

required by law, including the time spent by the teacher or teachers in their employ in attendance at such institute, and that the district board have given to the teacher or teachers the time of such absence, and have not deducted from his or their wages for the time so spent, such district shall be included in the annual apportionment of the income of the school fund: *provided always*, that such school district shall have complied with the laws in all other respects, and is entitled to share in such apportionment.

SECTION 44. It shall be the duty of the said board to co-operate with the superintendent of public instruction, so far as practicable, in holding and conducting teachers' institutes, as provided for by this act.

Board to co-operate with superintendent.

SECTION 45. All other acts and amendments thereto, shall be so construed as to enable the said board to carry out the provisions of this act, and all acts or parts of acts conflicting with this act are hereby repealed.

SECTION 46. This act shall take effect and be in force from and after its passage and publication.

Approved March 10, 1869.

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## CHAPTER 152.

[*Published March 16, 1869.*]

AN ACT to codify the laws of this state relating to highways and bridges.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. The supervisors of the several towns in this state shall by virtue of their office, be the commissioners of highways in their respective towns, and shall have the care and superintendence of the highways and bridges therein; and it shall be their duty to give directions for the repairing of the roads and bridges within their respective towns; to regulate the roads already laid out, and to alter such of them as they shall deem inconvenient; to cause such of the roads used as highways as have been laid out, but not

Town supervisors to be commissioners of highways, and their duties.

sufficiently described, and such as have been lawfully laid out and used as such up to the present time, but not fully and sufficiently recorded, to be ascertained, described and entered of record in the town clerk's office; to cause bridges, which are or may be erected over streams intersecting highways, to be kept in repair; to divide their respective towns into so many road districts as they shall judge convenient, and specify every such division in writing, under their hands, to be recorded in the office of the town clerk in a book kept for that purpose, but no such division shall be made within ten days next preceding the annual town meeting; to assign to each of the said road districts such of the inhabitants liable to pay tax on highways, as they shall think proper, having regard to the nearness of residence as much as practicable; to require the overseers of highways, from time to time, and as often as they shall deem necessary, to perform any of the duties required of them by law; to assess the highway taxes, in their respective towns in each year, as provided by law.

Power to lay out roads.

SECTION 2. The supervisors shall have power in the manner and under the restrictions hereinafter provided, to lay out and establish upon actual survey, such new roads in their respective towns as they may deem necessary and proper; and to discontinue such old roads as shall appear to them to have become unnecessary; and the supervisors of any town within the limits of which may be situated any unincorporated village with a plat of streets and alleys recorded according to law, shall have power at any regular meeting to declare any street or alley in such recorded village plat to be a public highway.

Shall render a statement of highway taxes to board of auditors.

SECTION 3. The supervisors of each town shall render to the board of auditors authorized by law to settle their accounts, at the meeting of such board, in each year, a statement in writing, containing the amount of highway taxes assessed, and the amount which has been collected in their town; the amount of tax collected in money, and the amount paid in labor; the manner in which any moneys raised by the town for the improvements or building of roads or bridges therein, have been disbursed, and the particular items of such disbursements, and an estimate of the sum necessary to be raised by the town for the improvement of

roads and bridges therein for the ensuing year, specifying the improvements required.

SECTION 4. The said board of auditors shall cause such statement to be presented at the then next annual town meeting, and such meeting may vote for the raising of such sum for the improvement of the roads and bridges within the town, as a majority of the electors present may deem necessary; and the same [sum] so voted, shall be levied and collected in the same manner as other town taxes.

Statement to be presented at town meeting.

SECTION 5. It shall be the duty of overseers of highways to repair and keep in order the highways within the several districts for which they have been elected or appointed respectively; to notify all persons assessed to pay highway taxes, of the time when and place where labor will be received in payment for such taxes; to collect all highway taxes, as required by law, and to execute all lawful orders of the supervisors.

Overseers shall keep highways in repair.

SECTION 6. Whenever the amount of highway taxes, assessed by the supervisors in any district shall be deemed insufficient to keep the roads therein in repair, the overseer of such highways may, upon an application in writing, signed by a majority of the inhabitants liable to pay highway taxes in such district, make another assessment on the taxable property in said district, in the same proportion and not exceeding one-third of the amount assessed in the same year by the supervisors on the inhabitants of the district; and the taxes so assessed by an overseer shall be collected and expended in like manner as highway taxes assessed by supervisors are required to be collected and expended.

When overseers may make another assessment.

SECTION 7. It shall be the duty of the chairman of the supervisors of each town in this state, to cause to be erected at the intersection of all main traveled roads within his town with other legally laid out roads, suitable and intelligible post-guides or guide-boards, giving direction and distance from the point of such intersection to adjoining or important towns, the expense to be paid from the treasury of the town.

Chairman of supervisors shall erect guide boards.

SECTION 8. Any chairman of supervisors who shall neglect the duty required by the preceding section, shall forfeit and pay for each month's neglect of such duty, and for each instance of such neglect, for

Penalty for neglect.

the time aforesaid, a fine of five dollars, to be recovered before any justice of the peace of the county, on complaint of any person of lawful age who shall prefer such complaint, one-half of said fine to go to the complainant and the remaining half to the school fund; and the officer who shall be adjudged to pay any fine as provided in this section, shall also be adjudged to pay the costs of prosecution.

Shall keep<sup>1</sup>  
guide boards in  
repair.

SECTION 9. It shall be the duty of the chairman as aforesaid to keep in repair all guide-boards erected, as provided in section seven of this chapter, subject to the same penalty for neglect of duty, as provided in the next preceding section; the costs of such repairs shall be paid by the town.

Penalty for de-  
facing guide-  
boards.

SECTION 10. If any person shall deface, injure or destroy any guide-post or guide-board erected in any town in this state, and shall neglect for the space of ten days thereafter to repair and restore the same to as perfect condition as it was previous to such defacing, injuring or destroying, such person shall be adjudged, on complaint of any person, to pay damages to three times the cost of repairing such guide boards aforesaid, together with costs of prosecution; such damages to be recovered before any justice of the county.

Supervisors to  
prosecute of-  
fenses. . .

SECTION 11. It shall be the especial duty of any town supervisor who has knowledge that any offense mentioned in section ten has been committed within his town, to make diligent effort for the detection of the person by whom such offense was committed, and to prosecute for and collect the damages for the use of the town.

Oversees may  
procure plows,  
etc.

SECTION 12. Any overseer of highways may if he shall deem it necessary, procure a good and sufficient scraper and plow, or either of them, for the use of his road district, and pay for the same out of the highway taxes by him collected.

Compensation  
of overseer.

SECTION 13. If any overseer shall be employed more time, in executing the several duties enjoined upon him in this chapter, than shall be necessary for the payment of his highway tax, he shall be paid for the excess at the rate of one dollar per day, and be allowed to retain the same out of the moneys that may come into his hands on account of highway taxes; but he shall not be allowed to pay his own highway tax in money.

SECTION 14. It shall be lawful for any overseer of highways or any person acting under his directions, to enter upon any lands adjoining or near the highway in his district, to construct such drains or ditches as may be necessary for the improvement or preservation of such highways; and any such overseer or persons as aforesaid, may enter upon any unimproved lands adjoining to or near the highways in his district, and gather or dig any stones, gravel or sand and cut any wood or trees and take away the same, for the purpose of making or improving such highway; and in case there shall be within the limits of the highway in any adjoining district, any stone, gravel or sand suitable for the improvement of any such highway, the same may be taken and used to improve the highways in such adjoining district: *provided, however*, that the consent of the overseer of such adjoining district shall be obtained in writing; *and, provided, further*, that all damages, if any, to the adjoining land, may be settled as provided in section 15 of this chapter; but any overseer or other person so entering upon such lands shall carefully avoid doing any unnecessary injury upon the same.

May enter upon lands.

SECTION 15. If any owner or occupant of lands so entered upon for any of the purposes mentioned in the preceding section, shall feel himself aggrieved, he may apply to the supervisors of the town, who shall appoint three disinterested electors of such town to appraise the damages; and such electors being first duly sworn justly and impartially to appraise the damages done upon such lands, shall proceed to estimate the same; and the damages, if any, allowed by them shall be certified under their hands, and the same shall be audited by the town board and paid out of the town treasury; said appraisers shall take into consideration the advantages as well as the damages done to said lands by reason of any improvement made on said road by such materials so taken.

How owners of land may proceed.

SECTION 16. Whenever any highway shall become impassable by reason of any casual interruption from the falling of timber, the destruction of any bridge or the washing away or injury of any part of such highway, it shall be the duty of the overseer of said highway to cause such highway to be put in passable repair as soon as practicable.

Overseers to clear roads of obstructions.

If work is done  
in excess of tax,  
how paid.

**SECTION 17.** If any person, for the purpose of putting such highway in repair, shall expend in labor, material or money, an amount greater than he is assessed to pay on the highway in such year, such person shall be entitled to receive from the overseer of such district, a certificate for the amount of such expenditure above his highway tax, which shall be a good credit, and shall be allowed to the holder thereof on account of any subsequent highway tax assessed in said district.

If overseer re-  
fuse to serve,  
how his place  
supplied.

**SECTION 18.** If any person chosen to the office of overseer of highways shall refuse to serve or his office shall become vacant, the supervisors shall by warrant under their hands, appoint some other person in his stead; and the overseer so appointed shall have the same powers, perform the same duties and be liable to the same penalties as overseers chosen at town meetings.

Town clerk  
shall give notice  
of appointment.

**SECTION 19.** The supervisors making such appointment shall cause such warrant to be forthwith filed in the office of the town clerk, and such clerk shall immediately give notice to the person so appointed.

Penalty for re-  
fusal or neglect  
of duties.

**SECTION 20.** Every overseer of highways who shall refuse or neglect to perform any of the duties required of him by law, or which may be lawfully enjoined upon him by the supervisors of his town, and for the omission of which a penalty is not hereinafter provided, shall for any such neglect or refusal, forfeit the sum of ten dollars, and the said supervisors may remove such overseer and appoint some other person in his stead, as in case of a vacancy.

Duty of super-  
visors to prose-  
cute.

**SECTION 21.** It shall be the duty of the supervisors of each town, whenever any overseer of highways of such town has refused or neglected to perform any of the duties required of him by law, forthwith to prosecute such overseer for the recovery of such penalty, and each overseer of highways shall, before he enters upon the duties of his office, execute to the board of supervisors of his town, if a majority of said board so require, a bond, to be filed by the town clerk, in such amount as shall be required by said board of supervisors, conditioned for the faithful discharge of the duties of his office, and the proper application and payment of all moneys that may come into his hands by virtue of said office, as provided by law.

SECTION 22. The supervisors in each town shall meet within eighteen days after the annual town meeting, at such time and place in the town as they may agree upon, and proceed then or at a subsequent meeting, to assess the highway tax in their town for the ensuing year, but the supervisors shall not extend the time for assessing such highway tax beyond the second Monday in May in any year. But no town containing a population of less than five hundred inhabitants in any county in this state, shall hereafter levy or collect a tax of more than one thousand dollars in any one year, for the purpose of constructing roads and bridges in such town; said sum of one thousand dollars to include the amount of money—that may be voted at any general or special town meeting, and also the mill tax which the several boards of town supervisors are now by law authorized to levy as a highway tax in this state.

Supervisors to meet and assess tax.

SECTION 23. Each overseer of highways shall within sixteen days after his election or appointment, deliver to the town clerk a list, subscribed by him, of the names of all the inhabitants of his road district who are liable to pay taxes on the highways; and the town clerk shall deliver all such lists received by him to the supervisors. If the overseer shall neglect or refuse to deliver such list to the town clerk as aforesaid, the supervisors shall have power to issue a warrant under their hands, directed to any constable in the town, requiring him forthwith to bring such overseer before them, to show cause why said list has not been filed with the town clerk according to law; the constable's fees for such service shall be paid by said delinquent overseer.

Overseer to deliver list of names to town clerk.

SECTION 24. The supervisors in each town shall make out separate lists of the names of all persons liable to pay highway taxes in each road district in such town, which lists shall also contain a statement of all the taxable personal property, and a description of all lots or parcels of land within each such district, with the value of each lot or parcel set opposite to such description, as the same shall appear on the assessment roll; and if such lot or tract was not separately described in such roll, then in proportion to the valuation which shall have been affixed to the whole tract of which such lot or parcel forms a part.

Supervisors shall make out separate lists.

How proceed to make out assessments.

SECTION 25. In making an assessment of highway taxes, the supervisors shall proceed as follows: First. Every male inhabitant in each road district, being over the age of twenty-one years and under the age of fifty years, excepting paupers, idiots and lunatics, shall be assessed to pay a poll tax of one dollar and fifty cents. Said tax may be paid to the overseer in cash, or be commuted for in labor. Second. The residue of the highway tax, to an amount of not less than one nor more than seven mills on the dollar, shall be assessed on the valuation of the real and personal property in each district: *provided*, that the supervisors of the several towns in the counties of Dodge, Washington, Ozaukee, Sheboygan, Ashland, Bayfield, Burnett, Dallas, Douglas, Monroe, Polk, Marathon, Waupaca, Outagamie, Manitowoc and Calumet, shall assess any amount of highway tax, additional to the amount authorized to be assessed, ordered to be assessed at the annual town meeting, not exceeding fifteen mills nor less than three on the dollar of the valuation aforesaid. Third. The supervisors shall set opposite to each person and corporation, and to each description of taxable property, the amount of tax charged to each respectively.

What counties excepted.

Town clerk shall make duplicate lists.

SECTION 26. The town clerk shall, under the direction of the supervisors, make duplicates of the several lists which shall be subscribed by them, one of which lists for each road district shall be filed by such clerk in his office, and the other shall be delivered to the overseer of highways of the district in which the highway labor therein specified is assessed.

Form of warrant.

SECTION 27. The supervisors shall annex to each such tax list a warrant, signed by them, which shall be in substance in the following form:

"To A. B., overseer of road district number \_\_\_\_\_, in town of \_\_\_\_\_. You are hereby required to collect from the several persons and corporations named in the annexed tax list, and from the owners of the real estate described therein, the taxes set opposite to such persons, corporations and property, within the time limited by law, and to apply the taxes by you collected and make due returns, as the law requires.

Dated \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

C. D.,  
E. F., } *Supervisors.*  
G. H., }

SECTION 28. The names of persons left out of any such lists and who ought to have been included therein, and of new inhabitants who have not in the same year been assessed in some other place for highway taxes, shall be from time to time, added to the several lists, and assessed by the overseers on their polls and in proportion to their taxable property, as others are assessed on such lists by the supervisors, to pay taxes on the highway, subject to an appeal to the supervisors.

Names left out of list to be added.

SECTION 29. It shall be the duty of the supervisors of each town, to credit such persons as live on private roads and improve the same, so much upon their assessment on account of such improvements as such supervisors may deem necessary to keep such private roads in repair; or they may annex any such private road to some highway district.

Persons living on private roads to be credited for work.

SECTION 30. Whenever the occupant of any land not owned by him shall be assessed therefor by the supervisors, they shall distinguish in their assessment list the amount charged upon such land from the personal tax, if any, of such occupant; but when any such land shall be assessed in the name of the occupant, the owner thereof shall not be assessed during the same year to pay a highway tax on account of such land.

How occupants of lands not owned to be assessed.

SECTION 31. Whenever a tenant of any land for a less term than twenty years shall be assessed to pay a tax on the highways on account of such lands, pursuant to the last section, and shall actually pay such tax, he shall be entitled to a deduction from the rent due or to become due from him for such lands, equal to the full amount of such tax, or he may recover the same of his landlord in an action for money paid out for his benefit, unless otherwise provided by agreement between such tenant and his landlord.

When tenant entitled to deduction.

SECTION 32. Every overseer of highways shall cause at least two-thirds of the amount of highway tax assessed in his district to be collected and expended, as the law requires, before the first day of July, and the residue by such time or times as the supervisors of the respective towns may designate each year, except in case of McAdam roads. Then in that case the time for expending the tax above provided shall be extended to the last Monday in March of each year.

Two-thirds of tax to be expended before first of July.

SECTION 33. It shall be the duty of every overseer of highways to give at least three days' notice to

Three days' notice to be given.

all persons residing in his district assessed to pay highway taxes therein, either personal or in writing left at their usual places of abode, of the time when and the place where they may appear and pay their highway taxes in labor, and with what implements.

May work in person or by substitute.

SECTION 34. All persons assessed to pay highway taxes in such district may appear at such times and places therein, and with such teams and implements as the overseer, in the notice mentioned in the preceding section may direct, and work in person or by an able-bodied substitute.

May require persons to furnish implements.

SECTION 35. Every overseer of highways may require of all persons offering to pay their highway taxes in labor, to furnish a spade, shovel, axe or hoe; and any person offering to pay such tax in labor, and who is the owner of a team, plow, wagon or cart or other implement useful for working the highways, may be required by such overseer to furnish such team, plow, wagon or cart or other implement, if the assessment of such person on such highways be not less than three dollars.

Amount to be allowed for labor, teams and implements.

SECTION 36. Every person intending to pay any highway tax assessed against him or any part thereof in labor, and who shall upon the notice required to be given by the overseer, appear and work agreeably to the directions of such overseer, shall be credited on his tax one dollar and fifty cents for every day he shall actually work eight hours on such highway, and fifty cents a day for every wagon or plow, and one dollar a day for each yoke of oxen, and one dollar and fifty cents for each span of horses he shall furnish agreeably to the requirements of said overseer.

Penalty for neglect to appear.

SECTION 37. If any person assessed to pay a highway tax shall neglect to appear and work on the highway at the time and place specified in the notice required to be given by the overseer, unless satisfactory cause shall appear to such overseer for such neglect, such person shall not thereafter be entitled to pay his highway tax assessed for that year or any part thereof in labor.

How tax to be collected in money.

SECTION 38. It shall be the duty of the overseer of highways, whenever any person shall become liable to pay the highway tax assessed against him in money, as prescribed in the preceding section, to collect such tax; and for that purpose such overseer shall call at

least once on the person taxed, or at the place of his residence, if in such district or the town in which such overseer has been chosen, and demand payment of the taxes charged to such person.

SECTION 39. In case such person shall refuse or neglect to pay the tax charged against him, such overseer shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same.

How tax to be enforced.

SECTION 40. Such overseer shall give public notice of the time and place of sale and of the property to be sold, at least six days previous to the time of sale, by advertisement to be posted up in at least three public places in the district or town where such sale shall be made; the sale to be by public auction.

Notice of sale.

SECTION 41. If the property levied upon shall be sold for more than the amount of tax and costs, the surplus shall be returned to the person from whom the property was taken.

Surplus to be paid over to owner.

SECTION 42. Every overseer shall be entitled to retain five per cent. for his fees, out of all moneys collected by him on his warrant, and in case of a levy and sale by him of goods and chattels for the payment of any tax, he shall be entitled to collect and receive for the same, such fees as constables are authorized to receive for levying upon and selling goods under execution.

Fees of overseers for collections.

SECTION 43. It shall be lawful for any overseer of highways, for the purpose of collecting any unpaid highway taxes on his tax list against any person or persons who shall have become liable to pay the same in money, to place such tax list in the hands of any constable of the same town in which such overseer shall have been elected; and such constable shall possess the same powers in the collection of such tax, and be entitled to receive the like compensation as overseers of highways in like cases.

May place list in hands of constable for collection.

SECTION 44. Whenever any overseer of highways shall place his tax list in the hands of a constable for collection as provided in the preceding section, he shall designate the person named therein from whom taxes are due in money, and he shall indorse over his signature, on such tax list, as follows: "I hereby authorize A. B. (naming the constable) to collect the unpaid taxes due in money on the within tax list.

List to be endorsed by overseer.

Dated \_\_\_\_\_, 18 .

C. D., Overseer."

How constable  
to proceed.

SECTION 45. Every constable who shall receive any such tax list to be collected, shall, to the best of his ability, collect the sums due in money on such tax list from the persons who ought to pay the same; and shall within thirty days from the date of such endorsement on said tax list, return to the said overseer his doings thereon, and pay over all moneys so collected to such overseer; and any overseer, if he shall deem it necessary, may once re-issue such warrant and tax list in the manner specified in the preceding section, and when so re-issued, the constable shall proceed thereon as hereinabove provided.

Moneys to be  
faithfully ap-  
plied.

SECTION 46. Moneys collected or received by any overseer of highways on account of highway taxes in his district, shall be faithfully applied and expended by such overseer in the procuring of labor and in the purchase of implements and materials, as in the opinion of the said overseer, will most benefit the highways and bridges in his district.

When annual  
statement to be  
made out and  
delivered.

SECTION 47. Every overseer of highways shall, on or before the first Monday in November in each year, make out and deliver to the town clerk of his town a statement in writing, containing a description of all the real estate taxed in his tax list upon which the taxes remain unpaid, together with the amount of tax assessed to each such description of land, and the names of the owners thereof, if known; and he shall make and subscribe an affidavit thereon, before some justice of the peace or other person authorized to administer oaths, that the taxes mentioned in said statement remain unpaid. If the said overseer shall neglect or refuse to make out and deliver to the town clerk such statement as aforesaid, the supervisors or a majority of them, shall upon the application of the town clerk, issue a warrant under their hands to any constable of the town, commanding him to forthwith bring such overseer before them, to show cause why such statement has not been made as the law requires. The constable's fees for such service shall be paid by such delinquent overseer.

Proceedings for  
neglect to make  
out statement.

Town clerk  
shall enter un-  
paid taxes in du-  
plicate assess-  
ment roll.

SECTION 48. The town clerk shall, in making out the duplicate assessment roll of the town next thereafter, enter such unpaid taxes therein opposite to the description of the land upon which the taxes so remain unpaid; and such taxes shall be collected in the same

manner as town taxes are collected, and when so collected shall be paid over as hereinafter provided, for the use of the district in which they were originally assessed.

SECTION 49. It shall be the duty of each town treasurer, between the fifteenth and thirtieth days of April in each year, to notify the overseer of highways of every road district in his town which may be entitled to any moneys in the town treasury, accruing from returned highway taxes in such district, or from any balance received from a former overseer; and the said treasurer shall pay to the order of the overseer of each road district, all moneys in his hands belonging to such district for the construction and improvement of roads and bridges therein.

Town treasurer shall notify overseers of returned taxes or balance.

SECTION 50. Every overseer of highways shall, on or before the third Monday in March in each year, render to the supervisors of the town an account in writing, verified by his affidavit subscribed thereon before some person authorized to administer oaths, containing: First. The names of all persons assessed to pay a highway tax in his district. Second. The amount of tax collected from each such person, and from other sources, distinguishing the taxes which have been paid in labor from those which have been paid in money. Third. The amount of money received from the town treasurer, on account of returned taxes on real estate, or paid into the town treasury by a former overseer in such district. Fourth. The manner in which all taxes collected and received by him have been disbursed, and the particular items of such disbursements. Fifth. A statement of the highway taxes assessed upon real estate in his district, which remain unpaid.

Overseers to render account to supervisors.

SECTION 51. If upon rendering such account, any moneys shall remain unexpended in the hands of such overseer, he shall immediately pay over the same to the town treasurer.

Shall pay over moneys.

SECTION 52. If any overseer shall neglect or refuse to pay over any money remaining unexpended in his hands, as required in the preceding section, it shall be the duty of the town treasurer forthwith to sue for the same in name of office, in an action for money had and received to the use of such treasurer; which

Proceedings for neglect to pay over.

money, when collected, shall be applied as provided in the forty-ninth section.

**Petition to lay out, alter or discontinue.**

**SECTION 53.** When any six or more freeholders residing in any town, shall wish to have a highway laid out, altered or discontinued in such town, they may make application in writing to the supervisors of the town in which they reside, for that purpose, and the said supervisors shall proceed to lay out, alter or discontinue such highway, if, in their opinion, the public good will thereby be promoted.

**Roads not to be laid through orchards or gardens without consent of owner.**

**SECTION 54.** No public or private road shall be laid out through any orchards or gardens without the consent of the owner thereof, if such orchards have been set out two years or more, or if such gardens have been cultivated as such two years or more, nor shall any such road be laid out through any buildings or any fixtures or erections used for educational or charitable purposes, or for the purposes of trade or manufactures, or any yards or enclosures necessary to the use and enjoyment of any such buildings, fixtures or erections without consent of the owner.

**Damages to be awarded.**

**SECTION 55.** Whenever any highway shall be laid out through any lands other than those owned by this state or the United States, without the consent of the owner or owners thereof, the damages sustained by such owner or owners by reason of the laying out or opening of said highway, shall be ascertained, appraised and awarded as hereinafter provided.

**How notice to be given.**

**SECTION 56.** Upon application made to the supervisors for the laying out, altering or discontinuing of any highway, they shall make out a notice and fix therein a time and place at which they will meet and decide upon such application, and the application [applicant] shall, at least five days' previous to such time, cause such notice to be given to all the occupants of the lands through which such highway may pass, which notice shall be served personally or by copy left with or at the usual place of abode of each occupant of such lands; and such notice shall also be posted up in three public places in said town, at least ten days before the time of such meeting of the supervisors. Every such notice shall specify, as near as practicable, the highway proposed to be laid out, altered or discontinued, and the several tracts of land through which the same may pass.

SECTION 57. The supervisors upon being satisfied that the notices required in the preceding section have been duly given, proof of which may be shown by affidavit or otherwise as they may require, shall proceed to examine personally such highway, and shall hear any reasons that may be offered for or against laying out, altering or discontinuing the same, and shall decide upon the application as they deem proper.

Supervisors shall examine highway personally.

SECTION 58. Whenever the supervisors shall lay out, alter or discontinue any highway, they shall cause an accurate survey thereof to be made when necessary, and they shall make out a description of the highway so laid out, altered or discontinued, and incorporate the same in an order to be signed by them; and shall cause such order to be filed and recorded in the office of the town clerk, who shall note the time of recording the same in the record. Such order together with the award of damages hereinafter mentioned, shall be made out and filed in the office of the town clerk, within ten days after the day fixed for deciding upon the application for laying out, altering or discontinuing such highway, and in case said supervisors shall fail to file such order and award within the ten days aforesaid, they shall be deemed to have decided against the application.

Shall cause survey to be made.

Order and award to be filed and recorded.

SECTION 59. The order laying out, altering or discontinuing any highway or a copy of the record thereof, duly certified by the town clerk, shall be received in all courts and places as competent evidence of the facts therein contained, and shall be *prima facie* evidence of regularity of all the proceedings prior to the making of such order.

Shall be received as evidence.

SECTION 60. The damages sustained by any person or persons, through whose land any highway shall be laid out or altered, may be ascertained by agreement between the supervisors and such owner or owners; every such agreement shall be reduced to writing and signed by such owner and the supervisors, and filed in the town clerk's office, and every such agreement and every release of damages given, shall forever preclude such owner and all persons claiming under him from all further claim for damages. If there be any owner or owners of lands through which any highways shall be laid out or altered, who shall not agree with the supervisors as to the compensation they shall receive.

How damages to be ascertained.

for the damages sustained by them, by reason of the laying out or altering of such highway as provided in this section, and who shall not, previous to the making of the order laying out or altering such highway, deliver to said supervisors a written release of all claims for damages sustained by them by reason thereof, said supervisors shall at the time of such order, assess the damages which such owner or owners will sustain by reason of the laying out or altering of such highway through their lands, make an award in writing, specifying therein the sum awarded by them to each of said owners, for their respective damages; and if the owner of any parcel of land through which such highway shall be laid out or altered is unknown, the supervisors shall, in their award of damages, specify the amount of damages awarded by them to the unknown owner or owners of such parcel of land, giving a brief description of such parcel of land in their award; said award shall be signed by said supervisors, and be filed in the office of the town clerk, with the order laying out or altering such highway.

If owner not satisfied with award, how to proceed.

SECTION 61. If any owner of lands through which a highway shall be laid out or altered by the supervisors, shall not be satisfied with the sum awarded for damages by such supervisors, he may within thirty days after the filing of the award of damages in the office of the town clerk, as provided in the preceding section, apply to a justice of the peace of the same or of an adjoining town, for a jury to assess and appraise such damages. Such application shall be in writing, describing the premises, and any number of persons claiming damages on account of such highway may join in such application. The party appearing shall serve on two of the supervisors of the town in which such highway shall be laid out or altered, at least six days before the time fixed for making such application, a notice in writing, specifying therein the name of the justice to whom, and the time and place when and where such application will be made.

Person applying shall execute bond.

SECTION 62. Any person applying for a jury, as mentioned in the preceding section, shall by himself or agent, execute to the supervisors of the town and file with the justice, a bond with one or more sureties to be approved by such justice, conditioned to pay all costs arising from such appeal and appraisal of damages:

*provided*, such jury shall not award a larger amount of damages than were awarded by the supervisors of the town.

SECTION 63. Upon the filing of such bond, the justice shall make a list of fifteen disinterested freeholders of his town not of kin to the owner or occupant of said lands; each party may object to five on such list, and if none of the supervisors shall be present, the justice shall strike off the five names for the supervisors; and the justice shall thereupon issue a precept to some constable of his town, neither interested nor of kin to any person through whose lands such road is laid, directing him to summon the five persons named in such list, not objected to by the parties, to meet at a time and place to be specified in such precept, to appraise the damages sustained by the laying out or altering of such highway.

SECTION 64. At the time and place appointed for the appearing of such jury, they shall be sworn by the justice, justly and impartially to make such appraisal, and shall proceed to view such highway and hear the statements and proofs of the parties if they deem necessary, and such jury may increase or diminish the amount awarded by the supervisors; and they shall make return of their appraisal to the justice, which shall be certified by such justice and filed with the town clerk; and if the amount of the appraisal of such jury shall exceed the amount awarded by the supervisors, the costs and expenses shall be paid by the town; but if the jury shall not award more damages than were awarded by the supervisors, the costs and expenses shall be paid by the applicant. And if the jury shall fail to agree, and shall be discharged by the justice in consequence thereof, the justice shall immediately proceed to make another list of fifteen freeholders of his town, and not of kin to the owner or occupant of said lands, and the same proceedings shall be had in striking off or objecting to the persons on such list, as is provided by section 63 of this chapter, and the same precept directed to a constable of the town, shall be issued to [by] such justice and shall be made returnable in the same manner as therein provided; and at the time and place appointed for the appearing of such jury, the same proceedings shall be had as are now required by

How jury to be drawn and summoned.

Proceedings by the jury.

If jury fail to agree, justice shall make another list.

section 4 of this chapter, and the acts amendatory thereof.

**Fees of jurors.**

SECTION 65. Each person duly summoned, who shall attend as a juror, shall be allowed six cents a mile for each mile necessarily traveled from his place of abode to the place of meeting, and fifty cents for his services on such jury; and the justice shall be entitled to one dollar for his fees.

**All damages and charges to be audited by town board.**

SECTION 66. All damages consequent upon laying out or altering any highway, as finally settled upon, pursuant to the provisions of this chapter, and all lawful charges against a town for the services of any jury in the assessment of damages, or for fees of any justice or constable provided for in this chapter, or for the services of any commissioners appointed in the manner herein provided, shall be laid before the town board to be audited, and the amount allowed shall on the order of the supervisors, be paid by the town treasurer out of any money in the town treasury not otherwise appropriated. Whenever the damages consequent upon the laying out or altering of the highway as finally settled upon pursuant to the provisions of this chapter, and all lawful charges against the town for the services of a jury in the assessment of damages, or for the fees of any justice or constable provided for in this chapter, or for the services of any commissioners appointed in the manner provided for in this chapter, shall be laid before the town board to be audited, and if the said town board shall neglect or refuse to audit the same, any person aggrieved by such neglect or refusal may commence and prosecute an action in the proper county before any court having jurisdiction of the said town, and the sum claimed against said town, for all sums to which such person shall be entitled for or on account of such damages or fees.

**When highway laid upon town line, supervisors of each town to act.**

SECTION 67. Whenever it shall be deemed necessary to lay out a highway upon the line between two towns, such highway shall be laid by the supervisors of each of said towns, either upon said line, or as near thereto as the situation of the ground will admit; and they may vary the same, either to one side or the other of such line, as they may deem necessary.

**Shall determine what part of highway shall be made by each town.**

SECTION 68. The supervisors of each adjoining town, upon laying out a highway upon the line between such towns, shall determine what part of such highway

shall be made and kept in repair by each town, and what share of the damages, if any, shall be paid by each.

SECTION 69. The supervisors of each adjoining town shall proceed in all things as is required of the supervisors of one town in laying out highways in such town; and their proceedings or a duplicate thereof, shall be returned to the town clerk of each town; and their order, including the survey, shall be recorded in the town clerk's office; and each town shall have all the rights and be subject to all the liabilities in relation to the part of such highway to be made or repaired by such town, as if the same were wholly located in such town.

Shall proceed same as for one town.

SECTION 70. Whenever application shall be made by any freeholder whose land is excluded from the highway, to the supervisors of the town to lay out a private road, the supervisors may lay out such road; and the damages thereof to any owner of the lands through which such road may be laid, shall in like manner, be ascertained and determined; and in case of appeal, the like proceedings shall be had thereon as is provided in this chapter for the laying out and altering of public highways, except that the applicant for such private road shall in all cases, pay the damages and costs arising from the laying out of such road, and maintain at his or her own expense, suitable bars or gates through the inclosure over which said road may be laid.

Supervisors may lay out private road on application of owner of land.

SECTION 71. Every such private road, when so laid out, shall be for the use of such applicant, his heirs and assigns, but not to be converted to any other purposes than that of a road; nor shall the occupant or owner of the land through which such road shall be laid, be permitted to use the same as a road, unless he shall have signified his intention of so making use of the same to the supervisors, or the jury who ascertained the damages sustained by laying out such road, and before such damages were so ascertained.

Shall be for use of applicant.

SECTION 72. Whenever any person or persons shall apply for and obtain according to law, a private road or cartway from his or her dwelling to any public road and through the lands of others, the person or persons for whose benefit and at whose request such private road or cartway was granted, shall immedi-

Shall make fences and keep them in repair.

ately upon the opening thereof, make and keep in good repair all fences required by the opening of such road.

All papers to be filed with the clerk.

SECTION 73. All applications, certificates and other papers, relating to the laying out, altering or discontinuing any public or private road, shall be filed in the office of the town clerk, as soon as the supervisors have decided thereon.

Width of roads.

SECTION 74. Public roads to be laid out by the supervisors of the town shall be four rods wide, nor shall any private road be laid more than three rods wide. The supervisors of the several towns in this state shall have power to lay out public roads of the width of three rods, when in their opinion, a road of greater width is not needed. Whenever a village plat shall have been laid out and recorded, the supervisors may, for the purpose of connecting two or more streets in such village, adopt as a highway or part of a highway, such street or streets in such village as the public good may require.

Supervisors not to act as commissioners.

SECTION 75. No supervisor shall act as a commissioner of highways in laying out, altering or discontinuing any public or private road in which he may be personally interested.

May administer oaths.

SECTION 76. The supervisors of the several towns are by virtue of their offices authorized to administer any oaths required by the provisions of this chapter.

Persons may appeal from determination of supervisors.

SECTION 77. Any person who shall consider himself aggrieved by any determination of the supervisors of any town, either in laying out, altering or discontinuing, or in refusing to lay out, alter or discontinue any highway, may within thirty days after such determination, appeal therefrom and apply to a justice of the peace of the same or any adjoining town, for the appointment of commissioners to whom an appeal from such determination of the supervisors may be taken.

Application to be made in writing.

SECTION 78. Every application for an appeal from the determination of the supervisors shall be made in writing to such justice of the peace, and shall briefly state the grounds upon which it is made, and whether it is brought to reverse entirely the determination of the supervisors, or only to reverse a part thereof, and in the latter case, it shall state what part.

Proceedings under appeal.

SECTION 79. Upon the filing of such application and a bond executed to the supervisors of the town

with sufficient sureties, to be approved by the justice, conditioned to pay all costs arising from such appeal, provided the determination of the supervisors in laying out, altering or discontinuing, or refusing to lay out, alter or discontinue such highway, (as the case may be), shall not be reversed, such justice shall issue a notice, specifying therein a time and place for the appointment of commissioners; which notice shall be served on one or more of the supervisors at least six days before such time; and at the time and place so appointed, the justice shall make a list of eighteen disinterested freeholders of the county. Each party may object to six on such list, and in case none of the supervisors shall be present, the justice shall strike off the names for the supervisors, and out of the number not struck off, the justice shall by lot select three for such commissioners: *provided*, that if at any time before the making of said list of freeholders, the said supervisors shall file with the said justice an affidavit, made by one or more of the said supervisors, stating that he or they have reason to believe and do believe, that the justice to whom the application was made, from prejudice or any cause, will not act impartially in the appointment of commissioners, and shall pay to the justice twenty-five cents for a statement in writing, of the proceedings had before him, and for transmitting the papers in the case, then such justice of the peace shall transmit all of the papers in the case to the nearest justice of the peace in the county; and the justice to whom such papers are transmitted shall proceed to appoint the commissioners in the manner as it would have been lawful for the justice to whom such application was made to have done. But this provision shall not extend to a second removal.

SECTION 80. The justice shall then annex to the application a warrant, under his hand, appointing a time and place for the meeting of such commissioners, and issue the same to the persons so appointed, directing them to view and examine the highway described in the application, and the determination of the supervisors in laying out, altering or discontinuing, or in refusing to lay out, alter or discontinue the same (as the case may be), and to make return of their decision thereon to him, within twenty days after the date of the warrant; and before proceeding to make such view

Justice shall issue warrant.

and examination they shall be duly sworn, justly and impartially to discharge their duties as such commissioners.

Decision of commissioners to be reduced to writing—how expense of proceeding to be paid.

SECTION 81. The decision of such commissioners shall be reduced to writing and signed by them and filed with the town clerk; and if the determination of the supervisors shall be affirmed by the commissioners, the party appealing shall pay the expense of the proceedings had in the matter; but if such determination shall be reversed, then the expense shall be a charge against the town; each of such commissioners shall be entitled to one dollar a day for their services, and the justice shall be entitled to one dollar for his fees.

If decision refusing to lay out or discontinue be reversed, supervisors shall proceed accordingly.

SECTION 82. When an appeal shall have been made from the determination of the supervisors for refusing to lay out, alter or discontinue a highway, and such determination shall be reversed by the commissioners, the supervisors shall proceed to lay out, alter or discontinue such highway in the same manner, and the proceedings thereon shall be the same as if they had originally determined to lay out, alter or discontinue such highway.

Determination to be final for one year.

SECTION 83. The determination of the supervisors of any town in refusing to lay out, alter or discontinue any highway shall be final, (unless such determination be appealed from as provided in this chapter), for the term of one year after the making of such determination; and no application for laying out, altering or discontinuing any such highway shall be again acted upon by said supervisors within said term of one year; and in case the determination of the supervisors of any town in laying out, altering or discontinuing any highway, shall be appealed from, as provided in this chapter, and such determination shall be reversed on such appeal, the said supervisors shall not within one year after the making of the determination reversed on such appeal, act again upon an application to lay out, alter or discontinue any such highway.

Supervisors shall give owners notice to remove fences.

SECTION 84. Whenever the supervisors shall have laid out or altered any public highway through any enclosed, cultivated or improved lands, and their determination shall not have been appealed from, they shall give the owner or occupant of such lands notice in writing to remove his fences within such time as

they shall deem reasonable, not less than thirty days after giving such notice; but no person shall be required to remove such fence between the first day of April and the first day of November in any year; and if such owner or occupant shall not remove his fences within the time required in such notice, the supervisors shall cause such fences to be removed, and shall direct such road to be opened; but if the determination of the supervisors shall have been appealed from, then such notice shall be given after the final decision of such appeal.

SECTION 85. Every public highway already laid out, no part of which shall have been opened and worked within four years from the time of its having been so laid out, and every such highway hereafter to be laid out, no part of which shall be opened and worked within the like period, shall cease to be considered as a public highway; and all public highways now in use, heretofore laid out and established pursuant to law, and all roads not recorded which shall have been used as public highways twenty years or more, and roads not recorded which shall hereafter be used ten years or more, shall be deemed public highways.

If highway not opened and worked within four years, shall cease to be a highway.

When legalized by use.

SECTION 86. All highways laid out by the supervisors of any town and recorded, any portion of which shall have been opened and worked for the term of three years, shall be deemed to be and are hereby declared to be legal highways, so far as they have been so opened and worked, notwithstanding the statutes may not have been in all respects pursued in laying out the same; and the provisions and terms of this section shall apply also to all state roads, and no action shall be maintained for opening, working or traveling upon said highway or removing any obstructions therefrom or to vacate said highway, or to recover possession of land occupied by said highway, unless said action shall be commenced within twelve months after this act takes effect; and in all cases the failure to commence an action to vacate said highway within twelve months aforesaid, shall in all actions in all courts, be conclusive evidence of a dedication of the same to the public use.

When legalised by opening.

SECTION 87. When any highway shall be discontinued, the same shall belong to the owner or owners of the adjoining lands; if it shall be located between

When highway discontinued, land, to belong to owner of adjoining land.

the lands of two or more different owners, it shall be annexed to the lots to which it originally belonged, if that can be ascertained; if not, it shall be equally divided between the owners of the lands on each side thereof.

Shall be taken into account in estimating damages for new road.

SECTION 88. If any discontinued highway shall be set to a tract of land through which a new highway shall be laid out, the same may be taken into consideration in estimating the damages sustained by the owners; and in estimating the damages which may be sustained by any person owning or interested in lands, by reason of laying out or altering any highway, the benefit which such person may receive thereby shall be taken in consideration.

State roads to be laid out as other roads.

SECTION 89. All United States and territorial roads, and all state roads which shall hereafter be laid out, shall be opened and worked the same as other highways; and whenever any such state road shall be laid out through enclosed, improved and cultivated lands, without the consent of the owner, the damages claimed therefor may be determined by agreement between the commissioners authorized to lay out such road and the owner; but the damages thus allowed by the commissioners shall not in the aggregate exceed fifty dollars upon any such road in any one town; or the same proceedings may be had for the appraisal and collection of damages therefor, as if such road were laid out under the provisions of this chapter: *provided*, application for a jury to appraise such damages shall be made within thirty days after the return of the commissioners establishing such road, shall have been filed in the office of the clerk of the board of supervisors of the county where such damages are claimed.

County board may alter state road.

SECTION 90. The county board of supervisors of any county through which any state road shall pass, may alter the same within the limits of their county in the same manner they are authorized to alter county roads, but they shall not discontinue any such road, unless such road shall lie wholly within said county, and town boards of supervisors are hereby prohibited from altering, changing, vacating or discontinuing any and all state roads.

Any person may appeal from decision altering road.

SECTION 91. Whenever any road specified in the preceding section shall be altered as therein provided, any person considering himself aggrieved by such al-

teration, may appeal from the decision of such supervisors, within thirty days thereafter, to the county board of supervisors of the same county, upon filing with the town clerk of the proper town, a bond executed to the supervisors of such town, with sufficient sureties, to be approved by such clerk, conditioned to pay all costs arising from appeal: *provided*, the determination of the town supervisors in altering such road shall not be reversed; and the said board shall hear and determine such appeal; and if the determination of the town supervisors shall not be reversed, and the said board shall hear and determine such appeal, and if the determination of the town supervisors shall not be reversed, the appellants shall pay such costs; but if the same shall be reversed, then the town where such road shall be so altered shall pay the same.

SECTION 92. All state roads located and established within this state, shall be viewed, surveyed and established, and return made thereof, agreeably to the provisions of this chapter within two years from the passage of the act by which said road may be granted or authorized to be laid out.

State roads to come under provisions of this act.

SECTION 93. The commissioners appointed to locate and establish any state road, shall, at least twenty days before they proceed to locate the same, cause copies of the special law by which they act to be posted up in three public places in each town through which the said road may pass or run into, which notice shall set forth the time and place the said commissioners will meet to locate said road; may cause the same to be correctly surveyed and marked, from the beginning throughout the whole distance, by setting stakes in the prairie at a reasonable distance apart, and by blazing trees in the timber.

Commissioners of state roads shall cause law under which they act to be published.

SECTION 94. The commissioners and surveyors of each road shall make a certified return of the survey and plat of the whole length of said road, specifying in said return, the width, depth and course of all streams, the position of all swamps and marshes, and the face of the country generally, noting where timber and where prairie, and the distance said road shall have been located in each county.

Certified return of survey to be made.

SECTION 95. Said return and plat shall be signed by a majority of the commissioners and the surveyor of said road, and forwarded to the secretary of state,

Must be signed by majority of commissioners.

within sixty days after the view and survey of the same, to be by him recorded and preserved; they shall also, within sixty days as aforesaid, deposit in the office of the clerk of the board of supervisors of each county through which said road shall be laid, a return and plat as aforesaid of so much of said road as shall be laid out and established in said county, to be recorded as aforesaid.

Compensation  
of commission-  
ers.

SECTION 96. The commissioners shall be entitled to such compensation for their services in laying out all state roads, from the different counties through which the roads may pass, as the supervisors of said counties may deem just, to be paid out of the treasury of the county.

When supervi-  
sors shall not  
alter or vacate  
state road.

SECTION 97. The board of supervisors of any town shall not have the power to alter or vacate any state road laid out in accordance with the provisions of this chapter, when the roads shall not lie wholly in such town.

State not to be  
liable for any  
expenses for  
state roads.

SECTION 98. The state shall not be liable for any expenses incurred in, or damages arising from the laying out of any state road heretofore authorized by law to be laid out, and which has not been laid out, or which may hereafter be authorized, unless the law providing for the laying out of such road shall expressly provide that the state shall pay such expenses and damages.

Damages to be  
paid by coun-  
ties.

SECTION 99. All damages occasioned by the laying out and opening of any state road, shall be paid by the several counties in which the same may be located.

Legislature not  
to grant state  
road without  
proper notice.

SECTION 100. No state road shall be granted by the legislature unless it shall appear that notice has been given of the intention to apply for the same by the publication of a notice to that effect, four weeks successively, in some newspaper in such county through which it is proposed to lay such road: *provided*, that if there be no newspaper published in any such county, it shall be lawful to give such notice by printing [posting] the same, at three or more of the public places near the line of said proposed road, for the term of four weeks.

Penalty for ob-  
structing  
ditches.

SECTION 101. Whoever shall wilfully obstruct any highway or fill up or place any obstruction in any ditch constructed for draining the water from any highway, shall forfeit for every such offence, a sum not exceed-

ing twenty-five dollars; and the overseer of the proper district shall cause such obstruction immediately to be removed.

SECTION 102. In every case where a highway shall have been laid out and opened, and the same has been or shall be encroached upon by any fence, building or other fixture, the supervisors shall make an order under their hands, requiring the occupant of the land through or by which such highway runs and to which such fence, building or other fixture shall be appurtenant, to remove the same beyond the limits of such highway within thirty days; and they shall cause a copy of such order to be served upon such occupant; and every such order shall specify the width of the road, the extent of the encroachments and the place or places in which the same may be, with reasonable certainty.

Supervisors to prevent encroachments upon highways.

SECTION 103. If the fence, building or other fixture causing such obstruction shall not be removed within thirty days after the service of a copy of such order, such occupant shall forfeit the sum of fifty cents for every day after the expiration of that time during which such encroachment shall continue.

Penalty of owner for not removing obstruction.

SECTION 104. If the occupant upon whom a copy of such order shall be served, shall deny such encroachment, the supervisors or some of them, shall apply to some justice of the peace of the county for a precept, which shall be issued by such justice, directed to any constable of the county, commanding him to summon six disinterested freeholders thereof, to meet at a certain day and place, and not less than four days after the issuing thereof, to inquire into the premises; and the constable to whom such precept shall be directed, shall give at least three days' notice to one of the supervisors of the town and to the occupant of the land, of the time and place at which such freeholders are to meet.

If occupant of land deny encroachment, how proceed.

SECTION 105. On the day specified in the precept, the jury so summoned shall be sworn by such justice, well and truly to enquire whether any such encroachment has been made as described in the order of the supervisors and by whom; and the witnesses produced by either party shall be sworn by the justice, and the jury shall hear the proofs and allegations which may be produced and submitted to them, and in case any person summoned as a juror shall not appear, or shall

Jury and witnesses to be sworn.

be incompetent, his place may be supplied by a talesman, as in other cases.

Jury shall certify as to encroachments.

SECTION 106. If the jury find that any such encroachments have been made by the occupant of the land, or any former occupant thereof, they shall make and subscribe a certificate in writing of the particulars of such encroachments, and by whom made, which shall be filed in the office of the town clerk; and the occupant of the land, whether such encroachment shall have been made by him, or by any former occupant shall remove the fence, building or other fixture causing such encroachment within thirty days after the filing of such certificate, under penalty of fifty cents for each day after the expiration of the time during which such encroachment shall continue.

Penalty for not removing encroachments.

Occupant to pay costs of proceedings, and how enforced.

SECTION 107. If the jury find that any encroachment has been made as aforesaid, the occupant shall pay the cost of such inquiry; and if the same shall not be paid in ten days, the justice shall issue an execution for the collection thereof, directed to any constable of the county, commanding him to levy such costs and his fees thereon, of the goods and chattels of such delinquent, and make return thereof to such justice within thirty days from its date; and the justice, constable, jurors and witnesses shall be entitled to the same compensation as for other similar services in proceedings before justices of the peace.

If the jury find no encroachment, costs of proceeding to be paid to occupant.

SECTION 108. If the jury find that no encroachment has been made, they shall so certify, and shall also ascertain and certify the damage which the then occupant shall have sustained by such proceedings, which damages, together with the costs of the proceedings, shall be paid by the supervisors and shall be a charge in their favor against the town in which they shall have been elected.

When not required to remove fence.

SECTION 109. No person shall be required to move any fence under the above provisions, except between the first day of November and the first day of April, unless the same shall have been made within three months next before the making of the order for the removal thereof.

How fallen trees to be removed from highway.

SECTION 110. If any tree shall fall or be fallen by any person, from any occupied land into any highway, any person may give notice to the occupant of the land from which such tree shall have fallen, to remove the

same within twenty-four hours; and if such tree shall not be removed within that time, but shall continue in such highway, such occupant shall forfeit the sum of fifty cents for every day thereafter until such tree shall be removed; but the amount so forfeited shall not exceed ten dollars for one tree.

SECTION 111. In case any person shall cut down or fall any tree on enclosed land not occupied by him, so that it shall fall into the highway, unless by the order or consent of the occupant, such person shall pay to the occupant of such land the sum of one dollar for every day the same shall remain in such highway, together with all other damages which such occupant may sustain; but the amount so to be recovered, shall not exceed twenty dollars for one tree.

Penalty for persons not occupying land for falling trees into highway.

SECTION 112. Every person who shall obstruct any meandered navigable stream in this state, by felling any tree or trees therein, or by placing any refuse lumber, slabs or other substance calculated to impede the free navigation thereof, either in such stream or in any tributary of said stream, so that the same shall float into such meandered stream, shall forfeit for each such offense the sum of twenty-five dollars penalty, one half to the informer and one half to the treasury of the county where such offense may be committed; and every person damaged by such offense may sue for and collect such penalty by civil action in the circuit court of the county where such offense may have been committed, and may in the same action sue for any special damages he may have sustained by reason of the offense complained of in such action. The plaintiff in such action shall be the informer, and the defendant the person alleged to have committed the offense; and if the offense be found and adjudged to have been committed as alleged in the complaint, the plaintiff shall recover costs of the defendant, otherwise the defendant shall recover costs of the plaintiff. The verdict or finding in such action shall state: 1st. Whether or not such offense has been committed as alleged in the complaint, and if so, how committed. 2d. The amount of special damage which the plaintiff has sustained thereby.

Penalty for obstructing streams.

SECTION 113. The supervisors in any town in this state are hereby authorized and empowered to levy and collect a tax on all taxable property of such town,

Tax for bridges.

for the purpose of rebuilding and maintaining suitable and permanent bridges and causeways across any river, stream, creek, swamp or marsh in any such town, whenever they shall deem it necessary for the public interest and convenience to rebuild, repair or maintain any such bridge or causeway: *provided*, that no such tax shall exceed the sum of three hundred dollars for any bridge or causeway, and not more than one such tax shall be levied and collected in any one year in any of the said towns; *and provided, further*, that all the supervisors agree in levying and assessing such tax.

When and how levied.

SECTION 114. Said tax shall be levied and collected whenever any of said board of supervisors shall decide, in the same manner as other town taxes are levied and collected.

How apportioned between towns.

SECTION 115. Whenever it shall appear to the board of supervisors of any county that any one of the towns in such county would be required to raise an amount equal to more than one-half of one per centum of all the taxable property in such town, according to the last previous equalized valuation by the county board of equalization, for erecting or repairing any necessary bridge or bridges upon the principally traveled thoroughfares in said town, such board of supervisors may cause such sum to be raised and levied upon the county as will be sufficient to defray the expenses of erecting or repairing such bridge or bridges, or such part of such expense as they may deem proper, in excess of such one-half per cent., which must first be raised and expended by the town asking for such appropriation from the county treasury; and such moneys, when collected, shall be paid out upon the order of the chairman and clerk of such board, in such manner and at such times as they may determine and prescribe.

County supervisors to co-operate with town supervisors.

SECTION 116. Whenever the county board of supervisors of any county shall determine to appropriate any money for the purposes mentioned in the preceding section, they may designate such of their number as they shall deem proper, to co-operate with the board of supervisors of the town wherein such money is to be expended, in the letting, inspection and acceptance of the work; or in case where the whole of such work is proposed to be paid for by such county appropriation, such county board may direct the letting, inspection

and acceptance of such work in such manner as to them may seem proper and necessary.

SECTION 117. The supervisors of any town may put up and maintain, at the expense of their town, in conspicuous places at each end of any bridge in such town, maintained at public charge, and the length of whose span is not less than twenty-five feet, a notice, with the following words in large characters: "One dollar fine for driving or riding on this bridge faster than a walk."

Fines authorized for fast driving on bridges.

SECTION 118. Whoever shall ride or drive faster than a walk on any bridge upon which such notice shall have been placed and shall there be, shall forfeit for every such offense the sum of one dollar.

SECTION 119. Whoever shall wilfully injure any bridge maintained at the public charge, shall, for every such offense, forfeit treble damages; and he may be indicted and punished as provided by law.

Fines for injury to bridges.

SECTION 120. If any damage shall happen to any person, his team, carriage or other property by reason of the insufficiency or want of repairs of any bridge or sluiceway or road in any town in this state, the person sustaining such damages shall have a right to sue for and recover the same against such town, in any court having jurisdiction thereof; and if such damages shall accrue by reason of the insufficiency or want of repairs of a bridge erected or maintained at the expense of two or more towns, the action shall be brought against all the towns liable for the repairs of the same; and upon recovery of judgment, the damages and costs shall be paid by such towns in the proportion in which they are liable for such repairs; and the court may, in its discretion, issue execution against each town for its proportion only:

Persons injured by defective bridges may recover damages.

SECTION 121. If any such bridge or sluiceway or road shall have been out of repair in consequence of the neglect or default of the overseer of highways of the district in which the same may be situated, then the town against which any judgment shall have been recovered by reason of such defective bridge or sluiceway or road, may bring an action against such delinquent overseer, and recover the amount of such judgment.

Overseers to be held responsible.

SECTION 122. All trees standing or lying on any land over which any highway shall be laid out, shall

Trees standing in highway to be for use of

same, except shade and ornamental trees.

be for the proper use of the owner of such land or person otherwise entitled thereto, except such of them as may be requisite to make or repair the highways or bridges on the same land, or within one mile of the same; but no trees reserved for shade or ornament shall be used for such purpose.

Owners may set out trees—penalty for destroying them.

SECTION 123. Any person owning or occupying land adjoining any highway may plant or set out trees on each side of said highway contiguous to his land; which trees shall not be set in the highway more than ten feet from the margin thereof; and if any person shall cut down, destroy or injure any tree that may have been or shall be so planted or set out, or which shall have been left on the side of such highway for shade, he shall be liable to treble damages to the owner or occupant of such adjoining lands.

Penalty for injury to mile stones and guide boards.

SECTION 124. Whoever shall wilfully destroy, remove, injure or deface any mile stone or mile board erected on any highway, or shall wilfully injure or deface any inscription or device upon any guide post or guide board on any highway, or remove, destroy or injure any such guide post or guide board, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not exceeding fifty dollars, or imprisoned in the county jail not exceeding three months, in the discretion of the court.

Penalty for turning water course into highway.

SECTION 125. Whoever shall injure any highway, by obstructing or diverting any creek, water course or sluiceway, or by drawing logs or timber on the surface of any road or bridge or by any other act, shall be liable in treble damages, to be recovered by the overseer of highways of the road district within which the injury was done, in his name of office, to be expended by him in the repair of the roads in his district.

Not to apply to state roads, except when especially provided.

SECTION 126. The provisions of this chapter relating to highways and bridges shall be construed to extend to all parts of the state, except where special provisions, inconsistent therewith, have been or shall be made by law, in relation to particular towns, counties, cities or villages.

Protection for hedge fence.

SECTION 127. Whenever any owner or owners, occupant or occupants of any land or lands bordering upon any public road or highway, excepting a street or alley in a town or village, through which any public road or highway may pass, may wish to plant and cul-

tivate any hedge or live fence along the margin of his, her or their lands, it shall be lawful for any such person or persons to set or plant any such hedge or live fence, precisely on the line of the road or public highway, and also to place on the margin of such road a protection fence, not to occupy more than six feet of the margin or edge of such road; and such protection fence, when placed opposite any live fence or hedge actually set or planted, shall be permitted by the overseer of highways and all other persons, to remain for the term of seven years: *provided*, that the supervisors of any town may grant permission in writing, to the owner or owners of any hedge or live fence, to continue such protection fence any term of time which they may deem necessary.

SECTION 128. The county board of supervisors of each county shall be commissioned to lay out, survey and establish highways extending through or into two or more towns, or along and near the town line between two or more towns in such county.

When county board may lay out road.

SECTION 129. Upon petition of not less than thirty resident freeholders, and not less than fifteen from each town, through or into which or along and near to the line of which it is proposed to lay such highway, praying the laying out, surveying and establishing of a public highway extending through or into or along and near to the line between at least two of the towns of such county, the said board of supervisors shall proceed to lay out, survey and establish such highway, if, in their opinion, the public good will be thereby promoted.

Petitioners must be residents of each town.

SECTION 130. Whenever the county board of supervisors shall lay out any such highway, they shall cause an accurate survey thereof to be made, and they shall make out a description of the highway so laid out, and incorporate the same in an order to be signed by them or a majority of them, and shall cause said order to be filed and recorded forthwith in the office of the clerk of the board of supervisors of such county; and shall also cause a copy of such order to be filed in the office of the town clerk of each town into or through, or along and near to the line of which said road may run.

Shall cause survey to be made.

SECTION 131. Upon application made to said board of supervisors for the laying out of such highway, they shall cause a notice to be given, by publication of a

Shall give notice of time of meeting.

notice for three weeks, in some public newspaper printed and published in such county, of the time and place at which they will meet to decide upon such application, or by three written or printed notices, posted for the same length of time in each town: *provided*, that no newspaper shall be published in such county, or being published, shall not have general circulation.

How damages  
ascertained  
when not  
agreed upon.

SECTION 132. The damages sustained by any person through whose land any such highway shall be laid out, may be ascertained by agreement between said board of supervisors and [such] owner. In case of failure to agree upon such damages, the same may be ascertained and determined in the manner now provided by law for the ascertainment of damages, in chapter 19 of the revised statutes, and shall be paid by the towns, respectively, where the same are occasioned, unless otherwise adjudged by said county board of supervisors; and the said supervisors shall, if they think it is a burden upon any one town to pay all of said damages, decide what portion of said damages said town shall pay, and the balance of said damages shall be paid by towns benefited by such road, in such proportions as the county board of supervisors shall determine.

Compensation  
of supervisors.

SECTION 133. The said board of supervisors shall have the same *per diem* allowance as when in regular session; to be paid as well as the necessary expenses of surveying such road, out of the county treasury.

Alteration to be  
made by author-  
ity of the coun-  
ty board.

SECTION 134. No alteration, vacation or discontinuance of any such highway shall be made, unless by the board of county supervisors, and by such board only on like petitions and notices as in the case of laying out highways by said board. Highways laid out by said county board of supervisors, shall be opened and repaired in the respective towns in the same manner as other highways; but if the town board neglect or refuse to open said road as is now provided by law, the county board of supervisors shall have the same power and authority to open said highway, that the said town board now have by law.

If town super-  
visors cannot  
agree, then  
county super-  
visors may pro-  
ceed.

SECTION 135. Whenever the supervisors of any adjoining towns shall be unable to agree, or fail to meet in the location and laying out of a highway extending into or through such towns, so as to make a continuous road from one town into or through the other, as may be required for the convenience of the

public, upon petition of thirty freeholders, fifteen of whom shall reside in each of such towns, setting forth such disagreement or failure to meet as the case may be, and praying the laying out of a road extending into or through such two towns, the said board of county supervisors may proceed in the same manner hereinbefore provided, to view, lay out, survey and establish such highway.

SECTION 136. Whenever in any town in this state there shall be less than two supervisors, the county supervisors of said county, or any number of them not less than three, shall have the same power and authority to lay out, alter or discontinue highways in such town as is now vested in town supervisors.

If only one town supervisor, then county supervisors to lay out road.

SECTION 137. In the cases mentioned in the 136th section of this chapter, the application to lay out, alter or discontinue such highway shall be made to the county supervisors, or to any three of them, and said county supervisors shall act upon such application in conformity with the provisions of this chapter and the acts amendatory thereof, and an appeal from any order of said county supervisors, or from their award of damages, may be made in the manner prescribed in this chapter, and in the acts amendatory thereof: *provided, however*, that notice of such appeal shall be served on the clerk of said town.

Application to be made to county supervisors.

SECTION 138. Whenever it shall be deemed necessary to lay out a highway upon the line between a town and city, such highway shall be laid by the supervisors of said town, and by three commissioners elected by the common council of said city, who shall be duly sworn before entering upon the discharge of their duties.

If highway between town and city, commissioners chosen to act with supervisors.

SECTION 139. The common council shall elect commissioners to lay out highways as herein specified; on the petition of six freeholders of said city, and said commissioners shall join in laying out such highway, if in their opinion, the public good will thereby be promoted.

Common council to elect commissioners on petition.

SECTION 140. All the powers possessed by supervisors of adjoining towns in cases of application to lay out highways on town lines, shall be possessed by the said commissioners and supervisors, and all the provisions of chapter nineteen of the revised statutes, relative to laying out, establishing and maintaining highways

Commissioners to have same powers of supervisors.

on the line between towns, shall apply to highways on the line between cities and towns; and all matters relating to such wards, required to be recorded with town clerks, shall be recorded in the office of the city clerk, whenever such city is a party to laying out such highways.

Towns may vote on question of collecting tax in money.

SECTION 141. Any town, at any annual town meeting, may vote upon the question of collecting the highway taxes in such town, in money, and in case such town shall, by a majority vote, decide to collect such taxes in money, the said taxes shall be levied and collected and paid into the treasury at the same time and in the same manner as other town taxes.

May direct manner of expenditure of taxes.

SECTION 142. Such town may direct the manner of the expenditure of such taxes upon the highways and bridges in said town, under the direction of the board of supervisors, or by three highway commissioners to be elected for that purpose, whose duty it shall be to expend the avails of such taxes on the highways and bridges in such town, by the employment of labor under their direction; or said supervisors or commissioners may, if so instructed by the town, at any annual town meeting, let by special contract any or all the highways and bridges in such town to the lowest bidder or otherwise, as they may deem for the interest of the town, to be kept in repair for a term not exceeding five years.

When highways blocked with snow, overseers to call out tax payers to open them.

SECTION 143. It is hereby made the duty of overseers of highways, at any time during the winter, when any part of the public highways in their respective districts are blocked up by snow drifts so as to render the same impassable, to call out upon one day's notice, the tax payers of said districts, and immediately put such part or parts of said highways in passable order: *provided*, that whenever it shall be deemed impracticable by such overseer to render such part or parts of highways passable, and to keep the same in such condition, it shall be lawful for him to open a track through any field or inclosure in his district, for the temporary accommodation of travel, whenever the same may be done without any material damage to the owners of such inclosure, and no person using such track shall be liable therefor in any civil or criminal action.

SECTION 144. Every person who shall, upon notice being given by the overseer, appear with such tools as he shall direct, and work agreeably to the directions of such overseer shall be credited on the highway tax roll which may still be in the hands of said overseer, the amount of such labor, or any part thereof: *provided*, said person performing such labor shall have not paid the full amount of tax assessed to him on said highway tax roll. But in no case shall he receive a greater credit than he may be delinquent on said tax roll, or may be entitled to on account of such labor. The overseer shall have power to levy and assess a tax not to exceed one fourth of the amount assessed on the taxable property on the highway tax roll of the previous year, said tax to be applied to rendering the highways passable, according to the provisions of section one hundred and forty-three of this act; said tax to be collected in the same way and manner as any other highway tax.

May be credited on tax roll for work performed

What amount of tax overseer may levy.

SECTION 145. Whenever any turnpike or plank-road or any portion thereof shall have been abandoned by the owner or owners thereof neglecting to make repairs and collect tolls upon the same, for the period of sixty days, such road or any portion thereof so abandoned, shall be deemed a public highway, and the supervisors of any town in which such road or any portion thereof may be situated, shall immediately after such abandonment as aforesaid, cause the same to be put and kept in repair.

When turnpike or plankroad abandoned, shall be deemed public highway.

SECTION 146. It shall be lawful for the board of supervisors in any town in this state, in which there is a village that is not incorporated, upon the petition of ten tax-payers residing in such village, to make an order directed to the overseer of highways in such village, to appropriate and expend that portion of the highway tax named therein, in constructing such sidewalk or sidewalks as they shall designate, and to procure and set out such shade and ornamental trees in and about such village, as they shall direct: *provided, however*, that such board shall not set apart a greater sum for the purpose above named than twenty-five per cent. of the whole tax for such district in any one year.

How villages not incorporated procure sidewalks.

SECTION 147. When the plat of any village in this state shall be duly certified and recorded, according to the requirements of the law in such cases made and pro-

Supervisors may declare streets in villages public highways.

vided, the town board of supervisors shall make an order, to be recorded by the town clerk, declaring such streets in the said village plat as they may deem necessary for public use, to be public highways, without making any other survey than that made in such recorded plat; and when such order has been so recorded, the overseers of highways in such village shall make, improve and keep in repair such streets, the same as any other public roads.

Approved March 10, 1869.

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## CHAPTER 153.

[Published March 23, 1869.]

AN ACT to provide against deficiency in the revenues of the state.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

Secretary of state to levy additional tax.

SECTION 1. Whenever it shall appear at the time prescribed by law for the apportionment of the annual state tax, among the several counties of this state, that the appropriations made by the legislature and by existing laws exceed the amount of state tax levied to meet the expenses of the year for which such tax was levied, it shall be the duty of the secretary of state to levy and apportion such additional amount as may be necessary, in connection with the amount previously provided for, to meet all authorized demands upon the treasury of the state, up to such time as the succeeding state tax shall be due and payable.

Shall make statement of amount.

SECTION 2. The secretary of state shall make a statement, and include the same in his annual report to the governor, showing the amount of tax levied as provided above, and the estimates upon which such additional tax was based, which statement shall be placed on record in his office and published in his annual report.

SECTION 3. This act shall take effect and be in force from and after its passage.

Approved March 10, 1869.