance fund.

SEC. 20. Every person or corporation feeling himself or itself aggrieved by any judgment for damages or compensation or any assessment of benefits provided in this act, may appeal to the supreme court of the state within thirty days after the entry of the judgment, and such appeal shall bring before the supreme court the propriety and justness of the amount of compensation or damages or assessment of benefits in respect to the parties to the appeal. Upon such appeal no bonds shall be required and no stay shall be allowed.

May appeal  
to supreme  
court.

SEC. 21. Upon the return of the verdict the proceedings of the court regarding new trial and the entry of judgement thereon shall be the same as in other civil actions, and the judgement shall be such as the nature of the case shall require. The court shall continue or adjourn the case from time to time as to all occupants

[See note  
to title.]

Jury to as-  
certain com-  
pensation.

and owners named in such petition who shall not have been served with process or brought in by publication, and new summons may issue or new publication may be made at any time; and upon such occupants or owners being brought in, the court shall impanel a jury to ascertain the compensation so to be made to such defendant or defendants for property taken or damaged, and to ascertain and determine the maximum benefits received by any such property, and like proceedings shall be had for such purpose as herein provided.

Ownership  
having  
ceased.

SEC. 22. The court shall have power at any time, upon proof that any such owner or owners named in such petition who has not been served with process has ceased to be such owner or owners since the filing of such petition, to impanel a jury unless a jury be waived, and ascertain the just compensation to be made for the property, or the damages thereto or benefits received by said property which has been owned by the person or persons so ceasing to own the same, and the court may, upon any finding or findings of any jury or juries, or at any time during the course of such proceedings enter such order.

Appointing  
guardian.

SEC. 23. When it shall appear from the said petition or otherwise, at any time during the proceedings upon such petition, that any infant or insane or incompetent person is interested in any property that is to be taken or damaged, or benefited, the court shall appoint a guardian *ad litem* for such infant or insane or incompetent person to appear and defend him, her or them, and the court shall make such order or decree as it shall deem proper to protect and secure the interest of such infant or insane or incompetent person in such property or the compensation which shall be awarded therefor and benefits to be assessed.

SEC. 24. Any final judgement or judgements rendered by said court upon any finding or findings of any jury or juries, or upon any finding or findings of the court in case a jury be waived, shall be lawful and sufficient condemnation of the land or property to be taken, or of the

right to damage the same in the manner proposed, upon the payment of the amount of such findings and all costs, which shall be taxed as in other civil cases: *Provided*, That in any case defendant recovers no damages, no costs shall be taxed. Such judgment or judgments shall be final and conclusive as to the damages caused by such improvement, and as to the compensation to be allowed for property taken, unless appealed from, and no appeal from the same shall delay proceedings, if such district shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs, and such districts, after making such payment into court, shall be liable to such owner or owners or parties interested for the payment of any further compensation or damages which may at any time be finally awarded to such parties so appealing in said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor and abide any rule or order of the court in relation to the matter in controversy. In case of an appeal to the supreme court of the state by any party to the proceedings, the money so paid into the superior court by such district, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the owner of the land, real estate, premises, or other property accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived conclusively an appeal to the supreme court and final judgment may be rendered in the superior court as in other cases.

[See note to title.]

No costs taxed.

Appeal to supreme court.

SEC. 25. The court, upon proof that just compensation so found by the jury, or by the court in case the jury is waived, together with the costs, has been paid to the person entitled thereto, or has been paid into court as directed by the court, shall enter an order that the district shall have the right at any time thereafter to take possession of or damage the property in respect to which such compensation shall have been so paid or paid into court as aforesaid, and thereupon the title to any

Title vested in fee simple in district.

[See note  
to title.]

property so taken shall be vested in fee simple in such district.

Court may  
dismiss pro-  
ceedings.

SEC. 26. In case the damages or amount of compensation for such property, together with the estimated costs of the improvement, amount to more than the maximum amount of benefits which will be derived from said improvement, or, if said improvement is not practicable, or will not be conducive to the public health, sanitation, welfare and convenience, or will not increase the public revenue, the court shall dismiss such proceedings, and in such case a judgment shall be rendered for the costs of said proceedings against said district, and no further proceedings shall be had or done therein; and upon the payment of the costs, said organization shall be dissolved by decree of said court.

Application  
to court for  
money  
paid in.

SEC. 27. Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this chapter, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he is entitled to the same, the court shall make an order directing the payment of such claimant of the portion of such money as he or it may be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate or premises specified in the application of such claimant is in such condition as to require that an action be commenced to determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claims to such land, real estate or premises be determined according to law.

SEC. 28. Upon the entry of the judgment the clerk of said court shall immediately prepare a transcript, which shall contain a list of the names of all persons and corporations benefited by said improvement and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by such improvement belonging to each person and corporation, and shall file the same with the auditor of the county, who

shall immediately enter the same upon the tax-rolls of his office, as provided by law for the entry of other taxes, against the land of each of the said persons named in said list, together with the amounts thereof, and the same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and shall be collected in the same manner as other taxes and subject to the same right of redemption, and the lands sold for the collection of said taxes shall be subject to the same right of redemption as the sale of lands for general taxes: *Provided*, That said assessments shall not become due and payable except at such time or times and in such amounts as may be designated by the board of commissioners of said district, which designation shall be made to the county auditor by said board of commissioners of said district, by serving written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to benefits to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons or corporation, according to said notice, upon the assessment rolls in his said office, and collected therewith: *Provided further*, That no one call for assessments by said commissioners shall be in an amount to exceed twenty-five per cent. of the amount estimated by the board of commissioners to be necessary to pay the costs of the proceedings, and the establishment of said district and waterway system and the cost of construction of said work: *Provided further*, That where the amount realized from the original assessment and tax shall not prove sufficient to complete the original plans and specifications of any waterway system, alterations, extensions or changes therein, for which the said original assessment was made, the board of commissioners of said district shall make such further assessment as may be necessary to complete said system according to the original plans and specifications, which assessment shall be made and collected in the manner provided herein for the original assessment.

[See note to title.]

In case of delinquency in taxes.

Designation made by commissioners to county auditor.

No call to exceed twenty-five per cent.

[See note  
to title.]

Commis-  
sioners shall  
levy tax.

SEC. 29. In the event of the dismissal of said proceedings and the rendition of judgment against said district, as hereinbefore provided, said waterway commissioners shall levy a tax upon all the real estate within said district, taking as a basis the last equalized assessment of said real estate for state and county purposes, sufficient to pay said judgment and the cost of levying said tax, and shall cause said tax-roll to be filed in the office of the clerk of the superior court in which such judgment was rendered. If said tax is not paid within sixty days after the filing of said tax-roll, the court shall, upon the application of any party interested, direct said real estate to be sold in payment of said tax, said sale to be made in the same manner and by the same officer as is or may be provided by law for the sale of real estate for taxes for general purposes; and the same right of redemption shall exist as in the sale of real estate for the payment of taxes for general purposes.

Commis-  
sioners shall  
have full  
power in the  
construction  
and im-  
provement.

SEC. 30. After the filing of said transcript said commissioners of such waterway district shall proceed at once in the construction of said improvement, and in carrying on said construction or any extensions thereof, they shall have full charge and management thereof, shall have the power to employ such assistance as they may deem necessary and purchase all material that may be necessary in the construction and carrying on of the work of said improvement, and shall have power to let the whole or any portion of said work to any responsible contractor which said contract shall be let to the lowest responsible bidder after advertising for bids for such work in two successive issues of some weekly newspaper printed and published in such county, and shall in such case enter into all necessary agreements with such contractor that may be necessary in the premises: *Provided*, That in case the whole or any portion of said improvement is let to any contractor said commissioners shall require said contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by said contract,

Contractor  
to give bond.

with two or more sureties to be approved by the board of commissioners of said waterway district and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his executors, administrators or assigns, according to the terms and conditions of said agreement, and shall cause said contractor to enter into a further or additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said waterway district in the name of said district as obligee therein, conditioned that said contractor, his executors, administrators or assigns, or subcontractor, his executors, administrators or assigns, performing the whole or any portion of said work under contract of said original contractor, shall pay or cause to be paid all just claims for all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise or provisions of any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvement: *Provided further*, That no sureties on said last mentioned bond shall be liable thereon unless the persons or corporation performing said labor and furnishing said materials, goods, wares, merchandise and provisions, shall, within ninety days after the completion of said improvement, file their claim, duly verified, that the amount is just and due and remains unpaid, with the board of commissioners of said waterway district.

[See note to title.]

File claims within ninety days.

SEC. 31. The work on said improvement shall begin and shall be completed with all expedition possible, and said board of commissioners of such waterway district, or any contractor thereunder, shall have no power whatever to change said route or system of improvement or the manner of doing the work therein so as to make any radical changes in said improvement, without the written consent of all the land owners to be benefited thereby, and the land owners which may be damaged thereby. And in case any substantial changes in said system of improvement or the

Providing for changes.

[See note  
to title.]

manner of the construction thereof shall be deemed necessary by said board of commissioners at any time during the progress thereof, and if the written consent to such changes cannot be procured from said land owners, then said commissioners, for and on behalf of said district, shall file a petition in the superior court of the county within which said district is located, setting forth therein the changes which they deem necessary to be made in the plan or manner of the construction of said improvement, and praying therein to be permitted to make such changes, and upon the filing thereof, the commissioners shall cause a summons to be served, setting forth the prayer of said petition, which summons shall be served in the same manner as the service of summons in the case of the original petition, upon all the land owners of or others claiming any lien or record interest in the lands benefited or damaged by said improvement or by said proposed change in said improvement, and any or all of said parties so served may appear in said cause and submit their objections thereto, and after the time for the appearance of all of said parties has expired, the court shall proceed to hear said petition at once without further delay, and if it appears during the course of said proceedings that the property rights of any of said land owners will be affected by such proposed change in said improvements, then the court, after having passed upon all preliminary questions as in the original proceedings shall cause, unless a jury be waived, a jury to be impaneled as in the case of the original proceeding for the establishment of said improvements, and upon the final hearing of said cause, the jury shall return a verdict finding the amount of damages, if any, sustained by all persons and corporations, the same as upon the original petition, by reason of such proposed change, and shall readjust the amount of benefits claimed to have been increased or diminished by any of said land owners by reason of said proposed change in said improvements, and the proceedings thereafter shall be the same as to rendering judgment, appeal therefrom, payment of compensation and damages

Court shall  
hear petition.

Jury return  
verdict for  
damages.

and filing of the certificate with the auditor, as hereinbefore provided for in the proceedings upon the original petition, and said commissioners shall have a right thereafter to proceed with the construction of said improvements according to the changes made therein.

[See note to title.]

SEC. 32. During the construction of said improvement said commissioners shall have the right to allow payment thereof, in installments as the work progresses, in proportion to the amount of work completed: *Provided*, That no allowance or payment shall be made for said work to any contractor or subcontractor to exceed seventy-five per cent. of the proportionate amount of the work completed by such contractor or subcontractor, and twenty-five per cent. of the contract price shall be reserved at all times by said board of commissioners until said work is wholly completed, and shall not be paid upon the completion of said work until ninety days have expired for the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvements; and upon the completion of said work and the payment of all claims hereinbefore provided for according to the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor.

Payment as work progresses.

Twenty-five per cent. reserved.

SEC. 33. The board of commissioners of any commercial waterway district shall on or before the first day of November of each year, make an estimate of the cost of maintenance of the waterway system, constructed 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 estimates shall be made 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 lands in such district benefited by said improvement in proportion to the maximum benefits originally assessed by the judgment of the court, and said

Estimate cost of maintenance.

Estimate certified by the commissioners.

[See note  
to title.]

amount shall be added to the general taxes against said lands and collected therewith.

May issue  
warrants.

SEC. 34. The board of commissioners of such district shall elect one of their number chairman and one secretary, and shall keep minutes of all their proceedings, and may issue warrants of such district in payment of all claims of indebtedness against such district; such warrants shall be in form and substance the same as county warrants, or as near the same as may be practicable, and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chairman and attested by the secretary of said board: *Provided*, That no warrants shall be issued by said board of commissioners in payment of any indebtedness of such district for less than the face or par value.

May issue  
bonds.

SEC. 35. Upon the establishment of any district under the provisions of this chapter, and the establishment of a waterway system therein as provided for in this act, the board of commissioners of such waterway district may, upon a petition of the owners of a majority of the land within such district to be benefited thereby, issue bonds for the total amount of the costs of construction of said improvement, together with the costs of the establishment thereof, including damages assessed and compensation made to land owners for right of way and the expenses and costs of the entire proceeding, payable at a time not less than five years nor longer than ten years from the date thereof; and such commissioners may, at any time thereafter, issue such bonds in the manner and form herein prescribed for the purpose of funding any outstanding warrants or obligations of such district, and in case of such last named issue all the outstanding warrants shall immediately become due and payable upon receipt of the money by the county treasurer from the sale of said bonds, and upon a call of such outstanding obligations to be issued by him, which call shall be made by said treasurer immediately upon receipt of the proceeds from the sale of said bonds by

Outstanding  
warrants  
due on sale  
of bonds.

publication for two successive weeks in the county paper authorized to do the county printing, and such warrants and outstanding obligations shall cease to draw interest at the end of thirty days after the date of the first publication: *Provided*, That no bonds shall, under the provisions hereof, be sold for less than their par value.

[See note to title.]

SEC. 36. Said bonds shall be numbered from one upwards, consecutively, and be in denominations of not less than one hundred dollars nor more than one thousand dollars. They shall bear the date of issue, shall be made payable to the bearer in not more than ten years nor less than five years from the date of their issue, and bear interest at a rate not exceeding seven per cent. per annum, payable annually, with coupons attached for each interest payment. The bonds and each coupon shall be signed by the chairman of the board of waterway commissioners, and shall be attested by the secretary of the board, and the seal of such district shall be affixed to each bond, but not to the coupons.

Interest not exceeding seven per cent.

SEC. 37. Said bonds may be exchanged at not less than their par value for an equal amount of the warrants of the district issuing such bonds.

Bonds may be exchanged.

SEC. 38. Five years before said bonds shall become due the waterway commissioners of such district issuing them, are hereby authorized and required, annually, to levy an assessment sufficient to liquidate said bonds at maturity; such assessment shall be collected by the county treasurer and kept as a separate fund for the sole purpose of liquidating said bonds in accordance with the provisions of the following section.

SEC. 39. It shall be the duty of the treasurer of any county in which there may be a district issuing bonds under the provisions of this chapter, whenever he has upon hand two thousand dollars of the special fund for the payment of said bonds, to advertise in the newspaper doing the county printing, for the presentation to him for payment of as many of the matured bonds issued under the provisions of this chapter as he may be able to pay with the funds in his hands, to be paid in numerical order of said bonds, be-

County treasurer shall advertise.

[See note  
to title.]

ginning with bond number one, until all of said bonds are paid. Said notice shall be published two weeks consecutively: *Provided*, That thirty days after the first publication of said notice of the treasurer calling in any of said bonds by their number, said bonds shall cease to bear interest, which shall be stated in the notice.

Interest  
ceases after  
call.

SEC. 40. It shall be the duty of such waterway commissioners annually to levy an assessment sufficient for the payment of the coupons hereinbefore mentioned as they fall due. Said coupons shall be considered for all purposes as warrants drawn upon the funds of the district issuing bonds under the provisions of this chapter, and, when presented to the county treasurer, and no funds are in the treasury to pay said coupons, it shall be his duty to indorse said coupons as presented for payment in the same manner as other warrants upon the funds of said district are indorsed, and thereafter said coupons shall bear interest at the same rate as other warrants so presented and unpaid.

Coupons  
treated in  
same way as  
warrants.

SEC. 41. Before the bonds are delivered to the purchaser they shall be presented to the county treasurer, who shall register them in a book kept for that purpose and known as the bond register, in which register he shall enter the number of each bond, the date of issue, the maturity, amount and rate of interest, to whom and when payable, and the proceeds derived from the sale of said bonds shall in all cases be paid by the purchaser thereof to the county treasurer.

Bonds shall  
be registered.

SEC. 42. All warrants issued under the provisions of this chapter shall be presented by the holders thereof to the county treasurer, who shall indorse thereon the day of presentation for payment, with the additional indorsement thereon, in case of nonpayment, that they are not paid for want of funds; and no warrant shall draw interest under the provisions of this act until it is so presented and indorsed by the county treasurer. And it shall be the duty of such treasurer, from time to time, when he has sufficient funds in his hands for that purpose, to advertise in the newspaper doing the county printing for the presentation

Warrants  
presented  
by holders.

to him for payment of as many of the outstanding warrants as he may be able to pay: *Provided*, That thirty days after the first publication of said notice of the treasurer calling in any of said outstanding warrants, said warrants shall cease to bear interest, which shall be stated in the notice. Said notice shall be published two weeks consecutively, and said warrants shall be called in and paid in the order of their indorsement.

[See note to title.]

Notice published two weeks.

SEC. 43. Upon the trial of any questions of issue by a jury under the provisions of this chapter the trial court may, in its discretion, submit all questions to be found by the jury in the form of separate findings, or may submit to such jury separate forms of verdict on all such questions to be found by the jury therein.

Separate findings.

SEC. 44. All state, county, school district, or other lands belonging to other public corporations shall be subject to the provisions of this chapter, and such corporations, by and through the proper authorities, shall be made parties in all proceedings herein affecting said lands, and shall have the same rights as private persons, and their lands shall be subject to the right of eminent domain the same as the lands of private persons or corporations.

Relation of county, school district and other lands.

SEC. 45. In case lands belonging to the state, county, school district or other public corporation are benefited by any improvement instituted under the provisions of this chapter, all benefits shall be assessed against such lands, and the same shall be paid by the proper authorities of such public corporation at the times and in the manner as assessments are called and paid in case of private persons, out of any general fund of such corporation.

SEC. 46. Fees for services of all process necessary to be served under the provisions of this chapter shall be the same as for like services in other civil cases, or as is or may be provided by law.

Fees for service.

SEC. 47. In performing their duties under the provisions of this chapter the board of waterway commissioners shall receive such compensation as may be just and reasonable

[See note  
to title.]

Services not  
to exceed  
\$3.00 per  
day.

Objections  
to allowance.

for all necessary services actually performed, not exceeding three dollars per day, to be determined and allowed by the court upon presentation by said commissioners, or either of them, of an itemized statement duly verified by either or all of such board, that the same is just, reasonable, necessary and that such services were actually performed, and that no part of said compensation has ever been paid, and in case such services are rendered by said board in the establishment or construction of said improvement, or any extension thereof, the amount thereof so allowed by the court shall be deemed to be a part of the cost of the construction and establishment of said improvement, and in case such compensation to be allowed by the court shall be for services rendered by said board in the repairing or maintenance of such improvement, such allowance shall be added to the annual cost of maintenance of such system: *Provided*, That any person interested therein may file objections to the allowance asked for either in whole or in part, and such claims so filed shall not be passed upon or allowed by the court until the expiration of thirty days from the filing thereof. Said board of commissioners, or the member thereof, presenting such claims or allowance, shall, at the time of the filing thereof in the court, post notices in at least four public places within said district, which said notices shall set forth therein the fact that an application for allowance has been filed in said court, giving the date of the filing thereof and the amount of the allowance applied for, and demand that any and all persons having any interest therein shall file objections in said court, if any they have, to the allowance of such claim or any portion thereof, within thirty days from the filing of such application for allowance, and the court shall hear said application and the objections thereto, if any be made and filed, and shall in its discretion, make such allowance in such amount as it may deem to be just in the premises, and the same shall be paid as other claims against said district are paid.

Court may  
issue manda-  
tory in-  
junction.

SEC. 48. The superior court may compel the performance of the duties imposed by this chapter, and may, in its

discretion, on proper application therefor, issue its mandatory injunction for such purpose. [See note to title.]

SEC. 49. The organization, establishment and creation of all commercial waterway districts in this state heretofore had, or made, or attempted under the provisions of chapter 8 of the Laws of the Extraordinary Session of 1909, approved August 17th, 1909, entitled "An act relating to the establishment and creation of commercial waterway districts, and the construction and maintenance of a system of commercial waterways, including the straightening, deepening and widening of rivers, water-courses and streams and the protection of the banks thereof, and disposing of the interests of the state in the beds and shores of navigable waters, and to provide for the means of payment thereof, and declaring an emergency," under which attempted organization, establishment or creation, an organized district has been maintained since the date of such attempted organization, establishment or creation is hereby for all purposes declared legal and valid, and such commercial waterway districts are hereby declared duly organized, established and created. And all debts, contracts and obligations heretofore made or incurred by or in favor of any such commercial waterway district so attempted to be organized, established and created, and all official bonds or other obligations executed in connection with or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect: *Provided*, That nothing herein shall be construed to legalize or validate any attempted assessment or condemnation which may have been had by such district prior to the passage of this act.

Former acts  
declared  
valid.

Former acts  
in force.

SEC. 50. Nothing herein contained shall be considered as repealing any of the provisions of any act of the legislature relating to the validation and legalization of commercial waterway districts and obligations incurred by such attempted organizations, but all provisions of this act relating to the conferring of rights, powers and authority shall be deemed applicable to all commercial water-

[Reference  
here is to  
chap. 10  
*supra.*]

This act  
governs dis-  
tricts formed  
under  
previous acts.

[See note  
to title.]

way districts, whether organized or validated under the provisions of this act or organized or validated or legalized under or by virtue of any other act. All proceedings, acts and things which may heretofore have been had or done or attempted to be had or done under the provisions of any other act of the legislature relating to commercial waterways shall be considered and deemed a full compliance with the provisions of this act with reference thereto. And any such district so validated or legalized shall be permitted to continue its operations in accordance with the provisions of this act with like effect as if said district had been originally organized under the provisions hereof, and as if said acts, proceedings or things had been had or done by it under the provisions of this act, it being the intention hereby to enable and permit such validated or legalized district to continue and complete its operations with like force and effect as if such district had been organized and had proceeded under the provisions of this act.

Emergency.

SEC. 51. An emergency exists and this act shall take effect immediately.

Passed by the Senate January 31, 1911.

Passed by the House February 2, 1911.

Approved by the Governor February 9, 1911.

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## CHAPTER 12.

[H. B. 158.]

### COUNTY ASSESSORS' ANNUAL CONVENTION.

AN ACT relating to an annual convention of the County Assessors of the State and providing for the expense of the same.

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

SECTION 1. For the purpose of instruction on the subject of taxation, the county assessors of the state shall meet with the state board of tax commissioners at the capital of the state on the third Monday of January of

County  
assessors  
meet with  
tax com-  
mission.