Chapter 551

1965 REPLACEMENT PART

Diking Districts

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CROSS REFERENCES

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Water resources policy, state, conformance with required, 536.300 to 536.400

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551.010 "Lands" does not include improvements; railroads subject to taxation; duties of surveyor and engineer. (1) When the term "lands" is used in this chapter in reference to taxation, it shall not be held to include improvements thereon; but the roadbed of railway lines within diking districts shall be subject to taxation for diking purposes.

(2) For purposes of this chapter, duties prescribed for the county surveyor may also be performed by the county engineer if the county employs a registered professional engineer.

[Amended by 1965 c.286 §1]

551.020 Petition for formation of district; bond. One-half or more of the owners of lands which may be conveniently embraced in one diking district and which are subject to overflow by tide waters or freshets, and who represent one-half or more of the area of the lands embraced within the proposed diking district, may present a petition to the county court of the county in which the lands are situated, reciting therein that it is desired to form a diking district for the purpose of improving by diking or damming the lands contained therein, which are subject to overflow by tide water or by freshets, as the case may be, and further giving by legal subdivisions, or by metes and bounds, the description of such lands as are desired to be included in the district, and stating that the petitioners are the owners of one-half or more of the acreage to be embraced in the district. If, upon consideration of the petition, the county court finds the statements therein are substantially correct, the court shall require the petitioners to give a bond sufficient to cover the preliminary expenses of the proceedings.

551.030 Publication of petition; order to show cause; viewers to investigate proposed works; State Engineer to assist county surveyor. (1) The county court shall then have the petition published in the official county paper once each week for four consecutive weeks, together with an order citing all interested parties to appear before the court on a given date, after the time of publication of the notice has expired, and show cause why the petition should not be granted.

(2) The court shall appoint three disinterested viewers, nonresidents of the proposed district, together with the county surveyor, to view out the proposed dikes and dams, along the most practical route to accomplish the object desired, at the least possible cost and expense; provided, that the State Engineer or a competent representative of his office shall, upon order of the county court, assist the county surveyor in making such survey and plans for the proposed improvement, and such order shall be made by the county court if requested so to do in the petition. The fees of the State Engineer shall be included as a part of the costs of the improvement.

551.040 Procedure to be same as for establishment of roads; duties of surveyors and viewers; plans, estimate of costs and report. The routine of procedure under this chapter shall be as far as practicable the same as prescribed by the road law of the state for survey, location and establishment of county roads. The surveyors and viewers appointed shall meet as prescribed by the county court. They shall trace upon the ground the line of the dikes and dams necessary, and shall keep an accurate record of the magnetic bearings and the distances upon the same. They shall designate the width of the right of way through which the dikes and dams shall pass, which right of way, if the petition is granted, shall be the property of the district in so far as is necessary for the purpose of building and maintaining the works. The surveyors and viewers shall also define the boundaries of the district, and make an accurate list, by legal subdivision, of the lands embraced therein, and the names of the owners thereof. They shall further make plans for, and estimate the cost of, the proposed dikes and dams, and shall file with the county clerk, at least one week before the day set for a hearing, a complete report of their works. Their report shall be open to public inspection.

551.050 Hearing; postponement; decision of court; relation of benefits to expenditures; record of proceedings; assessment of cost of preliminary work. At the time advertised for the hearing of interested parties, the court may postpone the hearing as may be necessary in order to allow the viewers more time in which to report, or for other good cause. If, upon the final hearing, the county court, from the report of the viewers and the testimony of interested persons, believes that the benefits to be derived from forming a diking district are not sufficiently great to justify the expenditure

which will be incurred, the petition and report shall be dismissed at the cost of the petitioners. If the court believes that the proposed improvement will be for the general public good, and that the increase in the taxable value of the land will be greater than the cost, or that destruction of or damage to property equal to the cost will be prevented, the petition shall be granted and the district formed, a number given by which it shall be designated in future proceedings, the report of the viewers adopted and incorporated in the court records, and the cost of the preliminary work assessed upon the district.

551.060 Cost of dikes and dams; apportionment among landowners; placing on assessment roll; collection; crediting to special fund. After the petition has been granted and the proceedings had as specified in ORS 551.050, the court shall apportion the estimated cost of the dikes and dams among the landowners of the proposed district, in proportion to the valuation of the lands therein, according to the estimated value placed upon the respective tracts by the viewers. The cost thus apportioned shall be a tax upon the land and shall be placed upon the assessment roll of the county for the current year. Such taxes for diking purposes shall have the same legal effect and be collected in a like manner as other state and county taxes upon the assessment roll. The moneys collected on the assessment for diking purposes shall be paid to the county treasurer and by him held as a special fund for the credit of the diking district, to be paid out in accordance with the provisions hereinafter specified in this chapter.

551.070 Work proposed; advertisement for bids; contracts; bond; relation of expenditure to tax; personal subscriptions; modification of plan. When the tax has been collected or the application filed as provided in ORS 551.080, the county court shall advertise for bids on the proposed work, either as a whole or in parts, as may be deemed most economical. The advertisement for bids shall be published in the official county paper once each week for two successive weeks previous to letting the contracts. The contracts shall be drawn in such terms as will insure the district against loss, and a bond required of the contractor such as will insure the completion of the work in case of his failure to comply with his agreement. No contract shall be awarded which calls for an expenditure of a sum of money greater than the tax levied for the purpose; provided, that the difference may be made up by personal subscriptions; and provided also, the court may modify the plan so as to bring the cost of work within the tax levy, if such modification can be made without material detriment to the improvements.

551.080 Payment of assessments in instalments. After the assessments have been made, the owner of any property assessed for such improvement in a sum not less than $50 may, at any time within 10 days after the cost of such diking district has been apportioned, file with the clerk of the county court a written application to pay the assessment in instalments. The application shall state that the applicant waives all irregularities or defects, jurisdictional or otherwise, in the proceedings to create the diking district, and in the assessment and apportionment of costs. The application shall contain a provision that the applicant agrees to pay the assessment in five annual instalments with interest at the rate of six percent per annum. But no such application shall be received and accepted where the assessment exceeds the assessed valuation of the property on the tax roll of the county. The instalments shall be paid annually from the time of the apportionment of the costs. In case of default in the payment of any instalment for 20 days after it becomes payable, the whole of the remaining unpaid sum shall be collected as a tax against the property assessed for the same.

551.090 Meetings of landowners; procedure; selection of advisory board and superintendent. (1) Within 10 days after the petition has been granted, the petitioners shall call a meeting of the landowners of the district, to be held in the district at a time and place by them designated, for the purpose of choosing three landowners as an advisory board and nominating one landowner for superintendent of the district. Notice of the meeting shall be signed by at least three of the petitioners and posted in three public places in the district five days before the date of the meeting.

(2) At the meeting and at all subsequent district meetings one-half of the landowners in the district being the record owners of at least one-half of the number of acres of land therein shall constitute a quorum competent to transact business, and each landowner present shall be entitled to one vote for each

acre of land in the district of which he is at the time the record owner. All meetings shall be organized by selecting a chairman and secretary. The secretary shall certify all proceedings taken and file the same with the county court of the county within five days after any meeting.

(3) The advisory board shall assist the superintendent with its advice and counsel concerning the necessity of work and the manner thereof and in the repair and maintenance of the dikes and dams in the district. The members of the advisory board shall hold office until the next annual meeting and until their successors are elected and qualified.

(4) There shall be an annual meeting of the landowners of the district on the first Monday in November of each year at 11 a.m., at which time, or at an adjourned meeting thereof, three landowners of the district shall be chosen for the advisory board, and a superintendent shall be nominated for the next calendar year, whose selection shall be certified to the county court on or before January 1 each year. The county court shall appoint for superintendent of dikes in each district the person so nominated by the landowners. Should the district fail to file with the county court a certificate of the nomination of a superintendent, then the county court shall make its own selection from the landowners in the district and appoint him superintendent. In either case the superintendent shall serve until the next annual appointment and until his successor is appointed, subject to removal by the court for neglect of duty, incapacity or other good cause. In case of vacancy in the superintendent's office the county court may, on consultation with the advisory board, fill the vacancy until the next annual selection.

551.100 Superintendent; compensation; powers and duties; estimate of maintenance costs as basis for annual tax levy. (1) The superintendent:

(a) Shall receive such pay for his services as the court may allow, but shall be paid only for the time actually employed, and in no case shall the rate of pay exceed that allowed by the county surveyor.

(b) Shall oversee the construction and repair of dikes and dams.

(c) Shall see that all contracts are faithfully executed, and the work done in a thorough manner.

(d) After the dikes are completed, may employ the labor necessary to maintain them at the usual rate of wages allowed to laborers on the county road; provided, that in an emergency the county court may allow a higher rate of wages; and provided, further, that the county court may, with the approval of the advisory board, allow work on maintenance to be done by contract.

(2) The superintendent shall also, not less than 15 nor more than 30 days prior to the beginning of each fiscal year, file with the county court an estimate of the money required for the maintenance of the dikes and dams for the succeeding year. Such estimates added to any indebtedness there may be against the district shall be the basis of the tax for next year. The advisory board also shall file with the county court, on or before the fifteenth day preceding the beginning of each fiscal year, an estimate of the money required for the maintenance of the dikes and dams for the next succeeding year with a statement of the work in its opinion, required to be done, which estimates the court may consider in making its levy.

551.110 Payment of claims; warrants. All bills against the district for labor performed, material furnished, or on other accounts, shall first be indorsed by the superintendent, and when approved by the county court shall be paid by a warrant drawn by the county clerk upon the fund of the district upon deposit with the county treasurer. The clerk shall keep a separate account of all warrants drawn by him upon the fund of the district, giving the date of the warrant, the number and the account for which drawn. All warrants drawn upon the fund of the district shall be receivable for taxes due on account of that fund. The warrants shall be subject to the same regulations in reference to payment and interest as are warrants drawn upon the general fund of the county.

551.120 Damages; recovery by landowner. If, in locating and establishing the dikes and dams provided for in this chapter, an owner of land through which they pass is aggrieved on the score of right of way or other causes, he shall have proper damage. In such cases claims for damages shall be filed and the amount thereof determined in accordance with the general road law in like cases. The damages allowed shall be assessed against the lands of the district in the same manner as the tax for construction, and paid

to the aggrieved parties in the same manner in which other claims are paid.

551.130 Organization of repair and maintenance district for land already diked; levy in proportion to benefits; credit for original cost. Owners of land already diked may organize districts for the repair and maintenance of the dikes and dams thereof by complying with the procedure prescribed in this chapter, except that the petition need not be signed by more persons than the owners of more than one-half of the acreage embraced in the limits of the proposed district. The board of viewers shall provide for placing the dikes and dams in thorough repair and up to a uniform standard, and shall levy the cost of such repairs in the first instance, not upon the assessed valuation of the lands, but in proportion to the benefits conferred. The value of the dikes and dams as they stand shall be estimated and due credit given to the lands which have borne the original cost of construction; provided, such credit shall entitle the land to no consideration greater than release from the cost of repairs in the first instance.

551.140 Realignment of dikes by landowner. Any person through whose lands a dike has been constructed under this chapter may be allowed to construct a dike upon new lines between any two points on the original line. In such case the owner shall file application with the county court, giving a plat of the proposed change, and indorsed by the superintendent of the district. If the court is satisfied that the change is not detrimental to the district, the application shall be granted. The applicant shall construct the new dike at his own expense, and up to the standard of the original, of which fact the superintendent shall be the judge. The dike thus constructed shall become the property of the district in the same manner as the original, and subject to the same regulation, and the right of way of the original dike shall thereupon become vacated.

551.150 Vacation of right of way; reversion to original owner. The county court may vacate the right of way through which the dikes and dams pass, in the same manner in which county roads are vacated, and the right of way shall thereupon revert to the original owner.

551.160 County court's authority as to dikes and dams to prevent injurious overflow. The county court of any county shall have the powers provided for it in this chapter to regulate the building and maintenance of dikes and dams for the purpose of reclaiming and improving lands subject to tide overflow, or overflow by freshets, and for the purpose of protecting lands from overflow where great damage is liable to be caused thereby.

551.170 Appeals from county court. Appeals may be taken from the action of the county court in carrying out the provisions of this chapter in like manner as appeals are provided for under the road law. Any judgment resulting therefrom shall be an expense upon the district, and not upon the county, and shall be provided for in the tax levy upon the district.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 15, 1965.

Sam R. Haley
Legislative Counsel