

Playgrounds. Metropolitan Park District Fund", and paid out on warrants issued on the board of park commissioners for the purposes specified in this act, *Provided* That not less than one-fourth of the funds so raised shall be used and expended annually exclusively for the acquisition, maintenance and supervision of public playgrounds.

Passed the Senate December 17, 1925.

Passed the House December 30, 1925.

Vetoed January 7, 1926.

Passed over Governor's veto January 7, 1926.

CHAPTER 98.

[S. B. 114.]

TRIAL OF CONDEMNATION PROCEEDINGS; DAMAGES.

AN ACT relating to procedure for acquiring and appropriating land, real estate and other property for public uses of the State of Washington, providing for determination by the court that the proposed use is a public use, providing for occupancy and use of such land, real estate and other property by said state after entry of order adjudicating such public use and before assessment of damages, providing for consolidation of cases for trial by one and same jury, providing for payment of award into the registry of court, amending section 894, 895 and 897 Remington's Compiled Statutes and declaring an emergency.

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

SECTION 1. That section 894 of Remington's Compiled Statutes be amended to read as follows:

Section 894. 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 parties interested in the lands, real estate, premises, or other property described in said petition have been duly served with said notice as prescribed by section 892 of Remington's Compiled Statutes, and shall be fur-

§ 7664,
Pierce's
Code.

Hearing.

ther satisfied by competent proof that the contemplated use for which the lands, real estate, premises or other property sought to be appropriated is really necessary for the public use of the State of Washington, the court or judge thereof shall make and enter an order, to be recorded in the minutes of said court and which order shall be final unless review thereof to the supreme court of the state be taken within five days after entry of such order, adjudicating that the contemplated use for which the lands, real estate, premises or other property are sought to be appropriated is really a public use of the State of Washington, and directing that determination be had of the compensation and damages to be paid all parties interested in the land, real estate, premises or other property sought to be appropriated for the taking and appropriation thereof, together with the injury, if any, caused by such taking and appropriation to the remainder of the lands, real estate, premises or other property from which the same is to be taken and appropriated after offsetting against any and all such compensation and damages the special benefits, if any, accruing to such remainder by reason of such appropriation and use by the State of Washington of such lands, real estate, premises and other property described in the petition, such determination to be made within thirty days after the entry of such order, before a jury if trial by jury be demanded at such hearing either by the petitioner or by the respondents, otherwise by the court sitting without a jury: *Provided*, That if no regular venire has been called so as to be available to serve within such time, on application of the petitioner at such hearing, the court may by such order continue such determination to the next regular jury term or may direct the sheriff to summon, from the citizens of the county in which such lands, real estate, premises or other property sought to be appropriated be situated, as many

Order of
Necessity.

Review.

Damages.

Offsetting
benefits.

Continuance.

qualified persons as may be necessary in order to form a jury of twelve persons, unless the petitioner and respondents both consent to a less number of jurors (such number to be not less than three), and such consent shall be entered by the clerk in the minutes of such hearing: *Provided further*, That, upon application of the petitioner at the time of such hearing and after the entry of such order, the court or judge thereof shall continue said hearing to a day certain not less than six nor more than ten days thereafter, when, if no review of such order has been taken to the supreme court of the state, an additional order shall be entered providing thereby that the petitioner may forthwith enter upon, take possession of and use for the purposes set forth in the petition the lands, real estate, premises or other property so to be appropriated and by the terms of such order binding the petitioner to pay the full amount of any final judgment of compensation and damages which may thereafter be awarded for the taking and appropriation of the lands, real estate, premises or other property described in the petition and for the injury, if any, to the remainder of the lands, real estate, premises or other property from which the same is to be taken by reason of such taking and appropriation after offsetting against any and all such compensation and damage the special benefits, if any, accruing to such remainder by reason of the appropriation and use by the State of Washington of such lands, real estate, premises or other property described in the petition: *And Provided further*, That, at the time of fixing date for trial by jury in any case the court or judge thereof may, on application of the petitioner, order that any one or more of such condemnation cases then pending before such court and requiring determination by a jury of the compensation and damages as aforesaid be consolidated and tried before one and the same jury but with a sep-

Possessory
order:
terms.

Consolida-
tion of
cases.

arate award to be made in each such case. If necessary to complete the jury, the sheriff, under direction of the court or judge thereof, shall summon as many qualified persons as may be required to complete the jury from citizens of the county where such lands, real estate, premises or other property sought to be appropriated is situated.

Jury.

SEC. 2. That Section 895 of Remington's Compiled Statutes be amended to read as follows:

§ 7665,
Pierce's
Code.

Section 895. A judge of the superior court shall preside at the trial to determine the compensation and damage to be awarded, which trial shall be held at the courthouse in the county where the land, real estate, premises or other property sought to be appropriated or acquired is situated: and in the case of each such trial by jury the jurors by their verdict shall fix as a lump sum the total amount of damages which shall result to all persons or parties and to any county and to all tenants, encumbrancers and others interested therein, by reason of the appropriation and use of the lands, real estate, premises or other property sought to be appropriated or acquired. Upon the trial, witnesses may be examined in behalf of either party to the proceedings as in civil actions; and a witness served with a subpoena in each proceedings shall be punished for failure to appear at such trial, or for perjury, as upon a trial of a civil action. In case a jury is not demanded as provided for in Section 894 such total amount of damages shall be ascertained and determined by the court or judge thereof and the proceedings shall be the same as in trials of an issue of fact by the court.

Place of
trial.

Witnesses.

Jury waived.
Court trial.

SEC. 3. That Section 897 of Remington's Compiled Statutes be amended to read as follows:

§ 7667,
Pierce's
Code.

Section 897. Upon the entry of judgment upon the verdict of the jury or the decision of the court or judge thereof, awarding damages as hereinbefore prescribed, the State of Washington may make pay-

Damages
awarded.

Payment.

ment of the damages and of the costs of the proceedings by depositing the same with the clerk of said superior court, to be paid out under the direction of the court or judge thereof; and upon making such payment into the court of the damages assessed and allowed, and of the costs to any land, real estate, premises or other property mentioned in said petition, said State of Washington shall be released and discharged from any and all further liability therefor, unless upon appeal the owner or party interested shall recover a greater amount of damages; and in that case only for the amount in excess of the sum paid into said court and the costs of appeal: *Provided*, That in case the state highway engineer shall certify the amount which the State of Washington has offered to the respondents and continues as a tender into court, which certificate and the amount tendered thereby shall be impounded and shall not be disclosed to any jury or court of judge thereof trying said action, and in case the respondents shall not secure an award of the jury or judgment of the court or judge thereof higher in amount than that which is tendered by said certificate, the costs of said action shall be borne by the respondents instead of the petitioner State of Washington: *Provided, further*, That in case of an appeal to the supreme court of the state by any party to the proceedings, the moneys paid into the superior court by the state as aforesaid shall remain in the custody of said court until the final determination of the proceedings by the said supreme court.

Offer
exceeding
award.

Costs borne
by respondent.

Appeal.
Custody of
moneys.

Emergency.

SEC. 4. An emergency exists making the provisions of this act necessary for the immediate support of state government and its existing institutions and this act shall take effect immediately.

Passed the Senate January 7, 1926.

Passed the House January 7, 1926.

Approved by the Governor January 9, 1926.