

SECTION 2. Subsection (3) of section 20.57 of the statutes is renumbered to be subsection (5) of section 20.11 of the statutes.

SECTION 3. Subsection (1) of section 20.57 of the statutes is amended to read: (20.57) (1) * * * *On July 1, * * * 1919 * * * two hundred * * * four thousand nine hundred five dollars, and on July 1, 1920, two hundred fourteen thousand six hundred sixty-five dollars,* for the execution of its functions. Of this there is allotted to each member of the commission an annual salary of five thousand dollars.

SECTION 4. This act shall take effect July 1, 1919.

Approved July 18, 1919.

No. 472, S.]

[Published July 24, 1919.

CHAPTER 600.

AN ACT to create sections 1299g—1 to 1299g—15, inclusive, of the statutes, relating to laying out and constructing highways and making an appropriation.

The people of the state of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Fifteen new sections are added to the statutes to read: Section 1299g—1. Whenever in any county the adult owners of more than one-half of the lands within any district in the county desire to lay out and construct a system of connecting highways in such district for the promotion of the general welfare by opening up unsettled lands for settlement or by making settled lands accessible, such owners may file in the circuit court of such county a petition setting forth:

(1) The necessity for laying out and constructing the proposed system of connecting highways;

(2) The boundaries of the proposed highway district and the location of the proposed highways therein;

(3) A name for the proposed highway district;

(4) The names of the owners of the lands within the proposed highway district so far as known;

(5) The name of the persons who caused the preliminary survey to be made and an itemized statement of the cost of said survey;

(6) The probable cost of constructing the proposed system of connecting highways which shall not exceed one thousand two hundred dollars per mile;

(7) The probable distribution of benefits among the several parts of the district;

(8) A prayer for the organization of such highway district by

the name and with the boundaries and plans proposed, and for the appointment of commissioners for the execution of the proposed work.

Section 1299g—2. 1. On such petition being filed, the court or judge thereof shall make an order fixing a time and place of hearing thereon and ordering notice.

2. Such notice shall state (1) in what court said petition is filed, (2) state briefly the location of the proposed highways, (3) give the proposed boundaries of said district (or a general description of all the lands in said proposed district), (4) give the name proposed for said highway district and (5) shall also state the time and place fixed by the court for the hearing on said petition.

Section 1299g—3. 1. All notices required to be served under sections 1299g—1 to 1299g—14, inclusive, unless otherwise therein specifically provided, shall be served by publishing such notice in at least one newspaper published in each county where any part of such district is situated once in each week for three successive weeks and by posting the same in three public places in each of the towns within which any part of the lands within such district are located.

2. Whenever the required notice of any hearing under sections 1299g—1 to 1299g—14, inclusive, has been served in the manner required by sections 2636 and 2637 of the statutes on all interested parties at least twenty days before the time fixed for such hearing, such service shall be sufficient to give the court complete jurisdiction of all such interested parties and of all lands in the district without publication, posting or mailing or other service of such notice.

3. If any owner of land within a district is a nonresident of the county in which the proposed district lies, the petition shall be accompanied by an affidavit (a) giving the name and post-office address of such nonresident owner if such are known, and (b) if known, stating that upon diligent inquiry his name or post-office address (whichever may be the fact) cannot be ascertained. The petitioners shall mail a copy of such notice aforesaid to each nonresident owner and mortgagee whose name and post-office address is known, ten days before the day fixed for hearing on the petition.

4. Personal service of such notice outside of the state of Wisconsin shall have the same effect as personal service in the state of Wisconsin.

5. Failure to serve notice on any party or parties entitled thereto shall not defeat the jurisdiction of the court. Such party may, by a written waiver filed in court or by appearance, waive

such notice or may be required to show cause why he should not be bound by the proceedings.

6. Any notice required under sections 1299g—1 to 1299g—14, inclusive, may be signed by the commissioners, or a majority of them, by a judge or court commissioner or by the clerk of the circuit court.

7. In case of service of any notice or other paper the certificate of the public officer or the affidavit of any person who made the service, publication, posting or mailing, or who knows the facts, shall be sufficient proof thereof.

8. It shall not be necessary to serve notice of hearing on the petition, upon any petitioner. All petitioners shall be deemed in court upon such hearing by virtue of their having signed the petition.

Section 1299g—4. 1. On the day fixed for hearing on such petition all parties owning lands within said proposed district may appear and contest (1) the sufficiency of the petition, (2) the sufficiency of the signers of the petition, (3) the sufficiency of the notice, (4) the constitutionality of the law, (5) the jurisdiction of the court, specifying their objections to such jurisdiction, and (6) whether or not the general welfare will be promoted by the proposed work, and whether or not the benefits thereof will exceed the damages and costs of construction. The petitioners and contestants may, on the trial, offer any competent evidence in regard thereto. All notices of contest shall be in writing and shall clearly specify the grounds of contest. The court shall hear and determine whether or not the petition contains the signatures of the owners of more than one-half of the lands within the said proposed district and shall determine all questions of law arising on said contest.

2. The circuit court in which such petition shall be filed, or the judge thereof, may adjourn the hearing on said petition from time to time for want of sufficient notice, or to give time to prepare for trial, or for other good cause.

3. The affidavit of any three or more of the signers of said petition stating that they have examined it and are acquainted with the locality of said district and that said petition is signed by a sufficient number of adult owners of lands in said district, to satisfy section 1, may be taken by the court or judge as prima facie evidence of the facts therein stated.

4. If the court or presiding judge thereof, after hearing any and all competent evidence that may be offered for and against the said petition, shall find that the same has not been signed as herein required, or if the court find that the general welfare will

not be promoted by the proposed work or that the benefits thereof will not exceed the damages and costs of construction, said petition shall be dismissed at the cost of the petitioners, and judgment shall be entered against said petitioners for the amount of said costs. If it shall appear that the petition has been so signed, and that the general welfare will be promoted by the proposed work and that the benefits thereof will exceed the damages and costs of construction, the court or judge shall so find, and order any necessary amendments thereto, and allow the actual cost of the preparation of the petition and other necessary papers. Upon such finding the court or judge thereof shall appoint the county highway commissioner, a member of the county highway committee and a resident owner of land in such district as commissioners. When the court shall appoint such commissioners said highway district shall be a fully organized highway district with the right to sue and be sued, together with all of the usual powers of a public corporation and in addition the power, subject to the approval of the court, to borrow the money necessary to do all work preliminary to the confirmation of the assessments of benefits hereinafter provided for. Highways thereafter laid out and constructed pursuant to the direction of said commissioners and in accordance with sections 1299g—1 to 1299g—15, inclusive, shall be and become highways of the municipality in which they are located and such municipality shall thereafter be charged with the duty of maintenance thereof.

Section 1299g—5. 1. Before entering upon their duties such commissioners shall take and subscribe an oath to support the constitution of the United States and the constitution of the state of Wisconsin, to faithfully and impartially discharge their duties as such commissioners and to render a true account of their doings to the court by which they are appointed whenever required by law or by the order of the court. Said commissioners shall forthwith organize by electing one of their number chairman and one of their number secretary.

2. The commissioners shall hold their office until the work in such highway district shall be completed.

3. Vacancies in the commission may be filled by the presiding judge of the circuit court of the county having jurisdiction of the highway district as soon after the vacancy occurs as possible.

4. The highway commissioners other than the county highway commissioners shall receive for their services four dollars per day and their actual reasonable expenses.

5. They shall at all times be under the control and direction of the court or presiding judge. For failure to comply with any

order or direction, they shall forfeit their compensation and be dealt with summarily as for contempt.

Section 1299g—6. 1. As soon as may be after their organization, or within such time as the court may direct, said commissioners shall have all necessary surveys made of the proposed system of connecting highways, with maps, plans and other specifications. Such highways shall be laid out as nearly as may be practicable along section or quarter section lines but not along such lines which are at a distance of less than one mile from a parallel highway. Such highways shall be graded roads, graded a distance of at least eighteen feet between ditches and cuts and on top of hills with the right of way cleared to a width of at least two rods.

2. The commissioners may make such changes in the plans of the proposed system of connecting highways and in the boundaries of the proposed district as contained in the petition as are proper and feasible, but no such change in boundaries shall be made as to deprive the court of jurisdiction. If the owners of lands adjacent to the district petition to have their lands brought into the district such may be considered the same as original petitioners in making changes in boundaries.

3. The commissioners may determine that the proposed highway shall be laid out and constructed in one year or that certain portions thereof shall be completed in successive years.

4. The commissioners shall not be confined to the plans, boundaries or other work as proposed by the petitioners, but shall locate the district or highway, lay out and plan the same in such manner as to them shall seem best to promote the general welfare and to make the lands of the parties interested accessible with the least damage and greatest benefit to all lands affected thereby. Any plan proposed by the commissioners, may, on the application of any person interested, on the hearing hereinafter provided for, or on the application of the commissioners, be altered by the court, by written order, in such manner as shall appear to the court to be just. If the commissioners find that the proposed district as described in the petition will not embrace all of the lands that will be benefited by the proposed work or that it will include lands that will not be benefited and are not necessary to be included in said district for any purpose, they shall extend or contract the boundaries of the proposed district so as to include or exclude all such lands as the case may be. The boundaries adopted by them may, upon the hearing of their report as hereinafter provided, upon their application or that of any person interested, be altered by the court in such manner as shall

appear to be just; provided, that the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district as to render such petition void or dismissable.

5. Upon the adoption of such surveys and such plans and specifications, the commissioners shall advertise for bids for laying out and constructing such system of connecting highways to be submitted not later than thirty days after the first advertisement. Such advertisements shall be published in a newspaper published or having general circulation in such district at least once in each week for three successive weeks. Upon the day appointed for receiving bids, the said commissioners shall meet and let, by contract, the laying out and construction of such highways to the lowest responsible bidder within the time and according to the surveys and plans and specifications adopted by them. Such contract shall by its terms become effective in the event that the court shall approve the action of said highway commissioners. The contract shall be executed in writing and shall be filed in the office of the county clerk. No contract shall be let under the provisions of this section for an amount exceeding one thousand two hundred dollars per mile for such proposed highways.

6. Forthwith upon the letting of any such contract, the commissioners shall determine the total cost of laying out and constructing such proposed highways which shall include all incidental expenses, the reasonable cost of organizing said district, the costs of the proceeding, all probable damage to lands, a reasonable attorney fee for the petitioners and the amount of such contract, which shall be referred to as the "cost of construction". They shall apportion and assess two-thirds of the cost of construction against the several benefited parcels or tracts of land in such highway district, in proportion to the benefits which they determine will be caused by the proposed highway, by setting down opposite each parcel or tract of land the sum which they assess against the same.

7. The commissioners shall make a detailed report to the court of their proceedings and recommendations under sections 1299g—5 and 1299g—6. Such report shall be filed with the clerk of said court.

8. Upon the filing of said report the court shall make and enter an order fixing the time and place when and where all persons interested may appear and remonstrate against the confirmation thereof. The clerk of said court shall cause notice of the time and place of such hearing to be given to all parties interested, which notice shall contain a brief description of the lands bene-

fited and damages, together with the net damage awarded to the several parcels or tracts of land to which damages are awarded, and the sum in each case assessed for cost of construction against said several benefited parcels or tracts. Said notice shall be published in the manner provided in section 1299g—3.

Section 1299g—7. 1. Any owner of lands within said district may file a written remonstrance five or more days before the day set for hearing on said report and therein remonstrate against the whole or any part of the proposed work or any change of the boundaries. Such remonstrance shall be verified by affidavit and shall set forth the objections of the affiant, whether they go to the jurisdiction of the commissioners or the court, or whether they rest on any other fact, as that some lands are assessed too high or too low or improperly, or that lands are assessed which ought not to be assessed, or that lands should be assessed which are not assessed, or that damages allowed to any parcel or tract of land are excessive, or that the plans for said proposed work should be changed, or that the boundaries of said district should be altered so as to include or exclude certain lands, or any persons to whom damages are allowed may remonstrate because they are inadequate.

2. The circuit court for said county or the presiding judge thereof may fix a time at any term of court or appoint a special term for hearing the remonstrants and, on demand of any person assessed for benefits or awarded damages, may frame issues in said matter, empanel a jury and take its verdict upon the trial of such issues (1) whether the amount of damages awarded by the commissioners to any land is excessive or whether the damage allowed to any remonstrant's land is inadequate and (2) whether the assessment of benefits to any remonstrant, demanding the review by a jury, is too high or too low and the jury may award and assess the same. All other issues arising on any remonstrance, except those of benefits and damages shall be tried by the court. If the court finds that the report requires modification the same may by order of the court be referred back to the commissioners, who may be required to modify it in any respect.

3. In any case between the commissioners and any remonstrant, the court may award and apportion the costs. Costs awarded against the commissioners shall not go against them personally but shall be paid out of the funds realized from the assessments for the cost of construction.

4. If the finding on any remonstrance of new parties who have been brought in since the making of the order pursuant to section

1299g—4 be against the validity of the proceedings, the same, unless the defect be cured, shall be dismissed as to such parties at the cost of the petitioners and judgment entered for costs in favor of such new parties.

5. If there be no remonstrance, or if the finding be in favor of the validity of the proceedings, or after the report shall have been modified to conform to the findings, the court shall confirm the report and the order of confirmation shall be final and conclusive, the proposed work shall be established and authorized, the proposed assessments together with further amounts made necessary by the proceedings approved and confirmed and the commissioners shall be directed and empowered to proceed with the work of construction and do any and all things necessary in connection therewith, unless within thirty days an appeal be taken to the supreme court. Said order of confirmation may, at the same or at any subsequent term of said court, be revised, modified or changed, in whole or in part, on petition of the commissioners, after such notice as the court may require, to parties adversely interested. At any time prior to making the order confirming said report or thereafter the court may permit the commissioners to present and file a supplemental report, or amend their report, as to any matter which, pursuant to the provisions hereof, was or might have been included in the original report presented by them, and after reasonable notice given to all parties interested, in such manner as the court shall direct, the court may, upon the hearing in said matter make such order as the case may require.

Section 1299g—8. In case the petition or proceedings are dismissed a judgment shall be entered against the petitioners and in favor of the contestants or commissioners for the costs, expenses and liabilities incurred in said proceedings, but for the benefit of those who have rendered services or advanced money in the prosecution of said proceedings, or have recovered costs on successful contests therein. Before any such judgment is entered, said contestants or commissioners shall file with the clerk of the circuit court in which said proceedings were instituted an itemized statement of such costs and expenses, duly verified, upon which an order shall issue requiring said petitioners to show cause before said court, at a time and place named, why judgment should not be entered against said petitioners for the amount of said costs and expenses. Notice of the hearing on said order to show cause shall be given to said petitioners, by mailing to each a copy thereof, to their last known post-office address, at least twenty

days prior to the time set for hearing, and by publication of the same in one or more newspapers published in the county where the proceedings are pending, at least three successive weeks prior to the day set for such hearing. Said notice need not contain an itemized statement of said account, but shall refer to said account on file. All petitioners shall, among themselves, contribute to the payment of said judgment, in proportion to the number of acres of land they had within the boundaries of the proposed district at the time of filing of said petition.

Section 1299g—9. 1. At the time of the final confirmation of assessments the court may by such order fix the date or dates on which the assessments or annual installments thereof for construction shall become due and such assessments or annual installments thereof shall draw interest from the date of said order.

2. Unless otherwise provided by said order, such assessment shall be payable into the county treasury at once. From the time of the entry of said order, and the filing of notice thereof with the register of deeds, assessments for construction and interest thereon shall be a lien upon the lands assessed until paid. Any owner of land assessed for construction, may at any time, before the said assessment is due, pay the amount of the assessment against his land or any tract thereof into the county treasury. Said payment shall relieve said lands from the lien of said assessment.

Section 1299g—10. 1. In all cases after assessments for construction are confirmed by the court, the commissioners shall within twenty days after such confirmation give notice of the entry of the order of confirmation and of the time or times when and the place where the assessments or annual installments thereof may be paid, by publication thereof for at least two successive weeks in one or more newspapers, published in the county where the proceedings are pending. A copy of such order shall be filed with the county treasurer.

2. If the assessments or annual installments against lands are not paid when due, the county treasurer shall certify the same to the clerk of the town, city, or village in which the delinquent lands are situated, as due and unpaid for such work, specifying after each parcel what amount thereof is due for principal and what amount thereof is due for interest, and such clerk shall enter the same in the tax roll of such town, city, or village next thereafter to be made against the land benefited, but in a separate column thereof, and the same shall be collected in the same manner in which state, county, and town taxes are collected.

3. In case any town, city, or village clerk fails to place any valid assessment or annual installment thereof certified to him on the tax roll against the land, assessed, such assessment or annual installment thereof shall be placed upon the tax roll of said town, city, or village for the next year or any subsequent year after the error is discovered, against the lands assessed. In case said town, village, or city clerk assesses a wrong sum against any land, the same shall be corrected on the tax roll the next year or any subsequent year after the error is discovered.

Section 1299g—11. Any town treasurer, village treasurer, or city treasurer who shall collect highway assessments or annual installments thereof, pursuant to section 1299g—10, shall, on or before the last Tuesday of March each year, transmit the highway moneys so collected by him to the county treasurer.

SECTION 1299g—12. Such highway assessment or annual installments thereof paid into the county treasury shall be credited by the county treasurer to a separate special fund for the construction of such highways in such district in the county.

Section 1299g—13. Within thirty days after the last Tuesday of March each year, the county treasurer shall submit a verified statement to the secretary of state showing the amount of money received and credited by him to itemized separate special funds for the construction of highways in highway districts in his county. Upon such statement the secretary of state shall issue his warrants upon the state treasurer for the payment into such separate special funds of amounts equal to one-half of amount received from towns, villages or city treasurers and credited to such funds. Such amounts received by the county treasurer from the state shall be credited to the various separate special funds to which such amounts belong.

Section 1299g—14. Payments to cover the "cost of construction" of highways in any highway district shall be made upon verified statement of the chairman of the commissioners of such highway district showing the amount due. Such statements shall be filed with the county clerk who shall issue his warrant upon the county treasurer for the payment of the amounts due thereon. Such amounts shall be charged against the separate special fund to which the same pertain.

Section 1299g—15. There is appropriated from the general fund a sum sufficient to carry out the provisions of this act.

SECTION 2. This act shall take effect upon passage and publication.

Approved July 18, 1919.