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Internal Improvements. An Act to Establish a General System of Internal Improvements in the State of Missouri

Missouri Board of Internal Improvements

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INTERNAL IMPROVEMENTS.

AN ACT

TO ESTABLISH A GENERAL SYSTEM OF INTERNAL IMPROVEMENTS IN THE STATE OF MISSOURI.

Of the organization of a Board of Internal Improvements, and their powers and duties.

WHEREAS, The Constitution of this State provides, that Internal Improvements shall forever be encouraged; and that the General Assembly, as soon as may be, shall make provision by law, for carrying into effect a systematic and economical plan of operations. Therefore,

Be it enacted by the General Assembly of the State of Missouri, as follows:

ARTICLE I.

§ 1. That five Directors shall be appointed and commissioned by the Governor, by and with the advice and consent of the Senate, who shall constitute a Board of Internal Improvement, for the purpose of ascertaining the most proper objects of improvement, in relation to roads and navigable waters, and to report thereon to every General Assembly, the state and progress of all works and interests committed to their charge, for the purpose of applying economically and systematically, such funds as may be hereafter appropriated by law to those objects; to superintend such works of internal improvement as may now or hereafter be ordered, by this or any future General Assembly, and for the purpose of a general supervision and control over all State roads, rail roads, slack-water navigation, or canals, that may be authorised by law, wherein the State shall own or reserve any interests, or rights, immediately or prospectively.

§ 2. The Governor, in making the nominations as above provided, shall, in addition to the qualification for the faithful and efficient dis-

charge of the duties of the office, have regard to the local situation of the nominee, taking into consideration the interests of the State, so that one Director shall be appointed from each section of the State, and so that each work then ordered, may be represented in said Board, by a suitable person, residing as near as practicable thereto.

§ 3. Three of the Directors, as shall be determined by lot at the first meeting of the Board, shall hold their offices for two years, and the remaining two shall hold their offices for four years. The Governor shall appoint the time and place of their first meeting; and during the recess of the General Assembly, he shall fill any vacancy that may have occurred in the Board during said recess, which appointment shall continue in force until the end of the next ensuing session of the Legislature, and no longer; during which session, the Governor shall make nominations to fill said vacancies.

§ 4. A majority of the Board shall be a quorum for the transaction of business, and may adjourn from time to time, and fix the time and place of future meetings, provided said Board shall meet at least twice in each year—when ordered by its President, when requested in writing by a Commissioner of their body, or when demanded by any two of the Directors.

§ 5. The Board shall biennially choose one of their number to be their President, whose duty it shall be to call meetings of the Board according to law, or when in his opinion he shall deem it expedient; to examine and correct the proceedings of the Board, to preside at all meetings, and in general, to perform such duties as may devolve upon him by the regulations of the Board. There shall be also, chosen by them, and subject to their removal, a Secretary, among whose prescribed duties, shall be that of keeping and preserving regular minutes of all their proceedings, which shall be always open to the inspection of the President and Directors, the Governor, the members of both Houses of the General Assembly, and such other persons as they may designate. He shall also keep, under the direction of the Board and President, such books as may be necessary to the transaction of its business.

§ 6. Whenever the Board shall deem it necessary, in prosecuting the duties assigned them by law, they shall have power to appoint one or more of their body as acting Commissioner or Commissioners to direct such works as they may judge to require immediate and constant

attention, and to contract, under authority of the Board, for all materials and work necessary for the prosecution of the works under his charge, or in progress, upon which he shall lay before the Board, a minute statement and account of the work to its completion; it shall be his duty to be constantly in the vicinity of the work, and to superintend generally, all interests of the State committed to his charge.

§ 7. The President, Directors, and Secretary of the Board, and every Engineer, or other person employed by them, to whom any trust shall be confided, shall take an oath, impartially to perform the several duties herein or hereafter to be required by law, and the said oath shall be recorded in a book to be kept for that purpose by the Secretary, and then filed in the office of the Secretary of State.

§ 8. Each Director shall receive three dollars, for each day of service, while actually employed in the duties of his office.

§ 9. The Board shall have power to employ, discharge, or remove at pleasure, such engineers, assistant engineers, draughtsmen, surveyors, clerks, translators, markers, chain carriers, and other servants, and to administer to them such oaths as they may deem necessary in the execution of the duties herein enjoined or prescribed; and to each of said persons so employed by them, such just and equitable allowance, pay, or salary, shall be allowed, as in the judgment of the Board may be deemed necessary, subject however, to the approval of the Governor.

§ 10. The Directors shall be liable to removal for neglect of duty, or improper conduct in other respects; by impeachment, as in other cases, or by a joint resolution of a majority of the members of each House of the General Assembly. The office of Director shall be vacated, by removal of the incumbent from the State; by his removal further than to a county adjoining that in which he resided when the appointment was accepted; by his absence from two successive meetings of the Board, without giving said Board information of some good cause; and by a refusal to take the oath, or to give the bonds required by law; in either of the above events, the Board shall declare the seat of the incumbent vacant, and shall inform the Governor immediately thereof.

§ 11. Each acting Commissioner, before entering upon the duties of his office, shall execute a bond to the Governor of this State, in a penalty of double the amount entrusted to him as a Commissioner with two substantial freeholders as sureties, conditioned for the faithful dis-

charge of his duties, and for the faithful accounting for all moneys entrusted to him as such Commissioner; which may be renewed, whenever, and as often as he may be so required by the Board, by a concurrent resolution of the two Houses of the Legislature, or by the Governor; and a refusal of any Commissioner to renew his bond when so required, shall be deemed a breach of its condition. Such bond shall be approved by the Governor, recorded in a book to be kept for that purpose by the Secretary of the Board, and filed in the office of the Secretary of State.

§ 12. The Board shall have a general superintendence of the chief Engineer and all other officers appointed under them, and shall cause said officers to perform the duties hereinafter directed to be executed by them, and on failure of performing said duties, the Board shall report the same to the Governor, to be by him laid before the next General Assembly.

§ 13. It shall be the first duty of the Board after their organization, to cause the principal rivers of this State, which shall be designated by law, to be examined and surveyed with a view to the improvement of the navigation of said rivers, either by deepening the channel thereof, clearing the bed and shores of obstructions, or by a proper system of slack-water navigation by means of locks and dams; and they shall cause their engineer to make out the requisite maps and estimates in such manner as to show the estimated or probable costs of each of the said works or improvements. They shall also cause a report of their proceedings, together with the plans, maps and reports, to be laid before the General Assembly at its next session.

§ 14. The Board shall cause such field notes, maps, plans, sections, elevations, &c. as they may deem necessary in the full elucidation of the plans of all rail-roads, turnpikes, State roads, canals, or rivers, which the State may order to be examined, on which the State may order improvements, or in which the State may have any interest, to be made out, and a copy of the part or parts thereof that may be in, or adjacent to any county, to be by him forwarded to the clerk of the Court of said county, for the use of the Court. One copy shall be filed in the office of the Secretary of State, and the originals shall be kept in the office of the chief Engineer.

§ 15. It shall be lawful for the Board of Internal Improvements, and each of them, by their Commissioner, or the chief Engineer, or by

their Superintendent, Agent or Engineers, employed by them, to enter upon and take possession of, and use, all and singular, any lands, streams, and materials, of any and every description, necessary for the prosecution and completion of the improvements contemplated by this act, and to make all such canals, feeders, dams, locks, drains, water-wheels, roads, turnpike or McAdamised roads, rail-roads and their branches; to construct places of depot, bridges, walls, culverts, viaducts, and all other works necessary to carry into effect the improvements authorized, or that may be authorized by law for the use of the State, or in which the State shall take any interest; but avoiding in all cases, unnecessary damage or injury to the proprietors.

§ 16. In all cases where persons may feel themselves aggrieved or injured by the location or construction of any of the works contemplated in this act, or by the use of materials for the same, the person or persons, so aggrieved or injured, shall receive such compensation as may be hereinafter prescribed.

§ 17. Should any member of the Board of Internal Improvements, Commissioner or other person employed by or under them, in the construction of the works under their charge, except along the navigable rivers of this State, purchase or lease, enter or hold, directly or indirectly, otherwise than by descent or devise and (except in the name and for the use and benefit of the State, or for his or their immediate accommodation and use, while actually employed in the duties devolving upon them in the progress of construction of said work) any real estate, or interest in any real estate, situate within two miles from the line of either of the said public works, for a longer time than two years during his term of office, it shall work as a forfeiture of said office—provided, however, that said Director or Commissioner, may purchase, lease, enter or hold any real estate, or interest therein, along said work, after the same shall have been completed, and declared by the Board to be open to the public.

§ 18. No civil officers of this State, holding their office either by appointment by the Governor and Senate, or by joint ballot of the two Houses of the General Assembly, shall, during the term of holding such office, be eligible to an appointment in the Board of Internal Improvement.

§ 19. The Board may make and alter from time to time, such by-laws and regulations for their own, and the government of the Engi-

neers and agents under their superintendence, as may be necessary, in their opinion, to further and regulate, in the most approved manner, the interest of the State. Provided, the same be not inconsistent with the laws of this State or of the United States.

§ 20. It shall be the duty of the Board of Internal Improvement, to settle and account with the Auditor, on or before the first Monday of October in each year, for all the moneys received by them, and each of them, from whatever source and such settlement, specifying the sums respectively paid to all Commissioners or Engineers, Contractors, Agents and servants of every description employed on the work, and to all persons having received compensation for damages, and the names of all such persons, with a full and detailed account of the costs of all works done since the last settlement; which shall, without delay, be reported by the Auditor to the Legislature.

§ 21. It shall be the duty of the Board, to cause all tracts of rail road hereafter ordered to be surveyed, or constructed in this State, whether public or private, to be of uniform width between the rails, which shall be fixed upon, after they shall have ascertained the most approved width.

§ 22. No public works or improvements shall be undertaken by the Board of Internal Improvement, until appropriations shall have been made for the purpose, by authority of the General Assembly; and whenever such appropriation shall be made, either for surveys or the location and construction of public works, the said Board shall immediately carry the same into effect, in the most approved and permanent manner, having due regard to the economical application of the funds appropriated to the purpose, and they shall perform such other duties, as the General Assembly shall direct by joint resolution, or as shall be prescribed by law.

§ 23. For the purpose of creating a means for internal improvements, to be applied by the Board as the Legislature may direct and appropriate, there shall be constituted a fund, which shall consist of all the moneys which may be raised by the sale of stocks, or in any other manner by virtue of loans authorised by law for that purpose; of all appropriations which may have been or may hereafter be made for those objects; of all the proceeds or moneys which may be derived from the tolls and rents of said works, of all the proceeds of lands granted, or that may hereafter be granted by Congress for the purpose of aiding in

internal improvements of any kind in this State; of all the proceeds of lands, after paying the expense of entry, now entered, or hereafter to be entered by the agents of this State, along public works, and on which may be located any valuable mineral, coal, or lime formations, or quarries, or upon which any valuable woods or mill seats are to be found; of all grants or donations which may be received from individuals or corporations in aid of their completion, together with all profits and interests which may accrue from any publications hereafter to be made, from any information in the possession of the State, relating to subjects of internal improvements; of all rents of water or steam power; and of all other proceeds arising from the construction or lease of public works or mineral lands, in any manner whatever: *Provided*, that nothing in this section shall be so construed, as to appropriate the road and canal fund to the purposes of internal improvements, under this act.

ARTICLE II.

Of the appointment of an Engineer and his duties.

§ 1. The Governor, by and with the consent of the Board of Internal Improvement, shall appoint and commission some competent person, of suitable scientific attainments, who shall be called and shall perform the duties of chief Engineer of the State of Missouri; who shall receive such competent and just salary, as shall be recommended by the Board and approved by the Governor, not to exceed two thousand dollars, per annum, who shall hold his office during the pleasure of the Legislature, subject, however, to suspension by the Governor and Board for misconduct during the recess, or removal by a joint resolution of a majority of the two Houses of the General Assembly.

§ 2. The chief Engineer shall take an oath, faithfully to discharge the duties enjoined on him by law, and shall have authority to administer oaths to those under his employ, when such becomes necessary by the regulations of the Board.

§ 3. Whenever the State or the Board shall think proper to place in the hands of the chief engineer, any moneys for the purpose of entering lands along the routes or lines of public works, or to be by him, or under his direction, expended in the construction and prosecution of any work or works of internal improvement, the chief Engineer shall enter such lands of the United States, as he shall deem valuable for water power or mineral productions, for the use of, and

in the name of the State; and he shall as is provided in the case of a commissioner of the Board, immediately execute a bond to the Governor of this State, in a penalty of twice the amount thus placed in his hands, with two substantial sureties, conditioned for the faithful discharge of the duties of the office and trust, and for the faithful accounting for all said moneys.

§ 4. It shall be the duty of the chief Engineer, under such regulations as shall be prescribed by the Board of Internal Improvements, to superintend, generally, all surveys ordered by the State, or the Board, all maps, plans, sections or drawings ordered by the Board, or necessary to be made in the execution of the work in contemplation or under construction; to make detailed reports to the Board or Legislature, recommending what, in his opinion, may be necessary to the welfare of the State, and he shall perform all other duties usually appertaining to his office.

§ 5. It shall be the duty of the chief Engineer, to cause to be compiled on a suitable scale, a large and correct map of this State, showing thereon, in a correct and minute manner, the geographical, topographical and geological features of the country, together with marginal notes of proper tabular form, containing all such information as may be considered useful to the citizens, or tending to the development of the resources of the State.

§ 6. It shall be the duty of the chief Engineer, under the sanction of the Board and approval of the Governor, to purchase or procure such instruments as may be required for the use of the State; and also such scientific books, maps, plans and stationery as shall be necessary to the enlightened and faithful discharge of his duties. He shall keep his office permanently, at some suitable place in this State, to be designated by the Board, and shall be subject to their general supervision and control; he shall have, under them, the immediate professional superintendence of the Engineers, assistant Engineers, Draughtsmen, Surveyors and other persons employed by the Board, or by him under them, and he shall take charge of, and safely keep the originals of all field notes, maps, plans, sections and other notes of all works ordered by the Board. In his office shall be daily kept, a diary of regular meteorological tables, and also in it shall be deposited and kept, all reports of Engineers, Geologists and other scientific persons, either contributed by individuals, or ordered by the State; and all the records

in the office of the chief Engineer, shall be open to the inspection of the Board or either of its members, the Governor and officers of State, the members of both Houses of the Legislature, and such other persons as may be designated by the Board of Internal Improvement.

ARTICLE III.

Of the mode of obtaining materials and land for the purposes of Internal Improvement.

§ 1. In all cases where the persons owning any materials necessary for the construction, or repair of said works, will not donate the same, and no contract can be made between the parties, it shall be lawful for said agent, or the Board, to give notice thereof, to some Justice of the Peace in the proper township, who shall thereupon fix a time and place for assessing the value of such materials, and the said Justice shall issue a summons to the Constable of the proper county or township, to be served upon the person, or persons owning said materials—which summons shall be served and returned as in ordinary cases, except that it shall not be made returnable in less than five days; and if such owner or owners shall not be residents of said county, then the summons may be served upon any tenant residing on the lands where such materials may be, and if there should be no person residing on said lands, then by causing notice of the contents of said summons, to be set up at four or more public places in the county, at least ten days before the return of the summons; the said Justice shall also issue a venire, directed to the Sheriff or any Constable of the county, requiring him to summon a jury of six disinterested householders of the county, to serve as jurors, at a time and place fixed or named in the summons, and upon the return day of said summons, the jury being empaneled, tried and sworn, shall after hearing the parties, and examining the materials desired by the Board or agent aforesaid, and considering also, the benefit said owner or owners derived from the enhanced value of his or their property, by reason of the improvement in progress, assess and report to the said Justice the damages, if any there be; which report being confirmed by the said Justice, judgment shall be entered accordingly, notwithstanding the amount may be over the jurisdiction of a Justice of the Peace, and the said Board, or their authorized agent, may enter upon said lands, and take and use said materials for the purposes aforesaid; and the said Board or their agent, shall pay the amount

assessed by said jury, to the party or parties, or in their absence, then to the Treasurer of the county, subject to the order of the person interested.

§ 2. That in all cases, where any person shall refuse to donate to, or contract with the Board, or their agent, for the use or relinquishment of any lands owned by them, and necessary for the use and completion of the works authorized to be constructed by said Board, or when no contract can be made with the party owning the same, either from the absence or disability of such person to contract therefor, it shall be lawful for said Board or their agent, to give notice thereof to the Judge of the Circuit Court, within the jurisdiction of which such lands may lie, and it shall be the duty of the Judge thereupon, to appoint three discreet and disinterested persons, to examine and view said lands, and the viewers, so appointed, shall fix a time when they will view and assess the damages thereon, of which, notice shall be given to both parties, if they reside in the county, or the tenant residing on the lands, at least ten days previous thereto, and if the owner reside out of the county, and there be no tenant on the lands, notice of the time shall be given, by at least three advertisements in one or more public newspapers printed in, or nearest to the county in which said lands lie. In case of any lands belonging to a married woman, notice may be served on her husband, and in case of lands belonging to infants, or persons of unsound mind, the notice shall be served on their lawful guardian, and if no such guardian has been appointed, the Judge of the Circuit Court shall appoint some person to appear and defend for such infant, or person of unsound mind.

§ 3. The viewers appointed as aforesaid, shall, before entering upon the duties of their appointment, take and subscribe an oath, faithfully, honestly and impartially to discharge their duties, and to assess such damages, as the construction of said works will be to the said lands, taking into their estimate, the advantages the said improvements may be to the same, which oath, when taken before any Justice of the Peace, shall be attached to the order of the Judge. It shall be the duty of the said viewers, to go upon said lands and examine the same, and report what damages, if any, will be done to said lands, or any building or appurtenance thereon, and the amount thereof, which report shall be signed by the viewers, and returned to the office of the clerk of the Circuit Court of the proper county, and said clerk shall file the same,

and enter judgment on the record of the Court, in accordance with the report of the said viewers; and the finding of the viewers shall be final and conclusive between the parties, unless they shall have filed in writing, in the office of said clerk, and within ten days after the day of filing the report aforesaid, their objections to the same. Said objections shall be examined by the Judge of the Circuit Court, as soon thereafter as may be, and if the same be deemed sufficient and just, he shall order a review by other viewers, in the same manner as is herein provided; but not more than one review shall be granted to the same party, upon the said lands, and in all cases of objections being filed, the clerk shall not enter judgment thereon, until the same is approved by the Judge of said Court.

§ 4. All damages assessed by said viewers in the manner before stated, may be paid to the owners or persons appearing on their behalf, and in case of persons having no agent for that purpose, the same shall be paid into the county Treasury, subject to the order of the said owner or owners of the lands aforesaid; and whenever the said Board or their agent, shall file in the office of the clerk of said Court, the receipt of the persons authorized to receive the same, for the amount of damages then assessed, the use, fee simple and interest thereupon shall be vested, fully and completely, in the State for the public use; and all relinquishments taken for lands necessary for the location and construction of the works in charge of the said Board, shall be in the name, and for the use and benefit of the State of Missouri, and shall be attested as deeds are attested and filed as in case of the receipts as aforesaid. All expenses of assessment and damages, as provided by this act, shall be paid by the Board or their agent; except in case of a review made upon objections filed as aforesaid, and whereon the viewers have made the damages assessed equal to, or less than the damages assessed by the first viewers, when the parties so objecting, shall pay all costs of assessment as aforesaid.

This act to take effect, and be in force from and after the passage thereof.

APPROVED, Feb. 11, 1839.

AN ACT supplementary to an act entitled an act to establish a general system of Internal Improvements in the State of Missouri.

Be it enacted by the General Assembly of the State of Missouri, as follows:

§ 1. The Board of Internal Improvements, to be established by

the act to which this is a supplement, shall, as soon as may be, cause to be made a reconnoissance and survey of the River Osage, from its mouth to the town of Ocoola, in the county of St. Clair; also a reconnoissance and survey of North Grand River, from its mouth to Gallatin, in the county of Daviess; also a reconnoissance of Salt River, from its mouth to the Three Forks, in the county of Monroe; also the Merrimac, from its mouth to Massie's Iron Works, in the county of Crawford; and shall cause to be made to the next General Assembly, a detailed report of the nature and character of the obstructions to the navigation of those rivers; whether it be practicable to remove them; and the probable cost of effecting the same.

§ 2. The Board shall also, as soon as may be, after their organization, cause to be made a survey and reconnoissance of a route for a Rail Road from the City of St. Louis, leading by the nearest and best route to the Iron Mountain, in the county of St. Francois, and passing through the mineral region between said points. The chief Engineer shall cause to be made such maps, plans, &c., as may be necessary to illustrate the route, and he shall report the same with a minute and accurate estimate of the cost for the construction of said Rail Road, to the next General Assembly of this State.

§ 3. The sum of twenty thousand dollars is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for carrying into execution this act, and the act to which this is amendatory, approved February 11th, A. D. 1839.

§ 4. To procure the sum of money by this act appropriated, the Governor is hereby authorized to borrow the said sum, at a rate of interest not exceeding six per cent. per annum, for which he shall issue the bonds of the State, payable at a period not less than twenty-five years from date.

This act shall take effect from its passage.

APPROVED, Feb. 13, 1839.

In pursuance of the 1st and 2d sections of the foregoing act of the General Assembly, the Governor, by and with the consent of the Senate, appointed and commissioned the following persons to be "Directors of the Board of Internal Improvements in Missouri."

CORNELIUS DAVY, of *Jackson County*.

ROBERT WHITE, of *Scott County*.

GEORGE C. SIBLEY, of *St. Charles County*.

HUGH MEREDITH, of *Monroe County*.

B. F. ROBINSON, of *Cole County*.

And in pursuance of the 3d section, the Governor appointed the first meeting of the Board to be held at the City of St. Louis, on the first Monday in May, 1839.