

AN ACT

To further amend section thirteen of an act, approved the thirty-first day of May, Anno Domini one thousand nine hundred and eleven (Pamphlet Laws, four hundred and sixty-eight), entitled "An act providing for the establishment of a State Highway Department, by the appointment of a State Highway Commissioner, two Deputy State Highway Commissioners, chief engineer, chief draughtsman, superintendents of highways, and a staff of assistants and employes; defining their duties and the jurisdiction of the State Highway Department, and fixing salaries of commissioner and deputies and other appointees; providing for taking over from the counties or townships of the Commonwealth certain existing public roads connecting county-seats, principal cities, and towns and extending to the State line; describing and defining same by route numbers as the State highways of the Commonwealth; providing for the improvement, maintenance and repair of said State highways solely at the expense of the Commonwealth, and relieving the several townships or counties from any further obligation and expense to improve or maintain the same, and relieving said townships or counties of authority over same; requiring boroughs and incorporated towns to maintain certain State highways wholly and in part; requiring the State Highway Commissioner to make maps to be complete records thereof; conferring authority on the State Highway Commissioner; providing for the payment of damages in taking of property, or otherwise, in the improvement thereof; providing for purchase or acquiring of turnpikes or toll-roads forming all or part of any State highway, and procedure therein; providing for work of improvement of State highways to be done by contract, except where the State Highway Commissioner decides the work be done by the State; providing aid by the State to counties and townships desiring the same in the improvement of township or county roads; defining highways and State-aid highways; providing method of application for State aid in the improvement, maintenance and repair of township or county roads and prescribing the contents of township, county, borough or incorporated town petitions; providing for percentage of cost of improvement or repairs to be paid by State, county, township, borough, or incorporated town, and requiring contracts by counties, townships, boroughs, and incorporated towns with Commonwealth governing same; providing for the minimum width of State highways and State-aid highways, and kind of materials to be used in the improvement; providing for payment of cost of improvement and repairs; providing penalty for injuring or destroying State highways; making appropriations to carry out the provisions of the act; and providing for the repeal of certain acts relating to Highway Department and improvement of roads, and of all acts or parts of acts inconsistent herewith; and providing that existing contracts are not affected by provisions of this act," as amended.

Highway
Department.

Construction of
highways.

Section 1. Be it enacted, &c.. That the thirteenth section of an act, approved the thirty-first day of May, Anno Domini one thousand nine hundred and eleven (Pamphlet Laws, four hundred and sixty-eight), entitled "An act providing for the establishment of a State Highway Department, by the appointment of a State Highway Commissioner, two Deputy State Highway Commissioners, chief engineer, chief draughtsman, superintendents of highways, and a staff of assistants and employes; defining their duties and the jurisdiction of the State Highway Department, and fixing salaries of commissioner and deputies and other appointees; providing for taking over from the counties or townships of the Commonwealth certain existing public roads connecting county-seats, principal cities,

and towns and extending to the State line; describing and defining same by route numbers as the State highways of the Commonwealth; providing for the improvement, maintenance and repair of said State highways solely at the expense of the Commonwealth, and relieving the several townships or counties from any further obligation and expense to improve or maintain the same, and relieving said townships or counties of authority over same; requiring boroughs and incorporated towns to maintain certain State highways wholly and in part; requiring the State Highway Commissioner to make maps to be complete records thereof; conferring authority on the State Highway Commissioner; providing for the payment of damages in taking of property, or otherwise, in the improvement thereof; providing for purchase or acquiring of turnpikes or toll-roads forming all or part of any State highway, and procedure therein; providing for work of improvement of State highways to be done by contract, except where the State Highway Commissioner decides the work be done by the State; providing aid by the State to counties and townships desiring the same in the improvement of township or county roads; defining highways and State-aid highways; providing method of application for State aid in the improvement, maintenance and repair of township or county roads and prescribing the contents of township, county, borough or incorporated town petitions; providing for percentage of cost of improvement or repairs to be paid by State, county, township, borough or incorporated town, and requiring contracts by counties, townships, boroughs, and incorporated towns with Commonwealth governing same; providing for the minimum width of State highways and State-aid highways, and kind of materials to be used in the improvement; providing for payment of cost of improvement and repairs; providing penalty for injuring or destroying State highways; making appropriations to carry out the provisions of the act; and providing for the repeal of certain acts relating to Highway Department and improvement of roads, and of all acts or parts of acts inconsistent herewith; and providing that existing contracts are not affected by provisions of this act," which, as amended by an act, approved the seventh day of June, one thousand nine hundred and nineteen (Pamphlet Laws, four hundred and twenty-eight), entitled "An act to amend sections three and thirteen of an act, approved the thirty-first day of May, Anno Domini one thousand nine hundred and eleven (Pamphlet Laws, four hundred sixty-eight), entitled 'An act providing for the establishment of a State Highway Department, by the appointment of a State Highway Commissioner, two Deputy State Highway Commissioners, chief engineer, chief draughtsman, superintendents of high-

ways, and a staff of assistants and employes; defining their duties and the jurisdiction of the State Highway Department, and fixing salaries of commissioner and deputies and other appointees; providing for taking over from the counties or townships of the Commonwealth certain existing public roads connecting county-seats, principal cities, and towns and extending to the State line; describing and defining same by route numbers as the State highways of the Commonwealth; providing for the improvement, maintenance and repair of said State highways solely at the expense of the Commonwealth, and relieving the several townships or counties from any further obligation and expense to improve or maintain the same, and relieving said townships or counties of authority over same; requiring boroughs and incorporated towns to maintain certain State highways wholly and in part; requiring the State Highway Commissioner to make maps to be complete records thereof; conferring authority on the State Highway Commissioner; providing for the payment of damages in taking of property, or otherwise, in the improvement thereof; providing for purchase or acquiring of turnpikes or toll-roads forming all or part of any State highway, and procedure therein; providing for work of improvement of State highways to be done by contract, except where the State Highway Commissioner decides the work be done by the State; providing aid by the State to counties and townships desiring the same in the improvement of township or county roads; defining highways and State-aid highways; providing method of application for State aid in the improvement, maintenance and repair of township or county roads and prescribing the contents of township, county, borough or incorporated town petitions; providing for percentage of cost of improvement or repairs to be paid by State, county, township, borough, or incorporated town, and requiring contracts by counties, townships, boroughs, and incorporated towns with Commonwealth governing same; providing for the minimum width of State highways and State-aid highways, and kind of materials to be used in the improvement; providing for payment of cost of improvement and repairs; providing penalty for injuring or destroying State highways; making appropriations to carry out the provisions of the act; and providing for the repeal of certain acts relating to Highway Department and improvement of roads, and of all acts or parts of acts inconsistent herewith; and providing that existing contracts are not affected by provisions of this act, so as to empower the State Highway Commissioner to acquire lands and the necessary equipment and to quarry stone and manufacture material used in the construction and maintenance of State highways and State-aid highways, and to supply such stone and

materials to contractors, and so as to authorize the State Highway Commissioner, in his discretion, to construct, build, or rebuild any highways by the employes of the State Highway Department," reads as follows:—

"Section 13. All work of construction, building or rebuilding of highways, excepting that of repairing and maintenance, done under the provisions of this act, may be by contract, and shall be according to plans and specifications to be prepared in every case by the State Highway Department, and, in awarding any contract, the work shall be given to the lowest responsible bidder, with the option on the part of the State Highway Commissioner to reject any or all bids, if the prices named for the work or materials to be used are higher than the estimated cost, or for any other reason appearing to said commissioner. Every person, firm, or corporation, before being awarded any contract for the construction or improvement of any State highway or of any State-aid highway, under the provisions of this act, shall furnish a bond, with sufficient surety or sureties, acceptable to the State Highway Commissioner, in a sum equal to fifty per centum of the contract price of the work, conditioned that the contractor shall, well and truly and in a manner satisfactory to the State Highway Commissioner, complete the work contracted for, and shall save harmless the Commonwealth of Pennsylvania from any expense incurred through the failure of said contractor to complete the work as specified, or for any damages growing out of the carelessness of said contractor or his or its servants, or for any liability for payment of wages due or material furnished said contractor, and shall well and truly pay to all and every person furnishing material or performing labor in and about the construction of said highway all and every sum and sums of money due him, them, and any of them, for all such labor and materials for which the contractor is liable.

"The State Highway Commissioner, however, is hereby authorized and empowered, in his discretion, to construct, build, or rebuild, by the agents, servants, and employes of the State Highway Department, any highway or highways for the construction, building, or rebuilding of which he may contract under the provisions of this act," be, and the same is hereby, amended to read as follows:—

Section 13. All work of construction, building, or rebuilding of highways, excepting that of repairing and maintenance, done under the provisions of this act, may be by contract, and shall be according to plans and specifications to be prepared in every case by the State Highway Department; and, in awarding any contract, the work shall be given to the lowest responsible bidder, with the option on the part of the State

Section 13, act of May 31, 1911 (P. L. 468), as amended by section 2, act of June 7, 1919 (P. L. 428), cited for amendment.

Work may be done by contract.

Bids.
Rejection.

Contractor's bond.	<p>Highway Commissioner to reject any or all bids, if the prices named for the work or materials to be used are higher than the estimated cost, or for any other reason appearing to said commissioner. Every person, firm, or corporation, before being awarded any contract for the construction or improvement of any State highway or State-aid highway under the provisions of this act, shall furnish a bond, with sufficient surety or sureties, acceptable to the State Highway Commissioner, in a sum equal to fifty per centum of the contract price of the work, conditioned that the contractor shall, well and truly and in a manner satisfactory to the State Highway Commissioner, complete the work contracted for, and shall save harmless the Commonwealth of Pennsylvania from any expense incurred through the failure of said contractor to complete the work as specified, or from any damages growing out of the carelessness of said contractor or his or its servants, and shall well and truly pay for all material furnished and labor performed in and about the construction of said highway; and any person, firm, or corporation who has furnished labor or materials used in the construction or improvement of any State highway or of any State-aid highway under the provisions of this act, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the Commonwealth of Pennsylvania on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the Commonwealth of Pennsylvania. If the amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the Commonwealth of Pennsylvania, the remainder shall be distributed pro rata among said interveners. If no suit should be brought by the Commonwealth of Pennsylvania within six months from the completion of said contract and final settlement with the Commonwealth, then the person or persons supplying the contractor with labor and materials shall, upon application therefor and furnishing affidavit to the State Highway Department that labor and materials for the prosecution of such work have been supplied by him or them and that payment for the same has not been made, be furnished with a certified copy of said contract and bond, upon which he or they shall have a right of action, and shall be and are hereby authorized to bring suit, in the name of the Commonwealth of Pennsylvania, for his or their use and benefit, against said contractor and his sureties, and to prosecute the same to final judgment and execution. Where suit is instituted by any of such creditors on the bond of the contrac-</p>
Conditions.	
Liability on bond to those who furnish labor or materials.	
Intervention in actions by Commonwealth.	
Distribution of amount recovered.	
Suit upon bond by those who furnished labor or materials.	
When suit may be commenced.	

tor, it shall not be commenced until after the complete performance of said contract and final settlement thereof with the Commonwealth, and shall be commenced within one year after the performance and said final settlement of said contract, and not later. Where suit is so instituted by a creditor or creditors, no other action shall be brought by any other creditor, but any other creditor may file his claim in the action first brought and be made party thereto within one year from the completion of the work under said contract, and not later. If two or more actions be brought on the same day, the action in which the largest claim is demanded shall be regarded as the first action. Any creditor who has brought an action within one year as aforesaid, but after suit brought by another creditor or on the same day, may intervene in the suit first brought within the year, notwithstanding the fact that the intervention in such case be after the expiration of the year, provided said intervention be made within thirty days after the expiration of the year. If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata of the amount of the recovery. The surety on said bond may pay into court, for distribution among said claimants and creditors, the full amount of the surety's liability, to wit, the penalty named in the bond, less any amount which said surety may have had to pay to the Commonwealth of Pennsylvania by reason of the execution of said bond; and, upon so doing, the surety will be relieved from further liability. In all suits instituted under the provisions of this act, such personal notice of the pendency of such suits, informing them of their right to intervene, as the court may order, shall be given to all known creditors, and, in addition thereto, notice shall be given by publication in some newspaper of general circulation, published in the county or town where the contract was performed, once a week for at least three successive weeks: Provided, however, That when such suit has been begun within three weeks of the end of the year within which suit may be brought, said notice by publication shall be only for the period intervening between the time of instituting such suit and the end of the year.

Intervention
by other
creditors.

Priority of
actions.

Distribution
of amount
recovered.

Payment of
amount of
bond into
court.

Notice of
suit on bond
shall be
given creditors.

Proviso.

Work may be
done by
department.

The State Highway Commissioner, however, is hereby authorized and empowered, in his discretion, to construct, build or rebuild by the agents, servants, and employes of the State Highway Department any highway or highways for the construction, building, or rebuilding of which he may contract under the provisions of this act.

APPROVED—The 16th day of May, A. D. 1921.

WM. C. SPROUL.