

**VOLUME 8**  
**Titles 85 through 91**

**Popular Names Table**

This table lists a number of legislative acts by their popularly known name and sets forth the RCW Title(s), chapter(s), or section(s) under which the act is found in the Revised Code of Washington.

**General Index**

**Revised Code of Washington and State Constitution**  
(See Volume 0 for Special Index to State Constitution)

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**2006**  
**REVISED CODE OF WASHINGTON**

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**Published under the authority of chapter 1.08 RCW.**

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Containing all laws of a general and permanent nature through the 2006 regular session, which adjourned sine die March 8, 2006.

# REVISED CODE OF WASHINGTON

2006 Edition

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## CERTIFICATE

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MARTY BROWN, Chair  
STATUTE LAW COMMITTEE

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## PREFACE

**Numbering system:** The number of each section of this code is made up of three parts, in sequence as follows: Number of title; number of chapter within the title; number of section within the chapter. Thus RCW 1.04.020 is Title 1, chapter 4, section 20. The section part of the number (.020) is initially made up of three digits, constitutes a true decimal, and provides a facility for numbering new sections to be inserted between old sections already consecutively numbered, merely by adding one or more digits at the end of the number. In most chapters of the code, sections have been numbered by tens (.010, .020, .030, .040, etc.), leaving nine vacant numbers between original sections so that for a time new sections may be inserted without extension of the section number beyond three digits.

**Citation to the Revised Code of Washington:** The code should be cited as RCW; see RCW 1.04.040. An RCW title should be cited Title 7 RCW. An RCW chapter should be cited chapter 7.24 RCW. An RCW section should be cited RCW 7.24.010. Through references should be made as RCW 7.24.010 through 7.24.100. Series of sections should be cited as RCW 7.24.010, 7.24.020, and 7.24.030.

**History of the Revised Code of Washington; Source notes:** The Revised Code of Washington was adopted by the legislature in 1950; see chapter 1.04 RCW. The original publication (1951) contained material variances from the language and organization of the session laws from which it was derived, including a variety of divisions and combinations of the session law sections. During 1953 through 1959, the Statute Law Committee, in exercise of the powers in chapter 1.08 RCW, completed a comprehensive study of these variances and, by means of a series of administrative orders or reenactment bills, restored each title of the code to reflect its session law source, but retaining the general codification scheme originally adopted. An audit trail of this activity has been preserved in the concluding segments of the source note of each section of the code so affected. The legislative source of each section is enclosed in brackets [ ] at the end of the section. Reference to session laws is abbreviated; thus "1891 c 23 § 1; 1854 p 99 § 135" refers to section 1, chapter 23, Laws of 1891 and section 135, page 99, Laws of 1854. "Prior" indicates a break in the statutory chain, usually a repeal and reenactment. "RRS or Rem. Supp.—" indicates the parallel citation in Remington's Revised Code, last published in 1949.

Where, before restoration, a section of this code constituted a consolidation of two or more sections of the session laws, or of sections separately numbered in Remington's, the line of derivation is shown for each component section, with each line of derivation being set off from the others by use of small Roman numerals, "(i)," "(ii)," etc.

Where, before restoration, only a part of a session law section was reflected in a particular RCW section the history note reference is followed by the word "part."

"Formerly" and its correlative form "FORMER PART OF SECTION" followed by an RCW citation preserves the record of original codification.

**Double amendments:** Some double or other multiple amendments to a section made without reference to each other are set out in the code in smaller (8-point) type. See RCW 1.12.025.

**Index:** Titles 1 through 91 are indexed in the RCW General Index. Separate indexes are provided for the Rules of Court and the State Constitution.

**Sections repealed or decodified; Disposition table:** Memorials to RCW sections repealed or decodified are tabulated in numerical order in the table entitled "Disposition of former RCW sections."

**Codification tables:** To convert a session law citation to its RCW number (for Laws of 1951 or later) consult the codification tables. A similar table is included to relate the disposition in RCW of sections of Remington's Revised Statutes.

**Errors or omissions:** (1) Where an obvious clerical error has been made in the law during the legislative process, the code reviser adds a corrected word, phrase, or punctuation mark in [brackets] for clarity. These additions do not constitute any part of the law.

(2) Although considerable care has been taken in the production of this code, within the limits of available time and facilities it is inevitable that in so large a work that there will be errors, both mechanical and of judgment. When those who use this code detect errors in particular sections, a note citing the section involved and the nature of the error may be sent to: Code Reviser, Box 40551, Olympia, WA 98504-0551, so that correction may be made in a subsequent publication.

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# Title 85

## DIKING AND DRAINAGE

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### Chapter 85.05 RCW DIKING DISTRICTS

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**Reviser's note:** The language "this act," "this chapter," and words of similar import appear throughout chapter 85.05 RCW. This chapter is almost entirely comprised of the basic diking district act of chapter 117, Laws of 1895, as amended and as expressly added thereto by subsequent enactments. The chapter is codified in the session law order of the basic act with a few independent sections which are in pari materia being also codified herein. Some sections were expressly added to the chapter of the code or compilation in which the basic act was currently published at the time of the particular enactment. Similarly some sections were amended by reference to the compilation number only. Some of these sections contain the language "this act," "this chapter," or both which appear in the session law either as original language or as reenactments of the compiler's translation. Therefore, throughout chapter 85.05 RCW such language is retained, wherever it appears, in the most recent session law reenactment. Situations concerning effective dates of particular acts or having express restrictive applications are otherwise specially noted.

**Validation—1915 c 163:** "Section 1. Whenever a petition for the formation of a diking district, under the provisions of section 4092 of Rem. & Bal. Code, shall have been filed with the board of county commissioners of any county, and such petition shall have conformed to the requirements of said section, except that the description of the proposed system of diking, the route over which the same is to be constructed, and the proposed spurs or branches, and the termini thereof, shall not have been definitely set forth in said petition, or said petition shall have been defective in any particular, and whenever said petition shall have been published, as required in section 4093 of Rem. & Bal. Code and a hearing shall have been held thereon, and supple-

mental petitions shall have been filed, and the board of county commissioners shall have, at the final hearing, entered findings and an order granting the prayer of the petitioners, in whole or in part, as provided in said section 4093, and said board of county commissioners shall have given notice of an election to be held in such proposed diking district, and shall have appointed officers of election in the manner prescribed in section 4094 of Rem. & Bal. Code, and such election shall have been held, and the board of county commissioners shall have counted and canvassed the votes cast thereat, and it shall have appeared that a majority of the votes cast were for "Dike Districts Yes," and the board shall have entered an order upon its records declaring the proposed territory duly organized as a diking district, and given such district a proper number, followed by the name of the county and state, and declared the three persons receiving respectively the highest number of votes the duly elected dike commissioners of such diking district, and caused a copy of the order entered of record, to be duly certified and filed in the office of the secretary of state, in the manner prescribed in section 4095 of Rem. & Bal. Code, the organization of said diking district so attempted to be organized shall be deemed complete, and the organization of any such diking district so attempted to be organized in the manner hereinabove set forth, is hereby validated, and said diking district is hereby declared to be a duly organized and established diking district." [1915 c 163 § 1.]

*Special district creation and operation: Chapter 85.38 RCW.*

**85.05.010 Districts authorized—Powers—Management.** Any portion of a county requiring diking may be organized into a diking district, and when so organized, such district, and the board of commissioners hereinafter provided for, shall have and possess the power herein conferred or that may hereafter be conferred by law upon such district and board of commissioners, and said district shall be known and designated as diking district No. . . . . (here insert number) of the county of . . . . . (here insert the name of county) of the state of Washington, and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession, and shall adopt and use a seal. The commissioners hereinafter provided for, and their successors in office, shall, from the time of the organization of such diking district, have the power, and it shall be their duty, to manage and conduct the business and affairs of the district; make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties, and perform such other acts as hereinafter provided, or that may hereafter be provided by law. [1921 c 146 § 1; 1895 c 117 § 1; RRS § 4236. Cf. 1888 p 90 § 1; Code 1881 § 2519. Formerly RCW 85.04.005, part.]

**85.05.065 Certain powers and rights governed by chapter 85.38 RCW.** Diking districts shall possess the authority and shall be created, district voting rights shall be determined, and district elections shall be held as provided in chapter 85.38 RCW. [1985 c 396 § 31.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.05.070 Eminent domain—Powers of district.** All diking districts organized under the provisions of this act shall have the right of eminent domain with the power by and through its board of commissioners to cause to be condemned and appropriated private property for the use of said organization, in the construction and maintenance of a system of dikes and make just compensation therefor; that the property of private corporations may be subjected to the same rights of eminent domain as private individuals, and said board of commissioners shall have the power to acquire by purchase

all of the real property necessary to make the improvements provided for by this act. All diking districts and the commissioners thereof now organized and existing, and all diking districts hereafter to be organized, and the commissioners thereof shall have in addition to the rights, powers and authority now conferred by any law of this state:

(1) The right, power and authority to straighten, widen, deepen and improve any and all rivers, watercourses or streams, whether navigable or otherwise, flowing through or located within the boundaries of such diking district, or any rivers, watercourses or streams which shall at any time by their overflow damage the land within the boundaries of any such diking district.

(2) To construct all needed and auxiliary dikes, drains, ditches, canals, flumes, locks and all other necessary artificial appliances, wherever situated, in the construction of a diking system and which may be necessary or advisable to protect the land in any diking district from overflow, or to provide an efficient system of drainage for the land situated within such diking district, or to assist and become necessary in the preservation and maintenance of such diking system.

(3) In the accomplishment of the foregoing objects, the commissioners of such diking districts are hereby given, in addition to the right and power of eminent domain now conferred by law upon the commissioners of any diking district, the right, power and authority by purchase, or the exercise of the power and authority of eminent domain, or otherwise, to acquire all necessary or needed rights of way in the straightening, deepening or widening of such rivers, watercourses or streams, and such auxiliary drains, ditches or canals hereinabove mentioned, and when so acquired shall have and are hereby given the right, power and authority, by and with the consent and approval of the United States government, in cases where such consent is necessary, to divert, alter or change the bed or course of any such river, watercourse or stream aforesaid, or to deepen or widen the same.

All diking districts and the commissioners thereof are further given the right, power and authority to join and contract with any other diking district or districts for the joint construction of any of the foregoing works, appliances, or improvements, whether such works, appliances or improvements are located within the boundaries of any or all of the contracting districts. [1939 c 117 § 1; 1915 c 153 § 1; 1907 c 95 § 1; 1895 c 117 § 7; RRS § 4243. Prior: 1883 p 30 § 1; Code 1881 § 2523. Formerly RCW 85.04.410.]

#### **85.05.071 Resolution to construct drainage system.**

Before entering upon the construction of any system of drainage for the land situated within such diking district, the commissioners thereof shall adopt a resolution which shall contain a brief and general description of the proposed improvement, a statement that the costs thereof shall be paid by warrants drawn and payable in like manner as for the original construction of the dikes of such district, and fixing a time and place within such district for hearing objections to such proposed improvement or for the proposed method of paying the costs thereof. The time so fixed shall be not less than thirty days or more than sixty days from the date said resolution shall be adopted. Such resolution may be adopted by the commissioners upon their own motion and it shall be their duty to adopt such resolution at any time when a petition

signed by the owners of sixty percent or more of the acreage within such diking district is presented, requesting them to do so. [1915 c 153 § 2; RRS § 4244. Formerly RCW 85.04.450.]

**85.05.072 Resolution to construct drainage system— Notice of hearing.** Notice of the hearing shall be given by posting in three public places within the district a true copy of the resolution signed by the commissioners of the diking district and attested with the seal thereof, which notice shall be posted for at least ten days prior to the day fixed in the resolution for the hearing. Notice shall also be published at least once in a newspaper of general circulation in the district at least ten days before the date of the hearing. [1985 c 469 § 67; 1915 c 153 § 3; RRS § 4245. Formerly RCW 85.04.455.]

**85.05.073 Resolution to construct drainage system— Procedure in absence of objections.** At the time fixed, the commissioners shall meet and if no objections have been made to the proposed improvement or to the proposed method of paying the costs thereof, they shall adopt an order reciting that fact and shall thereupon proceed to construct such system of drainage and pay the costs thereof in accordance with the terms specified in the resolution. [1915 c 153 § 4; RRS § 4246. Formerly RCW 85.04.460, part.]

**85.05.074 Resolution to construct drainage system— Objections to improvement.** But if objections in writing are filed either to the proposed improvement or to the proposed method of paying the costs thereof, the commissioners shall proceed to hear and consider the same and may, thereupon, order that such proposed improvement be abandoned for the time being or may direct such improvement to be constructed and the order of the commissioners in that regard shall be final and conclusive on all parties interested: PROVIDED, HOWEVER, That no such proceeding shall be abandoned unless the owners of at least twenty-five percent of the acreage within said district shall have at or prior to said hearing, filed protests against the same. But nothing contained in \*this act shall be held to forbid the commissioners in their discretion overruling all protests and directing the construction of such improvement.

Commissioners shall likewise hear and consider all objections that may be filed to the proposed method of paying the cost of such improvement. [1915 c 153 § 5; RRS § 4247. Formerly RCW 85.04.460, part.]

**\*Reviser's note:** "this act" appears in 1915 c 153 codified as RCW 85.05.070 through 85.05.079. See also reviser's note following chapter digest.

**85.05.075 Resolution to construct drainage system— Assessment of benefits.** In case the commissioners at such hearing shall determine that the benefits accruing to any lot or parcel of lands within said district by reason of the construction of such drainage system are greater or less than the amount theretofore fixed in the original or any subsequent proceeding for the construction of dikes, they shall determine the amount of such benefits to each lot or parcel of land and certify their findings and determination in that regard to the county auditor and the county auditor shall note the same on the transcript of the judgment (and in case there has been any readjustment of assessments of such diking district, then

upon such transcript as readjusted). [1915 c 153 § 6; RRS § 4248. Formerly RCW 85.04.465.]

**85.05.076 Resolution to construct drainage system—Appeal to supreme court—Trial de novo.** Any person deeming himself aggrieved by the assessment for benefits made against any lot or parcel of land owned by him, may appeal therefrom to the superior court for the county in which the diking district is situated; such appeal shall be taken within the time and substantially in the manner prescribed by the laws of this state for appeals from justices' courts and all notices of appeal shall be filed with the said board, and the board of diking commissioners shall at the appellant's expense certify to the superior court so much of the record as appellant may request, and the hearing in said superior court shall be de novo, and the superior court shall have power and authority to reverse or modify the determination of the commissioners and to certify the result of its determination to the county auditor and shall have full power and authority to do anything in the premises necessary to adjust the assessment upon the lots or parcels of land involved in the appeal in accordance with the benefits. [1915 c 153 § 7; RRS § 4249. Formerly RCW 85.04.475, part.]

**85.05.077 Resolution to construct drainage system—Assessments for drains and dikes to be segregated.** In all cases wherein it is finally determined that the assessments for the system of drainage differ from the assessment theretofore made, as to any tract or parcel of land within said diking district, the diking commissioners in making their annual estimate shall segregate the amount necessary to be raised for the construction, repair and maintenance of the system of drainage or for the payment of the principal or interest of any bonds issued for drainage purposes from the amount necessary to be raised for all other diking purposes and the county auditor in apportioning said estimate for drainage purposes to the lands in such district shall base such apportionment upon the assessment fixed for drainage purposes and shall apportion the remainder of such estimate upon the basis fixed in the original or any subsequent proceeding for all other diking purposes. But in all other cases, the estimate and apportionment shall be made in accordance with existing laws. [1915 c 153 § 8; RRS § 4250. Formerly RCW 85.04.470.]

**85.05.078 Resolution to construct drainage system—Bonds to construct drainage system.** Authority is hereby given to any diking district heretofore organized, or that may be hereafter organized, to issue bonds of such diking district for the purpose of procuring funds with which to construct a drainage system, such bonds to be issued in accordance with the terms of \*RCW 85.05.480. [1915 c 153 § 9; RRS § 4251. Formerly RCW 85.04.480.]

\*Reviser's note: RCW 85.05.480 was repealed by 1986 c 278 § 46.

**85.05.079 Resolution to construct drainage system—Appellate review.** Either the dike commissioners or any landowner who has appealed to the superior court in accordance with the provisions of \*this act may seek appellate review within the time and in the manner prescribed by exist-

ing law. [1988 c 202 § 72; 1971 c 81 § 156; 1915 c 153 § 10; RRS § 4252. Formerly RCW 85.04.475, part.]

\*Reviser's note: "this act," see note following RCW 85.05.074.

Severability—1988 c 202: See note following RCW 2.24.050.

**85.05.080 Rights of way on public land.** The right, power and authority to acquire the necessary and needed rights of way for any and all purposes now existing by law or created by this act, may be acquired by the commissioners of any diking district over, across and upon any land, or interest therein, of the state of Washington or any county of this state, and streets, avenues, alleys or public places of any city, town or municipal corporation of this state: PROVIDED, HOWEVER, That the construction of such dike or dikes shall not have the effect of impairing any right, power or authority now existing on the part of any city or town to construct in, upon, underneath, above or across such dike or dikes, sewers, water pipes, mains, or the granting of any franchise thereon, or the improvement by way of planking, replanking, paving, repaving or any other power, right or authority which but for this act such city or town would have in or to such street, avenue, alley or public place; except, however, that such right, power or authority on behalf of such city or town shall not be exercised either by such city or town or by any person, persons, firms or corporations to whom it might grant any right or franchise, which will materially impair the efficiency of such dike or dikes. The provisions of this section as regards said system of dikes to be located within the boundaries of any incorporated city or town shall apply to the extension or enlargement of any dike or dikes already existing upon, over and across any street, avenue, alley or public place of any city or town, as well as the original construction thereof. [1907 c 95 § 2; RRS § 4253. Formerly RCW 85.04.415.]

**85.05.081 Organization—Matters to be set in notices, petitions or proceedings.** In all proceedings hereafter had to organize diking districts, all notices, petitions or proceedings shall contain and set forth all matters and things required by existing law, and in addition thereto shall contain and set forth, so far as is necessary or applicable, all matters and things required by the provisions of this act, and all diking districts now existing, which may exercise any of the rights, powers or authority conferred by the provisions of this act, the proceedings to obtain the benefits hereof, must contain such allegations, and such steps and proceedings must be taken, as is rendered necessary by the provisions of this act; and the commissioners of existing diking districts are hereby given the right, power and authority to institute all proceedings and to take all necessary steps to secure the benefits of the provisions of this act, and all proceedings to secure the benefits thereof and all judgments to be rendered in such proceedings, including the filing of transcripts and the making of levies, and all other proceedings, shall be in addition to proceedings, assessments or levies, theretofore made in any prior proceedings. [1907 c 95 § 3; RRS § 4254.]

**85.05.082 Beds and shores of streams granted to district.** All the right, title and interest of the state of Washington in and to so much of the beds and shores of any navigable river, stream, waterway or watercourse located within the

boundaries of any diking district up to and including the line of ordinary high tide in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes, to the extent that the same under any proceedings to be had under this act shall cease to become a part of such river, stream, waterway or watercourse by reason of the diversion of such river, stream, waterway or watercourse, under any proceedings had under this act, are hereby given, granted and vested in the respective diking districts now existing or hereafter to be formed; and the commissioners of such respective diking districts are hereby given the right, power and authority to sell such beds and shores in such manner and upon such notices and proceedings as govern, under existing laws of this state, the board of county commissioners in the sale and disposition of any real estate belonging to counties of this state. The proceeds of such sales are to be used for the benefits of such diking district in the payment of any expenses connected with the construction of such dikes or maintenance thereof: PROVIDED, HOWEVER, That the commissioners of such diking district may, in their discretion, exchange such abandoned beds and shores for other property needed in the straightening, deepening or widening of such rivers, watercourses or streams; and which exchange may be made upon such terms, conditions and in such areas as in the discretion of such commissioners they may deem advisable and for the best interests of such diking district, without any notice or other formality of proceedings whatever. [1907 c 95 § 4; RRS § 4255. Formerly RCW 85.04.445.]

**85.05.083 Auditor to sign petition for his county, when.** Whenever the county owns any land situated within the boundaries of a proposed diking district, the county auditor, when so directed by the board of county commissioners of the county in which such lands are situated, is hereby authorized to sign the petition praying for the formation of such diking district for and on behalf and as the act and deed of such county, and when so signed the same shall be considered in determining the question of a majority signature in acreage to the petition for the formation of such district. [1907 c 95 § 5; RRS § 4256. Formerly RCW 85.04.430.]

**85.05.085 Commissioners, duty of.** The board of dike commissioners shall consist of three elected commissioners. The initial commissioners shall be appointed, and the elected commissioners elected, as provided in chapter 85.38 RCW. The board of dike commissioners shall have the exclusive charge of the construction and maintenance of all dikes or dike systems which may be constructed within the district, and shall be the executive officers thereof, with full power to bind the district by their acts in the performance of their duties, as provided by law. [1985 c 396 § 37; 1921 c 146 § 5; 1895 c 117 § 8; RRS § 4257. Cf. 1883 p 31 § 2; Code 1881 § 2527. Formerly RCW 85.04.045, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.05.090 Petition for improvement—Contents.** Whenever it is desired to prosecute the construction of a system of dikes within said district, said district, by and through its board of commissioners, shall file a petition in the superior

court of the county in which said district is located, setting forth therein the route over which the same is to be constructed, with a complete description thereof, together with specifications for its construction, with all necessary plats and plans thereof, together with the estimated cost of such proposed improvement, showing therein the names of the landowners whose lands are to be benefited by such proposed improvement; the number of acres owned by each landowner, and the maximum amount of benefits per acre to be derived by each landowner set forth therein from the construction of said proposed improvement, and that the same will be conducive to the public health, convenience and welfare, and increase the value of all of said property for purposes of public revenue. Said petition shall further set forth the names of the landowners through whose land the right-of-way is desired for the construction of said dikes; the amount of land necessary to be taken therefor, and an estimate of the value of said lands so sought to be taken for such right-of-way, and the damages sustained by any person or corporation interested therein, if any, by reason of such appropriation, irrespective of the benefits to be derived by such landowners by reason of the construction of said system. Such estimate shall be made, respectively, to each person through whose land said right-of-way is sought to be appropriated. Said petition shall set forth as defendants therein all the persons or corporations to be benefited by said improvement, and all persons or corporations through whose land the right-of-way is sought to be appropriated, and all persons or corporations having any interest therein, as mortgagee or otherwise, appearing of record, and shall set forth that said proposed system of dikes is necessary for the protection of all the lands from overflow described in said petition, and that all lands sought to be appropriated for said right-of-way are necessary to be used as a right-of-way in the construction and maintenance of said improvements; and when the proposed improvement will protect or benefit the whole or any part of any public or corporate road or railroad, so that the traveled track or roadbed thereof will be improved by the construction of said dikes, such fact shall be set forth in said petition, and such public or private corporations owning said road or railroad shall be made parties defendant therein, and the maximum amount of benefits to be derived from such proposed improvement shall be estimated in said petition against said road or railroad. [1895 c 117 § 9; RRS § 4258. Formerly RCW 85.04.050, part.]

**85.05.100 Petition for improvement—Employment of assistants—Compensation as costs in suits.** In the preparation of the facts and data to be inserted in said petition and filed therewith for the purpose of presenting the matter to the said superior court, the board of commissioners of said diking district may employ one or more good and competent surveyors and draughtsmen to assist them in compiling data required to be presented to the court with said petition as hereinbefore provided, and such legal assistance as may be necessary, with full power to bind said district for the compensation of such assistants or employees employed by them, and such services shall be taxed as costs in the suit. [1895 c 117 § 10; RRS § 4259. Formerly RCW 85.04.055, part.]

**85.05.110 Summons—Contents—Service.** A summons stating briefly the objects of the petition and containing a description of the land, real estate, premises or property sought to be appropriated, and those which it is claimed will be benefited by the improvement, and stating the court wherein the petition is filed, the date of the filing thereof and when the defendants are required to appear (which shall be ten days, exclusive of the day of service, if served within the county in which the petition is pending, and if in any other county, then twenty days after such service, and if served by publication, then within thirty days from the date of the first publication), shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein. The summons must be subscribed by the commissioners, or their attorney, running in the name of the state of Washington and directed to the defendants; and service thereof shall be made by delivering a copy of such summons to each of the persons or parties so named therein, if a resident of the state, or in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of the notice at his or her usual place of abode; or in case of a foreign corporation, at its principal place of business in this state with some person of more than sixteen years of age; in case of domestic corporations service shall be made upon the president, secretary or other director or trustee of the corporation; in case of persons under eighteen years of age, on their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of the person; in case of idiots, lunatics or insane persons, on their guardian, or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. \*In case the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited by the improvement, is state, tide, school or county land, the summons shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited, is situated. In all cases where the owner or person claiming an interest in the real or other property is a nonresident of this state, or where the residence of the owner or person is unknown, and an affidavit of one or more of the commissioners of the district shall be filed that owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained by such deponent, service may be made by publication thereof in a newspaper of general circulation in the county where such lands are situated once a week for three successive weeks. The publication shall be deemed service upon each nonresident person or persons whose residence is unknown. The summons may be served by any competent person eighteen years of age or over. Due proof of service of the summons by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of the court before the court shall proceed to hear the matter. Want of service of the notice shall render the subsequent proceedings void as to the person not served; but all persons or parties having been served with summons as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all cases not otherwise provided for, service of notice, order and other papers in the proceeding authorized by this chapter may be made as the superior court, or the

judge thereof, may direct: PROVIDED, That personal service upon any party outside of this state shall be of like effect as service by publication. [1985 c 469 § 68; 1971 ex.s. c 292 § 56; 1895 c 117 § 11; RRS § 4260. Formerly RCW 85.04.060, part.]

**\*Reviser's note:** Subsequent legislation provides for service of summons on budget director (now director of financial management; chapter 43.41 RCW), see chapter 79.44 RCW; see also note following RCW 85.06.110.

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**85.05.120 Appearance of defendants—Jury—Verdict—Decree.** Any or all of said defendants may appear jointly or separately, and admit or deny the allegations of said petition, and plead any affirmative matter in defense thereof, at the time and place appointed for hearing said petition, or to which the same may have been adjourned. If the court or judge thereof shall have satisfactory proof that all of the defendants in said action have been duly served with said summons, as above provided, and shall be further satisfied by competent proof that said improvement is practicable, and conducive to the public health, welfare and convenience, and will increase the value of said lands for the purpose of public revenue, and that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the establishment of said improvement, the court or judge thereof shall cause a jury of twelve qualified persons to be impaneled to assess the damages and benefits as herein provided, if in attendance upon his court; and if not, he may, if satisfied that the public interests require the immediate construction of said improvement, direct the sheriff of his county to summon from the citizens of the county in which said petition is filed as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the parties to the proceedings consent to a less number, such number to be not less than three, and such consent shall be entered by the clerk in the minutes of the trial. If necessary to complete the jury in any case, the sheriff, under direction of the court or judge thereof, shall summon as many qualified persons as may be required to complete the jury from the citizens of the county in which the petition is filed. In case a special jury is summoned, the cost thereof shall be taxed as part of the costs in the proceeding, and paid by the district seeking to appropriate said land, the same as other costs in the case; and no person shall be competent as a juror who is a resident of, or landowner in, the district seeking to appropriate said land. The jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, by reason of the appropriation and use of such land, real estate, premises or other property for said improvement, and shall ascertain, determine and award the amount of damages to be paid to said owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the establishment of said improvement; and shall further find the maximum amount of benefits, per acre, to be derived by each of the landowners from the construction of said improvement. And upon a return of the verdict into

court, the same shall be recorded as in other cases; whereupon a decree shall be entered in accordance with the verdict so rendered, setting forth all the facts found by the jury, and decreeing that said right-of-way be appropriated, and directing the commissioners of said diking district to draw their warrant on the county treasurer for the amount awarded by the jury to each person, for damages sustained by reason of the establishment of said improvement, payable out of the funds of said diking district. [1895 c 117 § 12; RRS § 4261. Formerly RCW 85.04.065, part.]

**85.05.130 Assessment of benefited lands formerly omitted—Procedure—Appeals.** If at any time it shall appear to the board of diking commissioners that any lands within or without said district as originally established are being benefited by the diking system of said district and that said lands are not being assessed for the benefits received, or that any lands within said district are being assessed out of or not in proportion to the benefits which said lands are receiving from the maintenance of the diking system of said district, and said board of diking commissioners shall determine that certain lands, either within or without the boundaries of the district as originally established, should be assessed for the purpose of raising funds for the future maintenance of the diking system of the district, or that the assessments on land already assessed should be equalized by diminishing or increasing the same so that said lands shall be assessed in proportion to the benefits received, said commissioners shall file a petition in the superior court in the original cause, setting forth the facts, describing the lands not previously assessed and the lands the assessments on which should be equalized, stating the estimated amount of benefits per acre being received by each tract of land respectively, giving the name of the owner or reputed owner of each such tract of land, and praying that such original cause be opened for further proceedings for the purpose of subjecting new lands to assessment or equalizing the assessments upon lands already assessed, or both.

Upon the filing of such petition, summons shall issue thereon and be served on the owners of all lands affected, in the same manner as summons is issued and served in original proceedings, as near as may be, and if such new lands lie within the boundaries of any other diking district, said summons shall also be served upon the commissioners of such other diking district.

In case any of the new lands sought to be assessed in said proceeding lie within the boundaries of any other diking district, and the diking commissioners of such other district believe that the maintenance of the dike or dikes of such other district is benefiting lands within the district instituting the proceedings, said diking commissioners of such other districts shall intervene in such proceedings by petition, setting forth the facts, describing the lands in the district instituting the proceeding which they believe are being benefited by the maintenance of the diking system of their district, and praying that the benefits to such lands may be determined and such lands subjected to assessment for the further maintenance of the diking system of their district, to the end that all questions of benefits to lands in the respective districts may be settled and determined in one proceeding, and such petitioners in intervention shall cause summons to be issued upon

such petition in intervention and served upon the commissioners of the diking district instituting the proceeding and upon the owners of all lands sought to be affected by such petition in intervention.

In case the owner of any such new lands sought to be assessed in said proceedings shall be maintaining a private dike against salt or fresh water for the benefit of said lands, and shall believe that the maintenance of such private dike is benefiting any lands within or without the district instituting the proceedings, or in case any such new lands sought to be assessed are included within the boundaries of some other diking district and are being assessed for the maintenance of the dikes of such other district, and the owner of such lands believes that the maintenance of the dike or dikes of such other district is benefiting lands included within the district instituting said proceedings, such owner or owners may by answer and cross-petition set forth the facts and pray that at the hearing upon said petition and cross-petition the benefits accruing from the maintenance of the respective dikes may be considered, to the end that a fair and equitable adjustment of the benefits being received by any lands from the maintenance of the various dikes benefiting the same, may be determined for the purpose of fixing the assessments for the future maintenance of such dikes, and may interplead in said proceeding such other diking district in which his lands sought to be assessed in said proceeding are being assessed for the maintenance of the dike or dikes of such other district.

No answer to any petition or petition in intervention shall be required, unless the party served with summons desires to offset benefits or to ask other affirmative relief, and no default judgment shall be taken for failure to answer any petition or petition in intervention, but the petitioners or petitioners in intervention shall be required to establish the facts alleged by competent evidence.

Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons, the court shall impanel a jury to hear and determine the matters in issue, and the jury shall determine and assess the benefits, if any, which the respective tracts of land are receiving or will receive from the maintenance of the dike or dikes to be maintained, taking into consideration any and all matters relating to the benefits, if any, received or to be received from any dike, structure, or improvement, and to credit, or charge, as the case may be, to each tract so situated as to affect any other tract or tracts, or having improvements or structures thereon or easements granted in connection therewith affecting any other tract or tracts included in such proceedings and shall specify in their verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. Upon the return of the verdict of the jury, the court shall enter its judgment in accordance therewith, as supplemental to the original decree, or in case a petition in intervention be filed by the diking commissioners of some other district than that instituting the proceeding, such judgment to be supplemental to all such original decrees, and thereafter, all assessments and levies for the future maintenance of any dike or dikes described in said judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in said judgment. Every person or corporation feeling himself or itself aggrieved by any such judgment may

appeal to the supreme court or the court of appeals within thirty days after the entry thereof, and such appeal shall bring before the supreme court or the court of appeals the propriety and justness of the verdicts of the jury in respect to the parties to the appeal. No bonds shall be allowed on such appeals. Nothing in this section contained shall be construed as affecting the right of diking districts to consolidation in any manner provided by law. [1971 c 81 § 157; 1913 c 89 § 1; 1901 c 111 § 1; 1895 c 117 § 13; RRS § 4262.]

**Rules of court:** Cf. RAP 5.2, 8.1, 18.22.

**Reviser's note:** This section was declared unconstitutional in *Malim v. Benthien*, 114 Wash. 533 (1921). Prior enactments are set forth below:

**1901 c 111 § 1.** "If the board of diking commissioners shall, at any time, discover that any lands within said district are being benefited by the diking system and the same were by mistake, inadvertence or other cause omitted from the assessment of benefits as provided for in \*the last preceding section, or which were omitted for the reason that they were not at the time of assessing the benefits as provided for in said preceding section, for any cause, subject to a legal assessment, said commissioners shall file a petition in the Superior Court in the original cause setting forth the fact of such benefits, describing the lands omitted, the reason the same were omitted in said original proceedings and giving the name of the owners or reputed owners thereof and praying that said original cause, as to such lands, be opened up for further proceedings for the assessment of the alleged benefits, and upon the filing of said petition summons shall issue thereon and be served on the defendants named in said petition the same as summons is served and issued in original proceedings, as near as may be, except the court may, to avoid costs, and in its discretion, call a jury of not less than three jurors, and the jury, in assessing the benefits, shall take into consideration the length of time said lands are to receive the benefits from said improvement and its future maintenance, estimating said time from the date when said lands first became legally assessable, which date must be found by the jury in their verdict as to each tract or parcel found to be benefited: AND PROVIDED FURTHER, That in case the expense and costs of the improvement have been paid for by assessments levied against the lands assessed in the original proceeding before the lands provided for in this section are assessed, as provided for herein, then, in such case, the assessments levied from time to time on said last mentioned land shall be paid into the maintenance fund of said district. Every person or corporation feeling himself or itself aggrieved by any judgment for damages or any assessment of benefits provided in this act, may appeal to the Supreme Court of the state within thirty days after the entry of the judgment, and such appeal shall bring before the Supreme Court the propriety and justness of the amount of damage or assessment of benefit in respect to the parties to the appeal. Upon such appeal no bond shall be required and no stay shall be allowed."

\***Reviser's note:** "the last preceding section" refers to 1895 c 117 § 12 codified as RCW 85.05.120.

**1895 c 117 § 13.** "Every person or corporation feeling himself or itself aggrieved by the judgment for damages, or the assessment of benefits, may appeal to the supreme court of this state, within thirty days after the entry of the judgment, and such appeal shall bring before the supreme court the propriety and justness of the amount of damage or assessment of benefit in respect to the parties to the appeal. Upon such appeal no bond shall be required and no stay shall be allowed."

**85.05.135 Special assessments—Budgets—Alternative methods.** RCW 85.38.140 through 85.38.170 constitute a mutually exclusive alternative method by which diking districts in existence as of July 28, 1985, may measure and impose special assessments and adopt budgets. RCW 85.38.150 through 85.38.170 constitute the exclusive method by which diking districts created after July 28, 1985, may measure and impose special assessments and adopt budgets. [1985 c 396 § 24.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.05.140 Proceedings may be dismissed when.** In case the damages or amount of compensation for such right-

of-way, together with the estimated cost of the improvement, amount to more than the maximum amount of benefits which will be derived from said improvement, or if said improvement is not practicable, or will not be conducive to the public health, welfare and convenience, or will not increase the public revenue, the court shall dismiss such proceedings, and in such case a judgment shall be rendered for the costs of said proceedings against said district, and no further proceedings shall be had or done therein; and upon the payment of the costs, said organization shall be dissolved by decree of said court. [1895 c 117 § 14; RRS § 4263. Formerly RCW 85.04.070, part.]

**85.05.150 Procedure to claim awards.** Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this act, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he is entitled to the same, the court shall make an order directing the payment to such claimant of the portion of such money as he or it may be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate or premises specified in the application of such claimant is in such condition as to require that an action be commenced to determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claims to such land, real estate or premises be determined according to law. [1895 c 117 § 15; RRS § 4264. Formerly RCW 85.04.210, part.]

**85.05.160 Transcript of benefits to auditor—Assessments—Collection.** Upon the entry of the judgment upon the verdict of the jury, the clerk of said court shall immediately prepare a transcript, which shall contain a list of the names of all the persons and corporations benefited by said improvement and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by said improvement belonging to each person or corporation, and shall file the same with the auditor of the county, who shall immediately enter the same upon the tax rolls of his office, as provided by law for the entry of other taxes, against the land of each of the said persons named in said list, together with the amounts thereof, and the same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and shall be collected in the same manner as other taxes and subject to the same right of redemption and the lands sold for the collection of said taxes shall be subject to the same right of redemption as in the sale of lands for general taxes: PROVIDED, That said assessment shall not become due and payable except at such time or times and in such amount as may be designated by the board of commissioners of said dike district, which designation shall be made to the county auditor by said board of commissioners of said diking district, by serving a written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to benefits, to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons or corporations, according to said notice, upon the assessment rolls

in his said office, and collected therewith: AND PROVIDED FURTHER, That no one call for assessments by said commissioners shall be in an amount to exceed twenty-five percent of the actual amount necessary to pay the costs of the proceedings, and the establishment of said district and system of dikes and the cost of construction of said work. [1895 c 117 § 16; RRS § 4265. Formerly RCW 85.04.080, part.]

**85.05.170 Tax to pay cost on dismissal.** In the event of the dismissal of said proceedings and the rendition of judgment against said district, as hereinbefore provided, said diking commissioners shall levy a tax upon all of the real estate within said district, taking as a basis the last equalized assessment of said real estate for state and county purposes, sufficient to pay said judgment, and the cost of levying said tax, and shall cause said tax roll to be filed in the office of the clerk of the superior court in which such judgment was rendered. If said tax is not paid within sixty days after the filing of said tax roll, the court shall, upon the application of any party interested, direct said real estate to be sold in payment of said tax, said sale to be made in the same manner and by the same officer, as is or may be provided by law for the sale of real estate for taxes for general purposes; and the same rate of redemption shall exist as in the sale of real estate for the payment of taxes for general purposes. [1895 c 117 § 17; RRS § 4266. Formerly RCW 85.04.075, part.]

**85.05.180 Construction—Contractors—Performance bonds.** After the filing of said certificate said commissioners of such diking district shall proceed at once in the construction of said improvements, and in carrying on said construction or any extension thereof they shall have full charge and management thereof, and shall have the power to employ such assistance as they may deem necessary, and purchase all material that may be necessary in the construction and carrying on of the work of said improvement, and shall have power to let the whole or any portion of said work to any responsible contractor, and shall in such case enter into all necessary agreements with such contractor that may be necessary in the premises: PROVIDED, That in case the whole or any portion of said improvement is let to any contractor, said commissioners shall require such contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by such contract, with two or more good and sufficient sureties to be approved by the board of commissioners of said diking district and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his executors, administrators or assigns, according to the terms and conditions of said agreement, and shall cause said contractor to enter into a further and additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said diking district in the name of said district as obligee therein, conditioned that said contractor, his executors, administrators or assigns, or subcontractor, his executors, administrators or assigns, shall perform the whole or any portion of said work under contract of said original contractor; shall pay or cause to be paid all just claims of all persons performing labor or rendering services in the construction of

said work, or furnishing materials, merchandise or provisions of any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvement: PROVIDED FURTHER, That no sureties on said last mentioned bond shall be liable thereon unless the persons or corporations performing said labor and furnishing said materials, goods, wares, merchandise and provisions, shall, within ninety days after the completion of such improvement, file their claim, duly verified, that the amount is just and due and remains unpaid, with the commissioners of said diking district. [1895 c 117 § 18; RRS § 4267. Formerly RCW 85.04.095, part.]

**85.05.190 Substantial changes in plans—Procedure.** The work on said improvement shall begin without delay, and shall be carried on with all expedition possible, and said board of commissioners of said diking district, or any contractor thereunder, shall have no power whatever to change the location of the dikes or the system of improvement or the manner of doing the work therein so as to make any radical changes in said improvement, without the written consent of all the landowners to be benefited thereby, and the landowners which may be damaged thereby. And in case any substantial changes in said system of improvement or the manner of the construction thereof shall be deemed necessary by said board of commissioners at any time during the progress thereof, and if the written consent to such changes cannot be procured from said landowners, then said commissioners, for and on behalf of said district, shall file a petition in the superior court of the county within which said district is located, setting forth therein the changes which they deem necessary to be made in the plans or manner of the construction of said improvement, and praying therein to be permitted to make such changes, and upon the filing thereof, the commissioners [clerk] shall cause a summons to be served, setting forth the prayer of said petition, under the seal of said court, which summons shall be served in the same manner as the service of summons in the case of the original petition, upon all the landowners or others claiming any lien thereon or interest therein appearing of record in said district, and any or all of such parties so served may appear in said cause and submit their objections thereto, and after the time for the appearance of said parties has expired, the court shall proceed to hear said petition at once without further delay, and if it appears during the course of such proceedings that the property rights of any of said landowners will be affected by such proposed change in said improvement, then the court, after having passed upon all preliminary questions as in the original proceedings, shall cause a jury to be impaneled as in the case of the original proceedings for the establishment of said improvement, and upon the final hearing of said cause the jury shall return a verdict finding the amount of damages, if any, sustained by all persons and corporations the same as upon the original petition, by reason of such proposed change, and the amount of compensation to be paid to any persons or corporations therefor, and for any additional right-of-way that may be necessary to be appropriated by reason of said proposed change, and shall readjust the amount of benefits claimed to have been increased or diminished by any of said landowners by reason of such proposed change in said improvement, and the proceedings thereafter shall be the same as to rendering judgment

ment, appeal therefrom, payment of compensation and damages, and filing of the certificate with the auditor, as hereinbefore provided for in the proceedings under the original petition, and said commissioners shall have a right thereafter to proceed with the construction of said improvement according to the changes made therein. [1895 c 117 § 19; RRS § 4268. Formerly RCW 85.04.100, part.]

**85.05.200 Payments on contracts—Retained percentage.** During the construction of said improvement said commissioners shall have the right to allow payment thereof, in installments as the work progresses, in proportion to the amount of work completed: PROVIDED, That no allowance or payment shall be made for said work to any contractor or subcontractor to exceed seventy-five percent of the proportionate amount of the work completed by such contractor or subcontractor, and twenty-five percent of the contract price shall be reserved at all times by said board of commissioners until such work is wholly completed, and shall not be paid upon the completion of said work until ninety days have expired for the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvement; and upon the completion of said work and the payment of all claims hereinbefore provided for, according to the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor. [1895 c 117 § 20; RRS § 4269. Formerly RCW 85.04.105, part.]

**85.05.210 Private dikes, how connected—Additional plans—Costs.** In case any diking district organized under the provisions of this act desires to connect its system of dikes with the system of dikes of any other district theretofore organized or constructed, said last mentioned diking district shall be made a party defendant in the proceedings in the superior court for the establishment of the improvement proposed to be constructed by such first mentioned diking district, and the petition to be filed in said court, in addition to the facts to be set forth therein as hereinbefore provided for, shall set forth the further fact that said district is desirous of connecting its said system of dikes with the system of such other diking district, and shall set forth an estimate of the additional cost per annum, if any, for the future maintenance of the diking system so sought to be connected with, and also an estimate of the cost of any additional improvement in said system so sought to be connected with, if any, by reason of such connection, and shall also set forth the amount of compensation which should be made by said diking district for the privilege of connecting with the said system of dikes; and in case it shall be deemed necessary to enlarge or strengthen the system of dikes to be connected with by reason of such connection, there shall be filed with said petition, in addition to the plans, specifications and data hereinbefore provided to be filed, plans and specifications and the estimated cost of the proposed improvement to be made in the system sought to be connected with by reason of such connection, and the proceedings thereon shall be the same as in other cases for the establishment of diking districts under the provisions of this act: PROVIDED, That the jury shall, in addition to the other findings provided for in other cases under the provisions of

this act, find the amount of compensation to be paid said district with whose system connection is sought to be made, for any additional cost, if any, which may be thrown upon said district by reason of the increased cost of maintenance by reason of such connection, and shall estimate the amount of such increased cost of maintenance per annum, and also the amount of compensation to be made to said district for the privilege of joining on to its system of dikes; the compensation to be made for the increased cost of maintenance shall be paid per annum out of the revenue derived from the assessments to be levied as in other cases, and the compensation to be made as may be found by the jury to said district whose system is sought to be connected with for the privilege thereof, shall be paid such district as damages are paid in other cases under the provisions of this act; and all amounts so paid to said district sought to be connected with, as compensation for the cost of maintenance, shall be used as an additional fund for the maintenance of said diking system of such district, and the amount of compensation paid for the privilege of connecting with the system of such district shall also be added to the general fund of said district, to be used for the payment of the cost of maintenance of the system of such district sought to be connected with. [1895 c 117 § 21; RRS § 4270. Formerly RCW 85.04.435, part.]

**85.05.220 Connecting with other diking systems.** In case it shall be found necessary to enlarge or strengthen the system of dikes sought to be connected with, by reason of such connection, the jury shall determine the cost of such enlarging or strengthening, and said petitioner district shall have the right, by and through its representatives, assistants and employees, to make such improvement on the system of such other district as may have been found necessary upon the hearing of said petition, and the costs thereof shall be assessed against the landowners of said petitioner district to be benefited by the construction of said entire system, and no additional cost or burden, by reason of such improvement, shall be thrown upon the landowners of said district sought to be connected with. [1895 c 117 § 22; RRS § 4271. Formerly RCW 85.04.435, part and 85.04.440.]

**85.05.230 Action by district to prevent washing away of stream banks.** Where any diking system is sought to be constructed by any district organized under the provisions of this act along any river or watercourse to prevent overflow therefrom, and it shall become necessary to provide against the washing away of the banks of said river or watercourse so as to prevent injury to such proposed diking system, or any system which may have already been completed, such district, by and through its board of commissioners, may make such portions of lands lying along said dikes which are threatened to be washed away by said river or watercourse part of the right-of-way of said dike system, and may construct along the banks of said river or watercourse, as a part of said diking system, such protection as may be necessary to protect said dike, and in such cases such tract or parcel of land may be condemned and appropriated under the law of eminent domain as provided herein as a part of the right-of-way of such dike system; and when not condemned or appropriated at the time said system is established and constructed, said

diking district, by and through its board of commissioners, may, at any time thereafter, when any portion of said system is threatened to be washed away by such river or watercourse, file their petition with the court condemning and appropriating for the use of said district so much of the land lying along said river or watercourse as may be necessary to be used for the protection of said diking system, and the proceedings therein for the making of compensation therefor and the payment of damages by reason of such appropriation shall be the same, or as near as may be applicable, as other proceedings for the condemnation of right-of-way provided for in this act. [1895 c 117 § 23; RRS § 4272. Formerly RCW 85.04.420, part.]

**85.05.240 Action by district to prevent washing away of stream banks—Expenses for appropriation of land.** Whenever any land is appropriated along the bank of any river or watercourse, as provided for in the last preceding section, the expenses of such appropriation, including the costs and damages to be paid therefor—when such appropriation is taken subsequently to the construction of any system of dikes under the provisions of this act—shall be added to the annual cost of the maintenance of said system and be paid as such, as provided herein. [1895 c 117 § 24; RRS § 4273. Formerly RCW 85.04.420, part.]

**85.05.250 Dikes along public road.** In the construction of any diking system under the provisions of this act, where it is desired to construct the same along the right-of-way of any public road which has theretofore been legally established, said district shall have a right to construct its dikes along such road: PROVIDED, That the dikes so constructed along such road shall not destroy or impair the same for the use of the public convenience as a public highway; and in case of the construction or improvement of any dike along any public highway, such dike shall be constructed of sufficient width and in such manner as will be conducive to the public as a public highway. [1895 c 117 § 25; RRS § 4274. Formerly RCW 85.04.425.]

**85.05.260 Incorporated town may act as or be included in diking district.** Any town or city already incorporated, or which may hereafter be incorporated, may exercise the functions of a diking district under the provisions of this act, or the whole or any portion of any such town or city may be included with other territory in a common district under the provisions for the establishment thereof as provided for herein. [1895 c 117 § 26; RRS § 4275. Formerly RCW 85.04.115, part.]

**85.05.270 Estimate for maintenance and repair—Emergency expenditures.** On or before the first day of November of each year the diking commissioners shall, and on or before the first Monday in October of each year the drainage commissioners shall, make and certify to the county auditor an estimate of the cost of maintenance and repair of the improvement for the ensuing year. The amount thereof shall be levied against the land in the district in proportion to the maximum benefits assessed, and shall be added to the general taxes and collected therewith. If such estimate of the

cost of maintenance and repair against any tract or contiguous tracts owned by one person or corporation is less than two dollars, then the county auditor shall levy such a minimum amount of two dollars against such tract or contiguous tracts, and upon the collection thereof as herein provided shall pay all sums collected into the maintenance and/or repair fund of the district. In case of an emergency the commissioners may incur additional obligations and issue warrants therefor in excess of the estimate. [1959 c 209 § 10. Prior: (i) 1913 c 89 § 2; 1905 c 7 § 2; 1895 c 117 § 27; RRS § 4276. (ii) 1917 c 133 § 2; 1907 c 120 § 1; 1905 c 173 § 3; 1895 c 115 § 24; RRS § 4324. Formerly RCW 85.04.120.]

**85.05.280 Organization of board—Warrants, how issued.** The board of commissioners of such district shall elect one of their number chair and shall either elect one of their number, or appoint a voter of the district, as secretary, who shall keep minutes of all the district's proceedings. The board of commissioners may issue warrants of such district in payment of all claims of indebtedness against such district. Such warrants shall be in form and substance the same as county warrants and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chair and attested by the secretary of the board: PROVIDED, That no warrants shall be issued by the board of commissioners in payment of any indebtedness of such district for less than the face or par value. [1991 c 245 § 35; 1985 c 396 § 38; 1895 c 117 § 28; RRS § 4277. Formerly RCW 85.04.040, part and RCW 85.04.165, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.05.355 Special assessment bonds.** Special assessment bonds and notes shall be issued and sold in accordance with chapter 85.38 RCW. [1986 c 278 § 23.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.05.360 Warrants—When and how paid.** All warrants issued under the provisions of this chapter shall be presented by the owners thereof to the county treasurer in accordance with chapter 36.29 RCW. [1991 c 245 § 36; 1986 c 278 § 29; 1895 c 117 § 36; RRS § 4286. Formerly RCW 85.04.170, part.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.05.365 Certificates of delinquency—Foreclosure—Sale—Use of proceeds.** Whenever any diking district assessments levied under this act shall remain unpaid for a period of four years from the date when such assessment becomes due and payable, the diking district, which levied said assessment or assessments is hereby empowered and authorized, through its board of commissioners, to make application to the county treasurer of the county in which said diking district is located, for a certificate of delinquency to be issued to it for said delinquent assessments and delinquent interest thereon. And the county treasurer shall issue to said diking district a certificate of delinquency in the same manner and form as to an individual: PROVIDED, HOWEVER, That it shall not be necessary or required for said diking district to pay to said county treasurer any part or portion of said

delinquent assessments or interest thereon, but payment of general taxes and interest due upon said general taxes, upon said diked lands will be sufficient payment by said diking district to entitle it to have said certificate of delinquency issued to it. Said diking district shall be empowered to foreclose said certificate or certificates and take title in said district the same as delinquent tax certificates are foreclosed by individuals. After acquiring title to any such lands through such foreclosure proceedings, the diking district, through its commissioners, may offer for sale and sell all, or any part, of such lands, in the same manner as counties are authorized to offer for sale and sell lands acquired by counties through delinquent tax foreclosure sales; and to issue a deed of conveyance therefor to the purchaser, executed by the commissioners of the diking district in behalf of the district, and attested by the clerk of the district. All revenue derived by the diking district from the sale of any such lands shall be first used for the redemption of any bonds and interest outstanding against said diking district which is due and payable, and the remainder thereof, if any, shall be applied to the payment of maintenance warrants, or other indebtedness, of the district, which is due and owing, in the priority deemed best by the board of diking commissioners. [1931 c 55 § 1; 1929 c 111 § 1; RRS § 4286-1. Formerly RCW 85.04.510, part.]

#### **85.05.366 Funds to purchase delinquent certificates.**

For the purpose of raising funds to purchase certificates of delinquency each diking district is authorized to levy an annual assessment upon the acreage contained within the diking district at the same time and in the same manner as other assessments of the district are levied; and for the purpose of raising funds to purchase certificates of delinquency upon delinquent diking district assessments during the year 1929, each diking district is authorized to issue emergency warrants, the payment and redemption of which shall be provided for at regular annual meeting in the year 1929; and thereafter all amounts raised for the purchase of delinquent diking assessment certificates shall be provided for at the regular annual meeting set for such purpose. [1929 c 111 § 2; RRS § 4286-2. Formerly RCW 85.04.515.]

**85.05.367 Lands owned by district exempt from taxation.** Any and all lands purchased and acquired by the diking district through foreclosure of delinquent assessment certificates shall, so long as owned by, or until sold by, such diking district, be exempt from general state and county taxes. [1929 c 111 § 3; RRS § 4286-3. Formerly RCW 85.04.510, part.]

**85.05.370 Trial—Findings and forms of verdict.** Upon the trial of any questions of issue by a jury under the provisions of this act, the trial court may, in its discretion, submit all questions to be found by the jury in the form of separate findings, or may submit to such jury separate forms of verdict on all such questions to be found by the jury therein. [1895 c 117 § 37; RRS § 4287. Formerly RCW 85.04.205, part.]

**85.05.380 Public lands subject to assessment—Rights and liabilities of public corporations.** All state, county,

school district or other lands belonging to other public corporations requiring to be diked as a protection from overflow shall be subjected to the provisions of this act, and such corporations, by and through the proper authorities, shall be made parties in all proceedings therein affecting said lands and shall have the same rights and liable to the same right of eminent domain as private persons, and their lands shall be subject to the right of eminent domain the same as the lands of private persons or corporations. [1895 c 117 § 38; RRS § 4288. Formerly RCW 85.04.110, part.]

#### **85.05.390 Assessments on public lands—How paid.**

In case lands belonging to the state, county, school district or other public corporations are benefited by any improvement instituted under the provisions of this chapter, all benefits shall be assessed against such lands, and the same shall be paid by the proper authorities of such public corporations at the times and in the same manner as assessments are called and paid in case of private persons out of any general fund of such corporation; and also all costs of repair and maintenance of such diking system shall be levied against and apportioned to such lands of such public corporations, whether owned at the time of the original improvement or subsequently acquired either by deed through delinquent tax foreclosure or otherwise, in the same manner as such costs of repair and maintenance are levied against and apportioned to lands belonging to private persons, and the same shall also be paid out of any general fund of such corporation. [1927 c 277 § 1; 1895 c 117 § 39; RRS § 4289. Formerly RCW 85.04.110, part.]

**85.05.400 Fees for service of process.** Fees for service of all process necessary to be served under the provisions of this act shall be the same as for like services in other civil cases, or as is or may be provided by law. [1895 c 117 § 40; RRS § 4290. Formerly RCW 85.04.200, part.]

**85.05.410 Commissioners—Compensation and expenses.** Members of the board of diking commissioners of any diking district in this state may receive as compensation the sum of up to seventy dollars for attendance at official meetings of the district and for each day or major part thereof for all necessary services actually performed in connection with their duties as commissioners, and shall receive the same compensation as other labor of a like character for all other necessary work or services performed in connection with their duties: PROVIDED, That such compensation shall not exceed six thousand seven hundred twenty dollars in one calendar year, except when the commissioners declare an emergency. Allowance of such compensation shall be established and approved at regular meetings of the board, and when a copy of the extracts of minutes of the board meeting relative thereto showing such approval is certified by the secretary of such board and filed with the county auditor, the allowance made shall be paid as are other claims against the district.

Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence, and mileage for

use of a privately owned vehicle in accordance with chapter 42.24 RCW.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. [1998 c 121 § 8; 1991 c 349 § 20; 1985 c 396 § 39; 1974 ex.s. c 39 § 1; 1951 c 30 § 1; 1909 c 171 § 1; 1895 c 117 § 41; RRS § 4291. Formerly RCW 85.04.400.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.05.420 Powers of court—Injunctions.** The court may compel the performance of the duties imposed by this act and may, in its discretion, on proper application therefor, issue its mandatory injunction for such purpose. [1895 c 117 § 42; RRS § 4292.]

**85.05.430 Sale of unneeded property—Authorized.** Whenever, in the judgment of a board of commissioners of any diking district heretofore or hereafter organized, real or personal property, or any part thereof, owned by said district, is no longer of use to or needed by such district, or if personal property has become obsolete, the same may be sold by the board of commissioners of said district at public or private sale. [1955 c 342 § 2. Formerly RCW 85.04.550.]

**85.05.440 Sale of unneeded property—Resolution of intention—Notice of hearing—Publication and posting.** Whenever in the judgment of the commissioners of any diking district, it is advisable so to sell real or personal property, the board of commissioners of such district shall pass a resolution declaring its intention to make such sale, describing the property to be sold and stating the terms of such sale. The resolution shall set a date upon which the board shall meet, to determine whether or not such sale shall be made. Thereafter a copy of such declaratory resolution and a notice of hearing thereon shall be posted under the direction of the board, in three public places in such district at least ten days before the date of hearing. The notice shall state the time and place of hearing, describe the property to be sold and the terms of the proposed sale. In addition a copy of such resolution and of such notice of hearing thereon shall be published twice, at least two weeks prior to such proposed sale in some newspaper qualified for legal publication in accordance with the provisions of chapter 65.16 RCW, of general publication in the county in which such diking district is located. [1955 c 342 § 3. Formerly RCW 85.04.551.]

**85.05.450 Sale of unneeded property—Protests—Resolution of final action—Conveyance.** At the time set for hearing, or at any time to which said hearing may be adjourned, any district elector within such district may appear and file a written protest against the proposed action of the board, which protest shall state clearly the basis thereof. At such hearing, which shall be public, the board shall give full consideration to the proposed sale and all protests filed, either

written or oral and on said date or at any adjourned date, take final action thereon by resolution of the board. This resolution shall provide that upon payment of the purchase price involved, conveyance of the property shall be made by a majority of the board of said district, by deed if the property be real property; by bill of sale if the property be personal property, conveying the property sold to the purchaser thereof, and such conveyance shall pass to the purchaser such title as the district has to the property. [1955 c 342 § 4. Formerly RCW 85.04.552.]

**85.05.460 Sale of unneeded property—Conveyance delayed if protests filed—Appeal.** If protests be filed against such sale, such conveyance shall not be executed or delivered until more than ten days elapse from the date of the hearing at which the resolution directing the sale, was passed. If appeal be taken by a protestant from the action of the board, such conveyance shall not be executed until termination of proceedings on appeal is had, and then only if the result of such appeal does not prevent such sale. [1955 c 342 § 5. Formerly RCW 85.04.553.]

**85.05.470 Sale of unneeded property—Direct action in superior court by protestant on final order.** Any protestant who filed a protest prior to the final order of the board, may appeal from such final order, but to do so must within ten days from the date said order was entered, bring direct action in the superior court in the county wherein such district or portion thereof is situated, against such board of commissioners in their official capacity, which action shall be prosecuted under the procedure of civil actions, with appellate review as provided in civil actions. In any such action so brought, the order of the board shall be conclusive of the regularity and propriety of the proceedings, and all other matters, except it shall be open to attack upon the ground of fraud, unfair dealing, arbitrary or unreasonable action of the board. [1988 c 202 § 73; 1971 c 81 § 158; 1955 c 342 § 6. Formerly RCW 85.04.554.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**85.05.490 Levy for preliminary expenses.** Whenever the board of county commissioners have passed a resolution establishing a diking district and prior to the commencement or the completion of the work of such improvement, the county commissioners may, and at the request of the diking commission shall, at the time of levying taxes each year until the improvement has been completed and a statement of the total costs has been filed, levy an assessment against the property within the district to defray the preliminary expenses of the district; the levy to be based upon the estimated benefits as shown by the report of the county engineer on file with the auditor, if such report is on file, and if not, as shown by the certificate or resolution of the diking commissioners of said diking district. The assessment so made shall be credited to the respective pieces of property. The preliminary assessment herein provided for shall be levied and collected in the same manner as county and state taxes are levied and collected, which amount shall be credited to the construction fund and used for the redemption of warrants issued against the same, which warrants shall be called and paid in

numerical order. [1933 c 39 § 1; RRS § 4247-1. Formerly RCW 85.04.405, part.]

**85.05.500 Levy for preliminary expenses—Preliminary expenses defined.** Preliminary expenses shall mean all of the expenses incurred in the proceedings for the organization of said district and in other ways to be incurred prior to the beginning of actual construction of the improvement and shall be paid from the fund hereby created from time to time upon call of the treasurer. [1933 c 39 § 2; RRS § 4247-2. Formerly RCW 85.04.405, part.]

**85.05.540 Plat of reclaimed land—Benefits to be determined and paid.** Where tide or other unsurveyed lands are reclaimed by a diking district and the owner of said lands shall desire to plat the same into lots, tracts or subdivisions, such plat shall specify and acknowledge the total benefits then a charge against each lot, tract or subdivision in said plat. Before a plat shall be approved or filed, same shall be submitted to the board of dike commissioners for their consideration. In case the owner and such board cannot agree as to the adjudged maximum benefits to be charged as the lien of the district and acknowledged to be such against each lot, tract or subdivision in such plat, any interested party may cause an action to be brought in the superior court of the county to have the just amount determined, and the decree of the court in such cause shall fix the amount of such lien and the same shall be conclusive and binding. In fixing the amount to be charged against the several lots, tracts and subdivisions, the adjudged benefits per acre, allowing credits for the benefits levied and paid at said time, shall be taken as the basis for determining the sum to be charged. The amount of adjudged benefits against property dedicated to the public for roads and highways in such plat shall be charged back against the abutting subdivisions and tracts in a just and equitable manner. All diking district assessments levied against the lands included in the plat shall be paid in full at the time said plat is approved. When approved such plat shall be filed with the county auditor of the county. Thereafter the lands within said plat shall be conveyed, assessed and taxed with reference to said plat. [1925 ex.s. c 69 § 4; RRS § 4292-4. Formerly RCW 85.04.505.]

**85.05.550 Plat of reclaimed land—Construction, application of RCW 85.05.510 through 85.05.550.** Nothing in RCW 85.05.510 through 85.05.550 shall be construed as repealing or modifying any act or statute now in force pertaining to diking districts, but the rights and remedies hereby granted shall be deemed cumulative as to the districts to which RCW 85.05.510 through 85.05.550 is limited. RCW 85.05.510 through 85.05.550 shall apply to districts heretofore or hereafter organized and to property owners' petitions heretofore or hereafter filed; provided that the decision of the board of dike commissioners of a district to which RCW 85.05.510 through 85.05.550 applies to issue bonds of a district under existing law or under RCW 85.05.510 through 85.05.550, shall be conclusive of such election. [1925 ex.s. c 69 § 5; RRS § 4292-5. Formerly RCW 85.04.490, part.]

**85.05.605 Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation.** Diking districts may annex territory, consolidate with other special districts, and have their operations suspended and be reactivated, in accordance with chapter 85.38 RCW. [1986 c 278 § 11.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.05.610 Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress.** Notwithstanding the provisions of \*RCW 85.05.020, any diking or drainage district or diking and drainage district organized pursuant to chapter 85.05 RCW as now or hereafter amended, may annex and assume, or such district may be organized for the purpose of assuming, and may take over, maintain, operate and extend any diking and drainage systems which have been heretofore erected and operated or may be hereafter erected and operated by the government of the United States of America or any political subdivision or agency thereof, whenever the congress of the United States by permissive legislation authorizes the transfer of maintenance and operations functions to state and local nonfederal agencies. [1967 c 184 § 19.]

**\*Reviser's note:** RCW 85.05.020 was repealed by 1985 c 396 § 87. For special district creation and operation see chapter 85.38 RCW.

**Severability—1967 c 184:** "If any provision of this 1967 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 184 § 25.]

**85.05.620 Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress—Indian trust lands and restricted lands may be included, when.** Any district organized pursuant to RCW 85.05.610 or pursuant to any other provisions of chapter 85.05 RCW as now or hereafter amended may include any Indian trust lands and restricted lands whenever the congress of the United States (1) authorizes the inclusion of such lands in such district and (2) provides authority for such district to assess and to tax such lands for necessary expenses in the maintenance, operations and capital improvements on such diking and drainage system. [1967 c 184 § 20.]

**85.05.630 Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress—Vesting of right, title and interest to dikes and land.** Whenever the congress of the United States provides for the transfer of all right, title and interest to any dikes and to the lands upon which they are situated to any state or local nonfederal agency, the title to such land and to the dikes shall pass to the county wherein the dikes are situated for the use and benefit of any district which may be organized pursuant to RCW 85.05.610 or pursuant to any other provisions of chapter 85.05 RCW as now or hereafter amended, until completion of organization of such district. In any case in which a district has been organized, all right, title and interest to such lands and dikes shall vest immediately in the diking and drainage district. [1967 c 184 § 21.]

**85.05.640 Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress—Definitions.** For purposes of RCW 85.05.610 through 85.05.650:

(1) The word "owner" as it appears in chapter 85.05 RCW shall include the owner of any undivided interest in any tract of land within the district boundaries, whether Indian trust land or restricted land, or non-Indian land;

(2) The "acreage" owned by any owner in any undivided estate interest shall be computed by multiplying the owner's fractional undivided interest against the total acreage embraced within a particular tract or lot assessed; and

(3) The names of the owners of Indian lands, the size of Indian tracts and lots, the fractional undivided interest therein and the "acreage" of each owner as determined according to the provisions of subsection (2) of this section shall, in any proceeding to organize and operate a district under the provisions of RCW 85.05.610 or pursuant to any other provision of chapter 85.05 RCW as now or hereafter amended, be conclusively determined by the certificate of the superintendent of the Indian agency of the Bureau of Indian Affairs having supervision over the Indian reservation in which such Indian lands may be located or by the certificate of the area director over the Bureau of Indian Affairs area encompassing such lands; and such certificate shall be accepted in lieu of all other evidence in the records of the county in which such lands are situated. [1967 c 184 § 22.]

**85.05.650 Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress—Ratification and confirmation of prior acts.** The acts and resolutions of all boards of county commissioners heretofore authorizing the organization and operation of any diking and drainage districts, following any provisions of chapter 85.05 RCW, and the acts and resolutions of all diking and drainage districts heretofore organized following acts of congress permitting the taking over and operation and maintenance of existing diking and drainage systems by the state and local non-federal governmental agencies, are ratified and confirmed. [1967 c 184 § 23.]

**Chapter 85.06 RCW**

**DRAINAGE DISTRICTS AND MISCELLANEOUS DRAINAGE PROVISIONS**

Sections

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**Reviser's note:** Part I of this chapter consists of chapter 115, Laws of 1895 as it has been amended and added to; thus the term "this act" has been translated to read "this chapter" throughout Part I. In Part II a number of miscellaneous acts relating to drainage districts have been codified; throughout Part II interval translations of the term "this act" have been made where they occur.

*Special district creation and operation: Chapter 85.38 RCW.*

**PART I—DRAINAGE DISTRICTS**

**85.06.010 Districts authorized—Powers—Management.** Any portion of a county, requiring drainage, which contains five or more inhabitants and freeholders therein may be organized into a drainage district, and when so organized

such district and the board of commissioners hereinafter provided for shall have and possess the power herein conferred or that may hereafter be conferred by law upon such district and board of commissioners, and said district shall be known and designated as drainage district No. . . . . (here insert number), of the county of . . . . . (here insert the name of the county), of the state of Washington, and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession, and shall adopt and use a seal. The commissioners hereinafter provided for and their successors in office shall, from the time of the organization of such drainage district, have the power, and it shall be their duty, to manage and conduct the business and affairs of the district, make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties, and perform such other acts as hereinafter provided, or that may hereafter be provided by law. [1895 c 115 § 1; RRS § 4298. Formerly RCW 85.04.005, part.]

**85.06.015 Certain powers and rights governed by chapter 85.38 RCW.** Drainage districts shall possess the authority and shall be created, district voting rights shall be determined, and district elections shall be held as provided in chapter 85.38 RCW. [1985 c 396 § 32.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.06.070 Eminent domain powers—Purchase of real property authorized.** All drainage districts organized or that may hereafter be organized under the provisions of this chapter or the acts amendatory thereof shall have the right of eminent domain, with the power by and through its board of commissioners, to cause to be condemned and appropriated private property for the use of said corporation in the construction and maintenance of a system or systems of drainage, and make just compensation therefor, and such right of eminent domain may be exercised either within or without the boundaries of such districts, and may be exercised with respect to rights of way for ditches, drains, dams, outlets or any other necessary appliances or structures and whether for the original system or any additions, enlargements or extensions thereof or for additional outlets or systems of drainage: PROVIDED, That the property of private corporations may be subjected to the same rights of eminent domain as that of private individuals: PROVIDED, FURTHER, That the said board of commissioners shall have the power to acquire by purchase all the real property necessary to make the improvements herein provided for. [1919 c 179 § 2; 1895 c 115 § 7; RRS § 4305. Formerly RCW 85.04.605, part.]

**85.06.080 Commissioners—Powers and duties.** The board of drainage commissioners shall consist of three elected commissioners. The initial commissioners shall be appointed, and the elected commissioners elected, as provided in chapter 85.38 RCW. The board shall have exclusive charge of the construction and maintenance of all drainage systems which may be constructed by said district and shall be the executive officers thereof, with full power to bind said district by their acts in the performance of their duties as pro-

vided by law. [1985 c 396 § 41; 1913 c 86 § 3; 1895 c 115 § 8; RRS § 4306. Formerly RCW 85.04.045, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.06.090 Petition for improvement—Contents.** Whenever it is desired to prosecute the construction of a system of drainage by said drainage district, said district, by and through its board of commissioners, shall file a petition in the superior court of the county in which said district is located, setting forth therein the route and termini of said system, with a complete description thereof, together with specifications for its construction, with all necessary plats and plans thereof, with draughts of any artificial appliances or equipment necessary in aid thereof, together with the estimated cost of such proposed improvement, showing therein the names of the landowners whose lands are to be benefited by such proposed improvement; the number of acres owned by each landowner, and the maximum amount of benefits per acre to be derived by each landowner set forth therein from the construction of said proposed improvement, and that the same will be conducive to the public health, convenience and welfare, and increase the value of all of said property for purposes of public revenue. Said petition shall further set forth the names of the landowners through whose land the right of way is desired for said improvement; the amount of land necessary to be taken therefor, and an estimate of the value of said lands so sought to be taken for such right of way, and the damages sustained by any person or corporation interested therein, if any, by reason of such appropriation, irrespective of any benefits to be derived by such landowners by reason of the construction of said improvement. Such estimate shall be made, respectively, to each person through whose land said right of way is sought to be appropriated. Said petition shall set forth as defendants therein all the persons or corporations to be benefited by said improvement, and all persons or corporations through whose land the right of way is sought to be appropriated, and all persons or corporations having any interest therein, as mortgagee or otherwise, appearing of record, and shall set forth that said proposed system of drainage is necessary to drain all of said lands described in said petition, and that all lands sought to be appropriated for said right of way are necessary to be used as a right of way in the construction and maintenance of said improvement; and when the proposed improvement will protect or benefit the whole or any part of any public or corporate road or railroad, so that the traveled track or roadbed thereof will be improved by its construction, such fact shall be set forth in said petition, and such public or private corporations owning said road or railroad shall be made parties defendant therein, and the maximum amount of benefits to be derived from said proposed improvement shall be estimated in said petition against said road or railroad: PROVIDED, HOWEVER, That all maps, plats, field notes, surveys, plans, specifications, or other data heretofore made, ascertained or prepared under laws heretofore enacted on the subject of this chapter, may be used under the provisions of this chapter. [1913 c 86 § 4; 1905 c 175 § 2; 1895 c 115 § 9; RRS § 4307. Formerly RCW 85.04.050, part.]

**85.06.100 Petition for improvement—Employment of assistants—Compensation as costs in suit.** In the preparation of the facts and data to be inserted in said petition and filed therewith for the purpose of presenting the matter to the superior court, the board of commissioners of said drainage district may employ one or more good and competent surveyors and draughtsmen to assist them in compiling data required to be presented to the court with said petition, as hereinbefore provided, and such legal assistance as may be necessary, with full power to bind said district for the compensation of such assistants or employees employed by them, and such services shall be taxed as costs in the suit. [1895 c 115 § 10; RRS § 4259. Formerly RCW 85.04.055, part.]

**85.06.110 Summons—Contents—Service.** A summons stating briefly the objects of the petition and containing a description of the land, real estate, premises or property sought to be appropriated, and those which it is claimed to be benefited by the improvement, and stating the court wherein the petition is filed, the date of the filing thereof and when the defendants are required to appear (which shall be ten days, exclusive of the day of service, if served within the county in which the petition is pending, and if in any other county, then twenty days after such service, and if served by publication, then within thirty days from the date of the first publication), shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein. The summons must be subscribed by the commissioners, or their attorney, running in the name of the state of Washington and directed to the defendants; and service thereof shall be made by delivering a copy of such summons to each of the persons or parties so named therein, if a resident of the state, or in case of the absence of that person or party from his or her usual place of abode, by leaving a copy of the notice at his or her usual place of abode, or in case of a foreign corporation, at its principal place of business in this state with some person of more than sixteen years of age; in case of domestic corporations, the service shall be made upon the president, secretary or other director or trustee of the corporation; in case of persons under eighteen years of age, on their guardians; or in case no guardian shall have been appointed, then on the person who has the care and custody of the person; in the case of mentally ill or mentally incompetent persons, on their guardian or limited guardian; or in case no guardian or limited guardian shall have been appointed, then on the person and on the person in whose care or charge the person is found. \*In case the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited by such improvement, is state, tide, school or county land, the summons shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited, is situated. In all cases where the owner or person claiming an interest in the real or other property is a non-resident of this state, or where the residence of the owner or person is unknown, and an affidavit of one or more of the commissioners of the district shall be filed that the owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained by the deponent, service may be made by publication thereof in a newspaper of general circulation in the county where the

lands are situated, once a week for three successive weeks. The publication shall be deemed service upon each nonresident person or persons whose residence is unknown. The summons may be served by any competent person eighteen years of age or over. Due proof of service of the summons by affidavit or publication shall be filed with the clerk of the court before the court shall proceed to hear the matter. Want of service of notice shall render the subsequent proceedings void as to the person not served; but all persons or parties having been served with summons as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all cases not otherwise provided for service of notice, order and other papers in the proceedings authorized by this chapter may be made as the superior court, or the judge thereof, may direct: PROVIDED, That personal service upon any party outside of the state shall be of like effect as service by publication. [1985 c 469 § 72; 1977 ex.s. c 80 § 74; 1971 ex.s. c 292 § 57; 1895 c 115 § 11; RRS § 4309. Formerly RCW 85.04.060, part.]

**\*Reviser's note:** The case of *Paine v. State*, 156 Wash. 31 states that the provisions of this section relating to the service of summons on the county auditor were repealed by implication by 1909 c 154 § 6 which provided for such service upon the commissioner of public lands. Subsequently 1919 c 164 was enacted containing similar provisions and providing for service upon the commissioner of public lands, and was amended by 1963 c 20 §§ 4 and 5 to provide for service upon the budget director and the chief administrative officer of the agency having jurisdiction over such land. Those sections, codified as RCW 47.20.020 and 47.20.030, were repealed by 1970 ex.s. c 51 § 178.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**85.06.120 Appearance of defendants—Jury—Verdict—Assessment of damages and benefits—Decree.** Any or all of said defendants may appear jointly or separately and admit or deny the allegations of said petition and plead any affirmative matter in defense thereof at the time and place appointed for hearing said petition, or to which the same may have been adjourned. If the court or judge thereof shall have satisfactory proof that all of the defendants in said action have been duly served with said summons, as above provided, and shall be further satisfied by competent proof that said improvement is practicable and conducive to the public health, welfare and convenience, and will increase the value of said lands for the purpose of public revenue, and that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the establishment of said improvement, and that said improvement has a good and sufficient outlet, the court or judge thereof shall cause a jury of twelve qualified persons to be impaneled to assess the damages and benefits, as herein provided, if in attendance upon his court; and if not he may, if satisfied that the public interests require the immediate construction of said improvement, direct the sheriff of his county to summons from the citizens of the county in which petition is filed as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the parties to the proceedings consent to a less number, such number to be not less than three, and such consent shall be entered by the

clerk in the minutes of the trial. If necessary, to complete the jury in any case, the sheriff, under the directions of the court or the judge thereof shall summon as many qualified persons as may be required to complete the jury from the citizens of the county in which the petition is filed. In case a special jury is summoned the cost thereof shall be taxed as part of the cost in the proceedings and paid by the district seeking to appropriate said land, the same as other costs in the case; and no person shall be competent as a juror who is a resident of, or landowner in, the district seeking to appropriate said land. The jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, by reason of the appropriation and use of such land, real estate, premises or other property for said improvements and shall ascertain, determine and award the amount of damages to be paid to said owner or owners, respectively, and to all tenants, incumbancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the establishment of said improvement; and shall further find a maximum amount of benefits per acre to be derived by each of the landowners, and also the maximum amount of benefits resulting to any municipality, public highway, corporate road, or district from construction of said improvement. And upon a return of the verdict into court the same shall be reported as in other cases; whereupon, a decree shall be entered in accordance with the verdict so rendered setting forth all the facts found by the jury, and decreeing that said right-of-way be appropriated, and directing the commissioners of said drainage district to draw their warrant on the county treasurer for the amount awarded by the jury to each person for damages sustained by reason of the establishment of said improvement, payable out of the funds of said drainage district. [1909 c 143 § 2; 1895 c 115 § 12; RRS § 4310. Formerly RCW 85.04.065, part.]

**85.06.125 Special assessments—Budgets—Alternative methods.** RCW 85.38.140 through 85.38.170 constitute a mutually exclusive alternative method by which drainage districts in existence as of July 28, 1985, may measure and impose special assessments and adopt budgets. RCW 85.38.150 through 85.38.170 constitute the exclusive method by which drainage districts created after July 28, 1985, may measure and impose special assessments and adopt budgets. [1985 c 396 § 25.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.06.130 Assessment of benefited lands formerly omitted—Procedure—Appeals.** If at any time it shall appear to the board of drainage commissioners that any lands within or without said district as originally established are being benefited by the drainage system of said district and that said lands are not being assessed for the benefits received, or if after the construction of any drainage system, it appears that lands embraced therein have in fact received or are receiving benefits different from those found in the original proceedings, and which could not reasonably have been foreseen before the final completion of the improvement, or that any lands within said district are being assessed out of or not in proportion to the benefits which said lands are receiv-

ing from the maintenance of the drainage system of said district, and said board of drainage commissioners shall determine that certain lands, either within or without the boundaries of the district as originally established, should be assessed for the purpose of raising funds for the future maintenance of the drainage system of the district, or that the assessments on land already assessed should be equalized by diminishing or increasing the same so that said lands shall be assessed in proportion to the benefits received, said commissioners shall file a petition in the superior court in the original cause, setting forth the facts, describing the lands not previously assessed and the lands the assessment on which should be equalized, stating the estimated amount of benefits per acre being received by each tract of land respectively, giving the name of the owner or reputed owner of each such tract of land and praying that such original cause be opened for further proceedings for the purpose of subjecting new lands to assessments or equalizing the assessments upon lands already assessed, or both. Upon the filing of such petition, summons shall issue thereon and be served on the owners of all lands affected, in the same manner as summons is issued and served in original proceedings, as near as may be, and if such new lands lie within the boundaries of any other drainage district, said summons shall also be served upon the commissioners of such other drainage district. In case any of the new lands sought to be assessed in said proceeding lie within the boundaries of any other drainage district, and the drainage commissioners of such other district believe that the maintenance of the drain or drains of such other district is benefiting lands within the district instituting the proceeding, said drainage commissioners of such other districts shall intervene in such proceedings by petition, setting forth the facts, describing the lands in the district instituting the proceeding which they believe are being benefited by the maintenance of the drainage system of their district, and praying that the benefits to such lands may be determined and such lands subjected to assessment for the further maintenance of the drainage system of their district, to the end that all questions of benefits to lands in the respective districts may be settled and determined in one proceeding, and such petitioners in intervention shall cause summons to be issued upon such petition in intervention and served upon the commissioners of the drainage district instituting the proceeding and upon the owners of all lands sought to be affected by such petition in intervention. In case the owner of any such new lands sought to be assessed in said proceedings shall be maintaining a private drain against salt or fresh water for the benefit of said lands, and shall believe that the maintenance of such private drain is benefiting any lands within or without the district instituting the proceedings, or in case any such new lands sought to be assessed are included within the boundaries of some other drainage district and are being assessed for the maintenance of the drains of such other district, and the owner of such lands believes that the maintenance of the drain or drains of such other district is benefiting lands included within the district instituting said proceedings, such owner or owners may by answer and cross-petition set forth the facts and pray that at the hearing upon said petition and cross-petition the benefits accruing from the maintenance of the respective drains may be considered, to the end that a fair and equitable adjustment of the benefits being received by any lands from the

maintenance of the various drains benefiting the same, may be determined for the purpose of fixing the assessments for the future maintenance of such drains, and may interplead in said proceeding such other drainage district in which his lands sought to be assessed in said proceeding are being assessed for the maintenance of the drain or drains of such other district. No answer to any petition or petition in intervention shall be required, unless the party served with summons desires to offset benefits or to ask other affirmative relief, and no default judgment shall be taken for failure to answer any petition or petition in intervention, but the petitioners or petitioners in intervention shall be required to establish the facts alleged by competent evidence. Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons, the court shall impanel a jury to hear and determine the matters in issue, and the jury shall determine and assess the benefits, if any, which the respective tracts of land are receiving or will receive from the maintenance of the drain or drains to be maintained, taking into consideration any and all matters relating to the benefits, if any, received or to be received from any drain, structure or improvement, and to credit or charge, as the case may be, to each tract so situated as to affect any other tract or tracts, or having improvement or structures thereon or easements granted in connection therewith, affecting any other tract or tracts included in such proceedings, and shall specify in their verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. Upon the return of the verdict of the jury, the court shall enter its judgment in accordance therewith, as supplemental to the original decree, or in case a petition in intervention be filed by the drainage commissioners of some other district than that instituting the proceeding, such judgment to be supplemental to all such original decrees, and thereafter, all assessments and levies for the cost of construction or future maintenance of any drain or drains described in said judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in said judgment. Every person or corporation feeling himself or itself aggrieved by any such judgment may appeal to the supreme court or the court of appeals within thirty days after the entry thereof, and such appeal shall bring before the supreme court or the court of appeals the propriety and justness of the verdicts of the jury in respect to the parties to the appeal. No bonds shall be required on such appeals. Nothing in this section contained shall be construed as affecting the right of drainage districts to consolidation in any manner provided by law. [1971 c 81 § 159; 1917 c 133 § 1; 1901 c 86 § 1; 1895 c 115 § 13; RRS § 4311.]

**Rules of court:** Cf. *RAP* 5.2, 8.1, 18.22.

**85.06.140 Dismissal of proceedings, when—Costs.** In case the damages or amount of compensation for such right-of-way, together with the estimated costs of the improvement, amount to more than the maximum amount of benefits which will be derived from said improvement, or, if said improvement is not practicable, or will not be conducive to the public health, welfare and convenience, or will not increase the public revenue, or will not have sufficient outlet, the court shall dismiss such proceedings, and in such case a

judgment shall be rendered for the costs of said proceedings against said district, and no further proceedings shall be had or done therein; and upon the payment of the costs, said organization shall be dissolved by decree of said court. [1895 c 115 § 14; RRS § 4312. Formerly RCW 85.04.070, part.]

**85.06.150 Procedure to claim awards.** Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this chapter, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he is entitled to the same, the court shall make an order directing the payment to such claimant of the portion of such money as he or it may be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate or premises specified in the application of such claimant is in such condition as to require that an action be commenced to determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claims to such land, real estate or premises be determined according to law. [1895 c 115 § 15; RRS § 4313. Formerly RCW 85.04.210, part.]

**85.06.160 Transcript of benefits to auditor—Assessments—Collection—Supplemental assessment.** Upon the entry of the judgment upon the verdict of the jury, the clerk of said court shall immediately prepare a transcript, which shall contain a list of the names of all the persons and corporations benefited by said improvement and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by said improvement belonging to each person and corporation, and shall file the same with the auditor of the county, who shall immediately enter the same upon the tax rolls of his office, as provided by law for the entry of other taxes, against the land of each of the said persons named in said list, together with the amounts thereof, and the same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and shall be collected in the same manner as other taxes and subject to the same right of redemption, and the lands sold for the collection of said taxes shall be subject to the same right of redemption as the sale of lands for general taxes: PROVIDED, That said assessments shall not become due and payable except at such time or times and in such amounts as may be designated by the board of commissioners of said drainage district, which designation shall be made to the county auditor by said board of commissioners of said drainage district, by serving written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to benefits to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons or corporation, according to said notice, upon the assessment rolls in his said office, and collected therewith; PROVIDED FURTHER, That no one call for assessments by said commissioners shall be in an amount to exceed twenty-five percent of the amount estimated by the board of commissioners to be necessary to pay the costs of the proceedings, and the establishment of said district and

drainage system and the cost of construction of said work; PROVIDED FURTHER, That where the amount realized from the original assessment and tax shall not prove sufficient to complete the original plans and specifications of any drainage system, alterations, extensions or changes therein, for which the said original assessment was made, the board of commissioners of said district shall make such further assessment as may be necessary to complete said system according to the original plans and specifications, which assessment shall be made and collected in the manner provided in this section for the original assessment. [1907 c 242 § 1; 1895 c 115 § 16; RRS § 4316. Formerly RCW 85.04.080, part.]

**85.06.180 Construction—Contractors—Performance bonds.** After the filing of said certificate said commissioners of such drainage district shall proceed at once in the construction of said improvement, and in carrying on said construction or any extensions thereof they shall have full charge and management thereof, and shall have the power to employ such assistance as they may deem necessary and purchase all material that may be necessary in the construction and carrying on of the work of said improvement, and shall have power to let the whole or any portion of said work to any responsible contractor, and shall in such case enter into all necessary agreements with such contractor that may be necessary in the premises: PROVIDED, That in case the whole or any portion of said improvement is let to any contractor said commissioners shall require said contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by said contract, with two or more sureties to be approved by the board of commissioners of said drainage district and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his executors, administrators or assigns, according to the terms and conditions of said agreement, and shall cause said contractor to enter into a further or additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said drainage district in the name of said district as obligee therein, conditioned that said contractor, his executors, administrators or assigns, or subcontractor, his executors, administrators or assigns, performing the whole or any portion of said work under contract of said original contractor, shall pay or cause to be paid all just claims for all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise or provisions of any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvement: PROVIDED FURTHER, That no sureties on said last mentioned bond shall be liable thereon unless the persons or corporation performing said labor and furnishing said materials, goods, wares, merchandise and provisions, shall, within ninety days after the completion of said improvement, file their claim, duly verified; that the amount is just and due and remains unpaid, with the board of commissioners of said drainage district. [1895 c 115 § 18; RRS § 4318. Formerly RCW 85.04.095, part.]

**85.06.190 Substantial changes in plans—Procedure.** The work on said improvement shall begin and shall be com-

pleted with all expedition possible, and said board of commissioners of such drainage district, or any contractor thereunder, shall have no power whatever to change said route or system of improvement or the manner of doing the work therein so as to make any radical changes in said improvement, without the written consent of all the landowners to be benefited thereby, and the landowners which may be damaged thereby. And in case any substantial changes in said system of improvement or the manner of the construction thereof shall be deemed necessary by said board of commissioners at any time during the progress thereof, and if the written consent to such changes cannot be procured from said landowners, then said commissioners, for and on behalf of said district, shall file a petition in the superior court of the county within which said district is located, setting forth therein the changes which they deem necessary to be made in the plan or manner of the construction of said improvement, and praying therein to be permitted to make such changes, and upon the filing thereof, the commissioners shall cause a summons to be served, setting forth the prayer of said petition, under the seal of said court, which summons shall be served in the same manner as the service of summons in the case of the original petition, upon all the landowners or others claiming any lien or interest therein appearing of record in said district, and any or all of said parties so served may appear in said cause and submit their objections thereto, and after the time for the appearance of all of said parties has expired, the court shall proceed to hear said petition at once without further delay, and if it appears during the course of said proceedings that the property rights of any of said landowners will be affected by such proposed change in said improvements, then the court, after having passed upon all preliminary questions as in the original proceedings may call a jury to be impaneled as in the case of the original proceeding for the establishment of said improvements, and upon the final hearing of said cause, the jury shall return a verdict finding the amount of damages, if any, sustained by all persons and corporations, the same as upon the original petition, by reason of such proposed change, and shall readjust the amount of benefits claimed to have been increased or diminished by any of said landowners by reason of said proposed change in said improvements, and the proceedings thereafter shall be the same as to rendering judgment, appeal therefrom, payment of compensation and damages and filing of the certificate with the auditor, as hereinbefore provided for in the proceedings upon the original petition, and said commissioners shall have a right thereafter to proceed with the construction of said improvements according to the changes made therein. [1909 ex.s. c 13 § 1; 1895 c 115 § 19; RRS § 4319. Formerly RCW 85.04.100, part.]

**85.06.200 Payments on contracts—Retained percentage.** During the construction of said improvement said commissioners shall have the right to allow payment thereof, in installments as the work progresses, in proportion to the amount of work completed: PROVIDED, That no allowance or payment shall be made for said work to any contractor or subcontractor to exceed seventy-five percent of the proportionate amount of the work completed by such contractor or subcontractor, and twenty-five percent of the contract price shall be reserved at all times by said board of commissioners

until said work is wholly completed, and shall not be paid upon the completion of said work until ninety days have expired for the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvements; and upon the completion of said work and the payment of all claims hereinbefore provided for according to the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor. [1895 c 115 § 20; RRS § 4320. Formerly RCW 85.04.105, part.]

**85.06.210 Connecting private drains—Procedure—**

**Costs.** Any person or corporation owning land within said district shall have a right to connect any private drains or ditches for the proper drainage of such land with said system, and in case any persons or corporations shall desire to drain such lands into said system and shall find it necessary, in order to do so, to procure the right-of-way over the land of another, or others, and if consent thereto cannot be procured from such person or persons, then such landowner may present in writing a request to the board of commissioners of said district, setting forth therein the necessity of being able to connect his private drainage with said system, and pray therein that said system be extended to such point as he may designate in said writing, and immediately thereon said board of commissioners shall cause a petition to be filed in the superior court, for and in the name of said drainage district, requesting in said petition that said system be extended as requested, setting forth therein the necessity thereof and praying that leave be granted by the board to extend the system in accordance with the prayer of said petition, and the proceedings in such case, upon the presentation of such petition and the hearing thereof, shall be, in all matters, the same as in the hearing and presentation of the original petition for the establishment of the original system of drainage in said district, as far as applicable. That the costs in such proceedings shall be paid from the assessment of benefits to be made on the lands of the person or persons benefited by such extension, and the assessment and compensation for the right-of-way, damages and benefits, and payment of damages and compensation, and the collection of the assessments for benefits, shall be the same as in the proceedings under the original petition, and the construction of the said extension shall be made under the same provisions as the construction of the original improvement; and all things that may be done or performed in connection therewith shall be, as near as may be applicable, in accordance with the provisions already set forth herein for the establishment and construction of said original improvement: PROVIDED, That such petitioner or petitioners shall, at the time of filing such petition by said drainage commissioners, enter into a good and sufficient bond to said drainage district in the full penal sum of five hundred dollars, with two or more sureties, to be approved by the court, conditioned for the payment of all costs in case the prayer of said petition should not be granted, which bond shall be filed in said cause. [1895 c 115 § 21; RRS § 4321. Formerly RCW 85.04.640.]

**85.06.220 Connecting with lower districts—Procedure.** In case of the establishment of a drainage district and system of drainage under the provisions of this chapter above

any other district that may have theretofore been established and above any other system of drainage that may have theretofore been constructed in said district, and in case said district to be established above may desire to connect its drainage system with the lower or servient district, shall be made a party to the proceedings for the establishment of such system, and the petition to be filed in the superior court for the establishment of the system of drainage in said upper district shall, in addition to the facts hereinbefore provided and required to be set forth therein, set forth the fact that said lower system in said lower district is necessary to be used as an outlet for the system of drainage of said upper district, and that the same will be a sufficient outlet and will afford sufficient capacity to carry the drainage of both said upper and lower districts; and in case said system of said lower district will be required to be enlarged by widening or deepening the same, or both, in order to give sufficient outlet to said upper district and afford sufficient drainage for said upper and lower districts, then the plans and specifications for enlarging the system of said lower district shall be filed with said petition in addition to the other data hereinbefore provided for in this chapter. All the landowners in said lower district, or any person claiming any interest therein as mortgagee or otherwise, shall be made parties defendant in said petition, and the proceedings therein as to the assessment of damages and compensation for land taken, if any be necessary to be taken in enlarging said lower system, shall be the same as in the establishment of systems of drainage in the lower or servient district as hereinbefore provided for; but the jury, in addition to the facts to be found by them as provided for in the establishment of a drainage system in the lower district, shall find and determine whether said lower system, when improved according to the plans and specifications filed with the said petition, will afford sufficient drainage for both said upper and lower districts, which finding shall be made by the jury before considering any other question at issue in said proceeding; and in case said jury should find that the system of said lower district when improved as proposed in said petition would not be sufficient, then, in that case, said finding shall terminate the proceedings, and no further proceedings in said case shall be had, and the costs of said proceeding shall be paid as costs in other proceedings, as hereinbefore provided for; but in such case the finding of said jury shall not terminate the objects of said upper district or operate to disorganize the same, but said upper district may begin new proceedings for the establishment of a system of drainage with some new outlet provided therein. All costs for the enlarging or improving of said lower system that may be required shall be assessed to the landowners in the upper district according to the benefits to be derived from the construction of said entire system, and no additional cost shall be thrown upon the lower district, and all compensation for taking any right-of-way that may be necessary to be taken in enlarging said lower system, and all damages occurring therefrom, if any, to the landowners of said lower district, shall be ascertained and paid in the same manner as hereinbefore provided for for the adjustment of compensation and damages in the establishment of drainage systems in lower districts. Said lower district, by and through its board of commissioners, may appear in said cause and show therein any injury it may sustain as a district by reason of the additional cost of maintenance of said lower system as improved

and enlarged, and such fact shall be determined in said cause and the jury shall find the amount of the increased costs of maintenance per annum, which will be sustained by said lower district by reason of said enlarging or improving of the same, and judgment shall be rendered in favor of said lower district against said upper district for such amount so found, and the same shall be paid each year as the cost of construction is paid as provided for in this chapter, and the amount so paid shall be held by said lower district as an additional fund for the maintenance of its said system as improved and enlarged by said upper district. [1895 c 115 § 22; RRS § 4322. Formerly RCW 85.04.645.]

**85.06.230 City or town may act as or be included in drainage district.** Any town or city already incorporated, or which may hereafter be incorporated, may exercise the functions of a drainage district under the provisions of this chapter, or the whole or any portion of any such town or city may be included with other territory in a common district under the provisions for the establishment thereof as provided for herein. [1895 c 115 § 23; RRS § 4323. Formerly RCW 85.04.115, part.]

**85.06.240 Estimate for maintenance and repair—Emergency expenditures.** See RCW 85.05.270.

**85.06.250 Organization of board—Warrants, how issued.** The board of commissioners of such district shall elect one of their number chairman and shall either elect one of their number, or appoint a voter of the district, as secretary, who shall keep minutes of all the district's proceedings. The board of commissioners may issue warrants of such district in payment of all claims of indebtedness against such district, which shall be in form and substance the same as county warrants, or as near the same as may be practicable, and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chairman and attested by the secretary of said board: PROVIDED, That no warrants shall be issued by said board of commissioners in payment of any indebtedness of such district for less than the face or par value. [1985 c 396 § 42; 1895 c 115 § 25; RRS § 4325. Formerly RCW 85.04.040, part and 85.04.165, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.06.255 Special assessment bonds.** Special assessment bonds and notes shall be issued and sold in accordance with chapter 85.38 RCW. [1986 c 278 § 24.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.06.330 Warrants presented for indorsement—When and how paid.** All warrants issued under the provisions of this chapter shall be presented by the owners thereof to the county treasurer, who shall indorse thereon the day of presentation for payment, with the additional indorsement thereon, in case of nonpayment, that they are not paid for want of funds; and no warrant shall draw interest under the provisions of this chapter until it is so presented and indorsed by the county treasurer. And it shall be the duty of such treasurer, from time to time, when he has sufficient funds in his

hands for that purpose, to advertise in the newspaper doing the county printing for the presentation to him for payment of as many of the outstanding warrants as he may be able to pay: PROVIDED, That thirty days after the first publication of said notice of the treasurer calling in any of said outstanding warrants said warrants shall cease to bear interest, which shall be stated in the notice. Said notice shall be published two weeks consecutively, and said warrants shall be called in and paid in the order of their indorsement. [1986 c 278 § 30; 1895 c 115 § 33; RRS § 4333. Formerly RCW 85.04.170, part.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.06.340 Trial—Findings and forms of verdict.** Upon the trial of any questions of issue by a jury under the provisions of this chapter the trial court may, in its discretion, submit all questions to be found by the jury in the form of separate findings, or may submit to such jury separate forms of verdict on all such questions to be found by the jury therein. [1895 c 115 § 34; RRS § 4334. Formerly RCW 85.04.205, part.]

**85.06.350 Public lands subject to assessment—Rights and liabilities of public corporations.** All state, county, school district or other lands belonging to other public corporations requiring drainage shall be subject to the provisions of this chapter, and such corporations, by and through the proper authorities, shall be made parties in all proceedings herein affecting said lands, and shall have the same rights as private persons, and their lands shall be subject to the right of eminent domain the same as the lands of private persons or corporations. [1895 c 115 § 35; RRS § 4335. Formerly RCW 85.04.110, part.]

**85.06.360 Assessments on public lands—How paid.** In case lands belonging to the state, county, school district or other public corporations are benefited by any improvement instituted under the provisions of this chapter, all benefits shall be assessed against such lands, and the same shall be paid by the proper authorities of such public corporation at the times and in the same manner as assessments are called and paid in case of private persons, out of any general fund of such corporation. [1895 c 115 § 36; RRS § 4336. Formerly RCW 85.04.110, part.]

**85.06.370 Fees for service of process.** Fees for service of all process necessary to be served under the provisions of this chapter shall be the same as for like services in other civil cases, or as is or may be provided by law. [1895 c 115 § 37; RRS § 4337. Formerly RCW 85.04.200, part.]

**85.06.380 Commissioners—Compensation and expenses.** In performing their duties under the provisions of this title the board and members of the board of drainage commissioners may receive as compensation up to seventy dollars for attendance at official meetings of the district and for each day or major part thereof for all necessary services actually performed in connection with their duties as commissioners: PROVIDED, That such compensation shall not exceed six thousand seven hundred twenty dollars in one cal-

endar year: PROVIDED FURTHER, That such services and compensation are allowed and approved at a regular meeting of the board. Upon the submission of a copy, certified by the secretary, of the extracts of the relevant minutes of the board showing such approval, to the county auditor, the same shall be paid as other claims against the district are paid. Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence and mileage for use of a privately-owned vehicle in accordance with chapter 42.24 RCW.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. [1998 c 121 § 9; 1991 c 349 § 21; 1985 c 396 § 43; 1980 c 23 § 2; 1959 c 209 § 1; 1947 c 76 § 1; 1907 c 62 § 1; 1895 c 115 § 38; RRS § 4338. Formerly RCW 85.04.600.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.06.390 Improvement of watercourses—Preservation of vested rights.** The whole or any portion of any natural watercourse, the whole or any portion of which lies within any district established under this chapter, or the whole or any portion of any ditch or drainage system already constructed or partially constructed prior to the passage of this chapter, may be improved and completed as a system under the provisions of this chapter: PROVIDED, That vested rights in any such watercourse acquired by appropriation of the water thereof for irrigation, mining or manufacturing purposes under existing law, shall not be disturbed. [1903 c 38 § 1; 1895 c 115 § 39; RRS § 4339. Formerly RCW 85.04.650.]

**85.06.400 Powers of court—Injunctions.** The superior court may compel the performance of the duties imposed by this chapter, and may, in its discretion, on proper application therefor, issue its mandatory injunction for such purpose. [1895 c 115 § 40; RRS § 4340. Formerly RCW 85.04.755.]

## PART II—MISCELLANEOUS DRAINAGE PROVISIONS

**85.06.500 Extension or enlargement of system.** Whenever it shall appear to the board of commissioners of any drainage district now organized or that may be hereafter organized under the laws of the state of Washington, that existing drainage systems or improvements are inadequate or insufficient to properly drain the lands within said district or any portion or portions thereof, such commissioners shall have the power and they are hereby authorized to construct such additional system or systems or to extend, add to, or enlarge any existing system as in their judgment is necessary. In such event the procedure for the establishment of such additional system or extension of existing system and the manner and method of the payment of the cost of construction and maintenance of the same by the assessment of the

lands particularly benefited thereby, as well as the obtaining of necessary rights of way shall be the same as that provided by existing laws for the establishment of the original drainage system within said district. In the exercise of any of the powers herein granted it shall be immaterial whether the outlet of any of the ditches, drains, or other necessary structures or appliances are to be located within or without the boundaries of said district. This section is intended to grant supplemental and additional powers to such drainage districts and shall not be construed to limit or repeal any existing powers of such districts, nor to repeal any existing laws relating thereto. [1919 c 179 § 1; RRS § 4304. Formerly RCW 85.04.635.]

**85.06.545 Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation.** Drainage districts may annex territory, consolidate with other special districts, and have their operations suspended and be reactivated, in accordance with chapter 85.38 RCW. [1986 c 278 § 12.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.06.550 Payment of preliminary expense where proceedings are dropped.** When any drainage district has been or shall be established and created under the provisions of an act of the legislature of the state of Washington, entitled "An act to provide for the establishment and creation of drainage districts, and the construction and maintenance of a system of drainage, and to provide for the means of payment thereof, and declaring an emergency", approved \*March 20, 1895, and when the drainage commissioners of such district have employed surveyors or draughtsmen or legal assistance as provided in RCW 85.06.100, and have incurred expenses for the compensation of such surveyors, draughtsmen and legal assistance, and have issued to such surveyors, draughtsmen or persons rendering said legal assistance any warrants, orders, vouchers or other evidence of indebtedness for said expenses so incurred, and when such warrants, orders, vouchers or other evidences of indebtedness remain outstanding and unpaid, and when from any cause no further proceedings are had as provided for in said act approved \*March 20, 1895, within a reasonable time, it shall be the duty of the county commissioners of the county in which such drainage district is located to assess in accordance with the provisions of RCW 85.06.550 through 85.06.630, the lands constituting and embraced within such drainage district for the purpose of paying such outstanding warrants, orders, vouchers, or other evidences of indebtedness, together with interest thereon. [1903 c 67 § 1; RRS § 4492. Formerly RCW 85.04.710.]

**\*Reviser's note:** The act of "March 20, 1895" is chapter 115, Laws of 1895, the basic drainage district law, codified as Part I of chapter 85.06 RCW as it has been amended and added to.

**85.06.560 Payment of preliminary expense where proceedings are dropped—Notice to present claims—Registration.** The county auditor of any county in which such drainage district is located upon the written request of any holder or owner of any such warrant, order, voucher or other evidence of indebtedness, mentioned in the preceding section, shall forthwith cause to be published in the newspaper doing the county printing, if any such there be, and if not, then in some newspaper of general circulation in the county,

a notice directing any and all holders or owners of any such warrants, orders, vouchers, or other evidences of indebtedness, to present the same to him, at his office, for registration within ninety days from the date of the first publication of such notice; and such notice shall be published once a week for six consecutive weeks. Said notice shall be directed to all holders and owners of warrants, orders, vouchers or other evidences of indebtedness issued by the drainage commissioners of the particular district giving its name and number, and shall designate the character of the warrants, orders, vouchers, or other evidences of indebtedness, the registration of which is called for by said notice. Upon the presentation to him of such warrants, orders, vouchers or other evidences of indebtedness, the county auditor shall register the same in a separate book to be kept for that purpose, showing the date of registration, the date of issue, the purpose of issue when the same is shown upon the face, the name of the person by whom presented, and the face value thereof. Any such warrants, orders, vouchers or other evidences of indebtedness, not presented within the time prescribed in such notice, shall not share in the benefits of RCW 85.06.550 through 85.06.630, and no assessment or reassessment shall thereafter be made for the purpose of paying the same. [1903 c 67 § 2; RRS § 4493. Formerly RCW 85.04.715.]

**85.06.570 Payment of preliminary expense where proceedings are dropped—Petition to court for assessment—Contents.** At any time after the expiration of the time within which warrants, orders, vouchers or other evidences of indebtedness, may be registered as provided in the preceding section, the holder or owner of any such registered warrant, order, voucher or other evidence of indebtedness, may for himself and in behalf of all other holders or owners of such registered warrants, orders, vouchers or other evidences of indebtedness, file a petition in the superior court of the county in which such drainage district is located praying for an order directing the publication and posting of the notice hereinafter provided for, and for a hearing upon said petition, and for an order directing the board of county commissioners to assess the lands embraced within said drainage district for the purpose of paying such registered warrants, orders, vouchers or other evidences of indebtedness and the costs of the proceedings provided for in RCW 85.06.550 through 85.06.630. Said petition shall set forth:

(1) That said drainage district was duly established and created, giving the time.

(2) The facts in connection with the expenses incurred by the drainage commissioners in the employment of surveyors, draughtsmen, or legal assistance and the issuance of such registered warrants, orders, vouchers or other evidences of indebtedness.

(3) The facts in connection with the compliance with the provisions of RCW 85.06.550 through 85.06.630.

(4) A list of such registered warrants, orders, vouchers or other evidences of indebtedness showing the names of owners or holders, the amounts, the date of issuance, the purpose for which issued, when shown upon the face thereof, and the date of presentation for payment, respectively. [1903 c 67 § 3; RRS § 4494. Formerly RCW 85.04.720.]

**85.06.580 Payment of preliminary expense where proceedings are dropped—Hearing to be fixed—Order for publication of notice.** Upon the filing of such petition it shall be the duty of the judge of the said superior court to fix a time for a hearing of said petition, which time shall be not less than sixty days from the time of the filing of said petition, and to enter an order directed to the sheriff of the said county ordering said sheriff to cause to be published and posted the notice as provided for in the next succeeding section. [1903 c 67 § 4; RRS § 4495. Formerly RCW 85.04.725.]

**85.06.590 Payment of preliminary expense where proceedings are dropped—Notice—Contents, publication, etc.** Upon the issuance of the order as provided for in the next preceding section it shall be the duty of the sheriff of said county to post, at the court house of said county and at three public places in said drainage district, and to cause to be published in a newspaper of general circulation in said county a notice of the time and place fixed by said order of court for the hearing of said petition. Said notice shall contain a statement that said petition has been filed as above provided for, that the said court has fixed a time and place for the hearing of said petition, which time and place shall be stated in said notice, a brief statement of the object of said proceeding upon said petition, a statement of the issuance of the said order of court directing the posting and publishing of said notice, a statement that all persons having any interest in any land in such drainage district, describing the same by its corporate name, may at or before the time fixed for said hearing appear and file objections or exceptions to the granting of the prayer of said petition: A statement that upon the hearing of said petition in case no objections or exceptions have been filed in said proceeding, or in case any objections or exceptions filed be not sustained, and that the allegations of said petition are proven to the satisfaction of the court an order will be entered in accordance with the prayer of said petition. That said notice shall be signed by the sheriff of said county. [1903 c 67 § 5; RRS § 4496. Formerly RCW 85.04.730.]

**85.06.600 Payment of preliminary expense where proceedings are dropped—Hearing—Order for levy—Costs.** At the time and place fixed in said order for the hearing of said petition, or at such time to which the court may continue said hearing, the court shall proceed to a hearing upon said petition and upon any objections or exceptions which have been filed thereto. And upon it appearing to the satisfaction of the court from the proofs offered in support thereof that the allegations of said petition are true, the said court shall ascertain the total amount of said registered warrants, orders, vouchers or other evidences of indebtedness with the accrued interest and the costs of said proceedings, and thereupon the said court shall enter an order directing the board of county commissioners to levy a tax upon all the real estate within said drainage district exclusive of improvements, taking as a basis the last equalized assessment of said real estate for state and county purposes, sufficient to pay said outstanding registered warrants, orders, vouchers or other evidences of indebtedness with interest as aforesaid and the costs of said proceeding, and the cost of levying said tax, and further directing the county auditor to issue a warrant on the county treasurer to the petitioner for the costs advanced

by him in such proceeding, which shall be paid in the same manner as the said registered warrants, orders, vouchers or other evidences of indebtedness. [1903 c 67 § 6; RRS § 4497. Formerly RCW 85.04.735.]

**85.06.610 Payment of preliminary expense where proceedings are dropped—Certification of order to tax levying officers.** The clerk of said superior court shall certify the said order to the board of county commissioners, and to the county auditor and upon receipt of said order by said board it shall proceed forthwith to execute said order, and upon said levy being made it shall be extended upon the tax rolls, certified and collected at the same time, in the same manner as other special district taxes. [1903 c 67 § 7; RRS § 4498. Formerly RCW 85.04.740.]

**85.06.620 Payment of preliminary expense where proceedings are dropped—Dismissal of petition.** If upon said hearing the court shall find that the petitioner is not entitled to an order granting the prayer of said petition the court shall enter an order dismissing said petition and taxing the costs against said petitioner. [1903 c 67 § 8; RRS § 4499. Formerly RCW 85.04.745.]

**85.06.630 Payment of preliminary expense where proceedings are dropped—Appellate review.** From any final order entered by the said superior court as above provided for, any party to said proceeding feeling himself aggrieved thereby may seek appellate review, as provided by the general appeal law of this state. [1988 c 202 § 74; 1903 c 67 § 9; RRS § 4500. Formerly RCW 85.04.750.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**85.06.640 Additional improvements—Authorized—Change in plans.** Whenever in the judgment of the commissioners of any drainage district general benefits to the entire district will accrue therefrom, or the general plan for improvement as adopted by such district will be more fully or properly carried out thereby, the board of commissioners of such district is hereby given and granted authority and power to do the following things:

(1) Straighten, widen, deepen, improve, or alter the course of or discontinue the use and maintenance of, or abandon any existing drains or ditches in said district, and when abandoned or discontinued, the right-of-way may be held or disposed of by said district in the discretion of the commissioners;

(2) Dig or construct any additional and auxiliary drains or ditches therein;

(3) Obtain, improve, or alter any existing reservoirs, spillways or outlets;

(4) Lease, acquire, build, or construct additional, new, or better reservoirs, spillways, and outlets;

(5) Lease, acquire, erect, build, or construct and operate any pumping plant and acquire equipment necessary therefor;

(6) Divert, dam, or carry off the waters of any stream or water endangering or damaging said district and protect against damage or flood from any waters whatsoever.

PROVIDED, That in carrying out such powers, said commissioners shall not be authorized under RCW 85.06.640

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through 85.06.700 to tap new sources of water which have other outlets and do not endanger the system or property of such district. [1941 c 133 § 1; 1935 c 170 § 1; Rem. Supp. 1941 § 4342-1. Formerly RCW 85.04.610.]

**85.06.650 Additional improvements—Methods of payment.** To pay for any work done under RCW 85.06.640 through 85.06.700, or matters incident thereto, the commissioners of said district may use any money raised or to be raised by collection of any unexhausted balance of assessed benefits as theretofore established upon the lands of said district and/or by assessments for maintenance, levied as provided by law; or they may issue warrants of such district redeemable by levies which shall be added to the annual cost of the maintenance of said system and be paid from the maintenance fund from time to time; or they may combine such methods of payment. [1935 c 170 § 2; RRS § 4342-2. Formerly RCW 85.04.625.]

**85.06.660 Additional improvements—Resolution—Notice and hearing—Protests—Appellate review, conclusiveness of order of board.** Whenever the board of commissioners of any district desire[s] to exercise any of the foregoing powers under \*this act, it shall pass a resolution declaring its intention to do so, which shall describe in general terms the proposed improvement to be undertaken. The resolution shall set a date upon which the board shall meet to determine whether such work shall be done. Thereafter a copy of such declaratory resolution and a notice of hearing shall be posted by the secretary or member of the board, in three public places in such district at least ten days before the date of hearing. The notice shall state the time and place of hearing and that plans therefor are on file with the secretary of the board subject to inspection by any party interested.

Any property owner affected by such proposed improvement, or any property owner within such district, may appear at said hearing and object to said proposed improvement by filing a written protest against the proposed action of the board. The protest shall clearly state the basis thereof. At such hearing, which shall be public, the board shall give full consideration to the proposed project and all protests filed, and on said date or any adjourned date, take final action thereon. If protests be filed before said hearing by owners of more than forty percent of the property in said district, the board shall not have power to make the proposed improvement nor again initiate the same for one year. If the board determines to proceed with such project in its original or modified form, it shall thereupon adopt a resolution so declaring and adopt general plans therefor, which resolution may authorize the acquisition by condemnation, or otherwise, of the necessary rights and properties to complete the same. Any protestant who filed a written protest prior to said hearing may appeal from the order of the board, but to do so must, within ten days from the date of entering of such order, bring direct action in the superior court of the state of Washington in the county wherein such district is situated, against such board of directors in their official capacity, which action shall be prosecuted under the procedure for civil actions, with the right of appellate review, as provided in other civil actions. In any action so brought, the order of the board shall be conclu-

sive of the regularity and propriety of the proceedings and all other matters except it shall be open to attack upon the ground of fraud, unfair dealing, arbitrary, or unreasonable action of the board. [1988 c 202 § 75; 1971 c 81 § 160; 1935 c 170 § 3; RRS § 4342-3. Formerly RCW 85.04.620.]

**\*Reviser's note:** "this act" refers to chapter 170, Laws of 1935, codified as RCW 85.06.640 through 85.06.700.

**Severability—1988 c 202:** See note following RCW 2.24.050.

**85.06.670 Additional improvements—Acquisition, sale of property—Contracts to share expense.** In carrying out the foregoing powers, or any other powers possessed by the board of commissioners of such district, said board shall have authority to acquire by lease, contract, private purchase, or purchase at any sale, any real or personal property and to sell any real or personal property, or any part thereof, owned by said district when they find that the usefulness thereof to such district has ceased. Such board shall also have authority to enter into contracts with any other diking and/or drainage district, person, public or municipal corporation, flood control district, state, or the United States, with reference to sharing the costs or expenses of improvements for said district or the protection thereof, and bind its district by such contract. [1935 c 170 § 4; RRS § 4342-4. Formerly RCW 85.04.615.]

**85.06.680 Additional improvements—Private property not to be taken without compensation.** In carrying out any of the foregoing powers, said district shall not impair, damage, injure, or take any private property or interest therein, or vested rights, without just compensation being paid. [1935 c 170 § 5; RRS § 4342-5. Formerly RCW 85.04.605, part.]

**85.06.690 Additional improvements—Right of eminent domain.** In carrying out any of the foregoing powers, or any powers possessed by said district, it shall have the right of eminent domain to acquire any property or rights or interest therein, within or outside of the district, necessary for the use of such district for the construction and maintenance of any ditches, drains, dikes, dams, spillways, outlets, necessary appliances and structures in connection with the operation, alteration, enlargement, extension, or protection of its drainage system. The procedure for exercising the right of eminent domain shall be that provided by law for private corporations. [1935 c 170 § 6; RRS § 4342-6. Formerly RCW 85.04.605, part.]

*Eminent domain by corporations generally: Chapter 8.20 RCW.*

**85.06.700 Additional improvements—Powers are additional—"Drainage district" defined.** The powers and rights \*herein granted are additional to, but not in substitution of, existing rights or powers of drainage districts. Drainage district as used \*herein shall mean a regularly established drainage, or drainage improvement district, combined diking and drainage improvement district, or drainage district exercising combined diking and drainage power. [1935 c 170 § 7; RRS § 4342-7. Formerly RCW 85.04.630.]

**\*Reviser's note:** "herein" appears in chapter 170, Laws of 1935, codified as RCW 85.06.640 through 85.06.700.

**Severability—1935 c 170:** "If any section, provision, or subdivision of a section of this act shall be adjudged to be invalid or unconstitutional, such

adjudgment shall not affect the validity of the act as a whole, or any other section, subdivision, or provision thereof." [1935 c 170 § 8.] This applies to RCW 85.06.640 through 85.06.700.

**85.06.710 Costs in excess of estimate—Authorized—Warrants validated.** Whenever any drainage district has been organized, established and created since January 1st, 1911, and extending to January 1st, 1921, in the manner provided by law, and the board of commissioners of such district have been authorized to proceed with the work of constructing a system of drainage for such district in the manner provided by law and have begun such work and expended the whole, or the major portion of the estimated cost of such improvement, and it shall have appeared to such board of commissioners that such improvement could not be completed within the estimated cost thereof so as to produce the benefits to the lands of the district found by the jury to be benefited by the proposed improvement without expending a greater sum than the estimated cost of such improvement and that the benefits which would actually accrue to the lands of the district would be sufficient to warrant the increased expenditure necessary to complete the improvement, and such board of commissioners shall have incurred indebtedness in the name of the district to such an amount as would complete the authorized system of drainage for the benefit of the lands of the district found by the jury to be benefited by the proposed improvement, and issued the warrants of the district to cover the additional cost of completing such improvement all warrants heretofore issued for such purposes are hereby declared to be valid and legal obligations of the district so issuing the same. [1921 c 187 § 1; RRS § 4460.]

**85.06.720 Costs in excess of estimate—Petition to reopen original proceedings—Damages and benefits.** Whenever the board of commissioners of any drainage district shall have heretofore issued any warrants of the district for the purpose of completing a system of drainage for such district so as to produce the benefits to the lands of the district found by the jury to be benefited by the proposed improvement as provided in the preceding section, and the total estimated maximum benefits found by the jury that would accrue to the lands of the district by reason of such proposed improvement are not sufficient to cover the actual cost of such improvement, including the cost of completing the same as hereinabove provided, the board of commissioners of such district shall file a petition in the superior court in the original proceeding for the determination of the damages and benefits to accrue from the proposed improvement, setting forth the facts, describing the lands that have been, in the judgment of the commissioners, actually benefited by the completed improvement, stating the estimated amount of benefits per acre that have accrued to each tract of land respectively, giving the name of the owner or reputed owner of such tract of land, and praying that the original proceedings be opened for further proceedings for the purpose of determining the benefits which have accrued to each tract of land actually benefited by the completed improvement. If the said board of commissioners fail or refuse to file such petition within sixty days after receipt of a written request so to do, signed by any warrant-holder, then the said warrant-holder shall have the right to file same. [1921 c 187 § 2; RRS § 4461.]

**85.06.730 Costs in excess of estimate—Summons on petition—Contents—Service—Answer.** Upon the filing of the petition provided for in the preceding section, summons shall issue thereon and be served on the owners of all lands described in the petition as having been benefited, in the same manner as summons is issued and served in the original proceedings for the determination of damages and benefits by reason of a proposed drainage improvement, as near as may be. No answer to any such petition shall be required unless the party served with summons desires to offset damages claimed to have been actually sustained by reason of the completed improvement in addition to the damages found by the jury in the original proceeding, and no default judgment shall be taken for failure to answer any such petition. [1921 c 187 § 3; RRS § 4462.]

**85.06.740 Costs in excess of estimate—Hearing by jury—Verdict.** Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons issued as provided in the preceding section, the court shall empanel a jury to hear and determine the matters in issue, and if the jury shall find that the matters set forth in the petition are true and that any of the lands of the district have been benefited by the completed improvement, after offsetting any additional damages found to have been sustained by reason thereof, it shall determine and assess the benefits which have actually accrued, and shall specify in its verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. [1921 c 187 § 4; RRS § 4463.]

**85.06.750 Costs in excess of estimate—Judgment—Appellate review.** Upon the return of the verdict of the jury as provided in the preceding section, if it shall appear to the court that the total benefits found by the jury to have accrued to the lands of the district is equal to or exceeds the actual cost of the improvement including the increased cost of completing the same, the court shall enter its judgment in accordance therewith, as supplemental to and in lieu of the original decree fixing the benefits to the respective tracts of land, and thereafter the assessment and levy for the original cost of the construction of the improvement, including the indebtedness incurred for completing the improvement together with interest at the legal rate on the warrants issued therefor, and all assessments and levies if any, for the future maintenance of the drainage system described in the judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in the judgment. Every person or corporation feeling himself or itself aggrieved by any such judgment may seek appellate review within thirty days after the entry thereof, and such review shall bring before the appellate court the propriety and justice of the verdict of the jury in respect to the parties to the proceeding. [1988 c 202 § 76; 1971 c 81 § 161; 1921 c 187 § 5; RRS § 4464.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

(2006 Ed.)

## Chapter 85.07 RCW MISCELLANEOUS DIKING AND DRAINAGE PROVISIONS

### Sections

- 85.07.010 Lease of equipment authorized—Disposition of proceeds.
- 85.07.040 Benefit to public road, how paid.
- 85.07.050 Basis of supplemental assessments.
- 85.07.060 Funding bonds—Authority to issue.
- 85.07.070 Funding bonds—Form, term, execution, interest.
- 85.07.090 Funding bonds—Outstanding warrants due when sale proceeds received—Call.
- 85.07.100 Funding bonds—Exchange for warrants.
- 85.07.110 Funding bonds—Assessments for payment—Special fund.
- 85.07.120 Funding bonds—Call—Payment.
- 85.07.130 Civil action to strike land from assessment roll—Costs.
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- 85.07.150 Adjustment of indebtedness with state.
- 85.07.160 Disincorporation of diking and drainage district located in county with a population of two hundred ten thousand or more and inactive for five years.
- 85.07.170 Additional powers relating to diking and drainage works—Duties of department of transportation.

**85.07.010 Lease of equipment authorized—Disposition of proceeds.** The commissioners of any diking or drainage district organized under the laws of this state, shall have power and authority to rent any machinery, tools or equipment belonging to such district, to any individual or corporation for hire under such conditions regarding the care and maintenance thereof as the commissioners may determine; and all sums of money received for the rent thereof shall be paid into the county treasury, to the credit of the district. [1979 ex.s. c 30 § 18; 1917 c 104 § 1; RRS § 4517. Formerly RCW 85.04.215.]

**85.07.040 Benefit to public road, how paid.** Whenever, upon the trial to fix and assess the benefits and damages resulting from the construction of any diking or drainage system under the laws of this state, the jury shall find by its verdict that any public or county road will be benefited from the construction of such improvement, the clerk of the court in which such trial is had shall, upon the entry of the judgment upon such verdict, certify to the board of county commissioners of the county in which such road is situated the amount of benefits to such road so found and adjudged. The said county commissioners shall, upon the receipt of such certified statement, allow the same as for other road work and shall order the amount thereof to be paid out of the road and bridge fund of the road district in which the road so benefited is situated, and shall direct the auditor of said county to issue a warrant for the amount of such benefits against the road and bridge fund of such road district in favor of the county treasurer of said county. The said county treasurer shall, upon the payment of said warrant, place the proceeds therefrom to the credit of the drainage or diking district from which such benefits resulted. [1909 c 194 § 1; RRS § 4314. Formerly RCW 85.04.085, part.]

*Counties to contribute for benefit to road: RCW 85.24.240.*

**85.07.050 Basis of supplemental assessments.** Any additional assessments for the construction of any diking or drainage system, and also all assessments for the maintenance of same shall be based upon the benefits so found and adjudged, and the proportion of benefits resulting to such

public or county road therefrom, on such basis, shall be allowed and paid for by such county in the same manner as in the case of the original construction. [1909 c 194 § 2; RRS § 4315. Formerly RCW 85.04.085, part and 85.04.090.]

**85.07.060 Funding bonds—Authority to issue.** (1) Any board of commissioners of any diking or drainage district may, at any time, without petition and on its own motion, issue bonds of such district for the purpose of funding any outstanding warrants of such district. No bonds so issued shall be sold for less than their par value. They may be sold at public or private sale. Any department or agency of the state of Washington having power to invest funds is hereby authorized and empowered to use the same to buy such bonds.

(2) Such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 189; 1935 c 103 § 1; RRS § 4459-11. Formerly RCW 85.04.140, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**85.07.070 Funding bonds—Form, term, execution, interest.** (1) Said bonds shall be numbered consecutively from one upwards and shall be in denominations of not less than one hundred dollars nor more than one thousand dollars each. They shall bear the date of issue, shall be made payable in not more than ten years from the date of their issue, and shall bear interest at a rate or rates as authorized by the board of commissioners, payable annually. The bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. The bonds and any coupon shall be signed by the chairman of the board of commissioners of each district and shall be attested by the secretary of said board. The seal, if any, of such district shall be affixed to each bond, but it need not be affixed to any coupon.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 190; 1970 ex.s. c 56 § 91; 1969 ex.s. c 232 § 53; 1935 c 103 § 2; RRS § 4459-12. Formerly RCW 85.04.145.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**85.07.090 Funding bonds—Outstanding warrants due when sale proceeds received—Call.** All outstanding warrants of such district so sought to be redeemed shall become due and payable immediately upon receipt by the county treasurer of the money from the sale of said bonds; and upon a call of such outstanding warrants or obligations issued by him, the same shall cease to draw interest at the end of thirty days after the date of the first publication of such call. The call shall be made by the treasurer by publishing notice thereof for two consecutive weeks in the county paper authorized to do the county printing. The notice shall designate the number of each warrant sought to be redeemed. [1935 c 103 § 4; RRS § 4459-14. Formerly RCW 85.04.175.]

**85.07.100 Funding bonds—Exchange for warrants.** Said bonds may be exchanged at not less than their par value

for an equal amount of the outstanding warrants of the district issuing such bonds. [1935 c 103 § 5; RRS § 4459-15. Formerly RCW 85.04.140, part.]

**85.07.110 Funding bonds—Assessments for payment—Special fund.** It shall be the duty of the commissioners of such district annually to levy assessments sufficient to pay interest on such bonds as they fall due. They may at any time levy such additional assessment as they deem best to redeem and retire such bonds. Commencing not less than five years before the due date of such bonds, they shall determine the number of equal annual levies necessary to retire such bonds at maturity, and annually thereafter levy an assessment sufficient to liquidate all of said bonds by maturity. Such levies for interest and redemption of the bonds shall be added to the annual cost of the maintenance of the diking or drainage system of said district. Such assessments shall be collected by the county treasurer and kept as a special fund for the sole purpose of paying interest upon and liquidating said bonds. [1983 c 167 § 192; 1935 c 103 § 6; RRS § 4459-16. Formerly RCW 85.04.160, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**85.07.120 Funding bonds—Call—Payment.** It shall be the duty of the county treasurer of each county in which there may be a district issuing bonds under the provisions of RCW 85.07.060 through 85.07.120, whenever he has on hand one thousand dollars over and above interest requirements in the special fund for the payment of said bonds and interest, to advertise in the newspaper doing the county printing, for the presentation to him for payment of as many of the bonds issued under the provisions of RCW 85.07.060 through 85.07.120 as he may be able to pay with the funds in his hands. The bonds shall be redeemed and paid in their numerical order, beginning with bond No. 1 and continuing until all of said bonds are paid. The treasurer's call for presentation and redemption of such bonds shall state the number of the bond or bonds so called. Thirty days after the first publication of said notice of the treasurer calling any of said bonds by their numbers, such bonds shall cease to bear interest, and the notice of call shall so state. If any bond so called is not presented, the treasurer shall hold in said fund until presentation of such bond is made, the amount of money sufficient to redeem the same with interest thereon to the date interest was terminated by such call. [1935 c 103 § 7; RRS § 4459-17. Formerly RCW 85.04.150.]

**85.07.130 Civil action to strike land from assessment roll—Costs.** Whenever any piece of land in any diking or drainage district in this state shall cease to be susceptible to benefit from the diking and/or drainage improvement of such district, the owner thereof may bring civil action in the superior court of the county wherein such property is situated, against the board of commissioners of such district in their official capacity, to have such property stricken from the assessment roll for such district. The procedure shall be that of other civil actions, except no judgment for costs shall be entered against such district in such proceedings. [1935 c 102 § 1; RRS § 4360-1. Formerly RCW 85.04.180.]

**85.07.140 Civil action to strike land from assessment roll—Court decree—Subsequent restoration to rolls, procedure.** If the court is satisfied that the status of said property has changed so that it is no longer susceptible to benefit from the improvement of such district and should be removed from the assessment roll thereof, and it be established that all benefits assessed against said lands up to the date of trial have been paid, such court may enter a decree striking such land from the assessment roll of said district, and it shall not be subject to future assessment for benefits or maintenance by such district, unless, thereafter, it is again brought into such districts by the proceedings provided by law to extend the district or include benefited property which is not assessed. Nothing herein shall prevent such property from being again brought into said district in the manner provided by law generally for the inclusion of benefited property, if it appear at a future date that said property will receive benefits from the improvement in such district. Upon entry of such decree of the court a certified copy thereof shall be filed in the office of the auditor of such county wherein the property is situated, and upon receipt thereof, he shall correct the assessment roll of said district accordingly and strike the property therefrom. [1935 c 102 § 2; RRS § 4360-2. Formerly RCW 85.04.185.]

**85.07.150 Adjustment of indebtedness with state.**  
See chapter 87.64 RCW.

**85.07.160 Disincorporation of diking and drainage district located in county with a population of two hundred ten thousand or more and inactive for five years.**  
See chapter 57.90 RCW.

**85.07.170 Additional powers relating to diking and drainage works—Duties of department of transportation.**

(1) The commissioners of any drainage or diking district shall have power, on behalf of the district, to acquire, place, repair and maintain, dikes and dams, ditches, drains and outlets therefor, together with right of way therefor and access thereto, or obtain rights therein or full or joint use and maintenance thereof, when deemed by them necessary or beneficial for the protection of the district's system or its improvements, by eminent domain, purchase, or contract, with the owners or other districts through their commissioners, or other entities or persons together with power to contract by and with other districts or entities with reference to such matters and their performance.

(2) If the commissioners of any drainage or diking district determine that repair or maintenance is required on any drainage facilities, including dikes and dams, ditches, and drains and outlets, that are on land owned by or under the jurisdiction of the department of transportation, they may give notice in writing to the department requesting that the department make the necessary repair or maintenance pursuant to the department's obligations under RCW 47.01.260. If the specified repair or maintenance is not conducted by the department within fourteen days upon receipt of the notice, the district commissioners may independently make the repair or maintenance. The department shall then reimburse the district for all reasonable costs incurred by the district associated with the repair or maintenance.

(3) The provisions of this section shall be construed as cumulative and shall not derogate from any other powers authorized by law for such districts. [2006 c 368 § 1; 1963 c 96 § 1.]

**Chapter 85.08 RCW  
DIKING, DRAINAGE, AND SEWERAGE  
IMPROVEMENT DISTRICTS**

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- 85.08.890 Merger of improvement district with irrigation district—Prior indebtedness.
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- 85.08.900 Alternative methods of formation of improvement districts.
- 85.08.905 Sewerage improvement districts—Powers.
- 85.08.910 Sewerage improvement districts located in counties with populations of from forty thousand to less than seventy thousand become water-sewer districts.
- 85.08.920 Sewerage improvement districts operating as sewer districts become water-sewer districts—Procedure.

**Reviser's note:** Chapter 85.08 RCW is almost entirely composed of chapter 176, Laws of 1913, the basic drainage improvement district act, as it has been amended and added to by subsequent legislation. Chapter 130, Laws of 1917 and chapter 157, Laws of 1921 are primarily express amendments to such basic act, however, also contained in such acts were several sections not expressly amendatory of the basic act but which are in pari materia therewith; therefore, such other sections are also codified in this chapter. Further, RCW 85.08.820 contains an independent session law which is in pari materia and so closely connected with the subject matter of this chapter that it has been codified herein. Thus, throughout chapter 85.08 RCW the term "this act" has been translated to read "this chapter" unless because of peculiar circumstances other treatment is required in which case it is specially noted.

**Repeal and saving (1913 c 176 § 39):** "Sec. 39. Chapter LXVI of the Laws of 1901 is hereby repealed, saving and excepting, however, that the provisions of said act shall continue in force and effect and shall be applicable to and shall govern all proceedings, rights and powers, in the case of ditches already contracted for, or under construction under said act, and in the case of the maintenance of the same for the current year 1913; and the method of supervision, construction, payment for the work, apportionment of costs, and assessment and collection thereof, delinquency and foreclosing thereof and penalties therefor, and all other proceedings in regard to the same, shall be as in said chapter LXVI of Laws of 1901 prescribed: PROVIDED, HOWEVER, That with the consent of the holders of warrants heretofore issued or hereafter issued for work already begun or contracted for under said act, or with the consent of the contractor engaged in constructing any ditch or drainage system under said act, the provisions of this act in regard to the funding of such warrants with bonds, or the payment for work with bonds and the issuance and sale thereof, and all provisions in regard to such issuing of bonds, shall be applicable to such outstanding warrants or work already begun or contracts let for work. And in such event and to the extent of the costs so acquiesced in by warrant holders or contractors, all the provisions of this act in regard to the method of payment, form, issuing and sale, of bonds and warrants, extension of the assessment over a term of years, collecting, delinquency, interest and foreclosure of the assessments, and all other proceedings in regard thereto shall be as in this act provided. In such event the county commissioners shall prescribe the method and time of payment of the assessments and whether bonds shall be issued and perform any other proper act in regard to the same, at a special meeting called for that purpose, or at the hearing on the apportionment of costs provided for in section 30 hereof.

PROVIDED, ALSO, That in case any of the provisions of this act shall be applied to any proceedings in regard to any ditch begun under said chapter LXVI of the Laws of 1901 and the same shall be held not to be legally applicable thereto by a court of competent jurisdiction, then appropriate and proper proceedings for the performance of said acts or duties shall be had and done in regard thereto, as in said chapter LXVI of the Laws of 1901 provided. And from the time any such drainage district organized and existing under the provisions of said chapter LXVI of the Laws of 1901, shall be brought under the provisions of this act, said district shall be known and designated in all proceedings and records relating thereto, as Drainage Improvement District No. . . . of . . . . County, retaining its original serial number.

Nothing in this act contained shall be construed as in anywise modifying or repealing any of the provisions of chapter CXV of the Laws of 1895, or the acts amendatory thereof or supplemental thereto, or affecting any proceeding heretofore or that may hereafter be had under the provisions of said act."

**Applicability of prior laws (1913 c 176 § 40):** "Sec. 40. Except as specified in the foregoing section, all of the provisions of this act, instead of said chapter LXVI of the Laws of 1901, shall be applicable to and shall govern and be the law in all respects, in regard to all ditches and drainage systems now existing, initiated or applied for under said chapter LXVI of the Laws of 1901, and all powers hereby vested in or granted to all boards and officers under this act shall be vested in such boards and officers that shall

hereafter have charge of the work, or administering of the affairs of such ditches and drainage systems, and the districts in which they lie."

**Severability (1913 c 176 § 41):** "Sec. 41. An adjudication that any section, paragraph, or portion of this act, or any provision thereof, or proceeding provided for therein, is unconstitutional or invalid shall not affect or determine the constitutionality, or validity, of this act as a whole or of any other portion or provisions thereof, and all provisions of this act not adjudicated to be unconstitutional shall be and remain in full force and effect and shall be operative until specifically adjudicated to be unconstitutional or invalid."

*Dissolution of inactive special purpose districts: Chapter 36.96 RCW.*

*Local governmental organizations, actions affecting boundaries, etc., review by boundary review boards: Chapter 36.93 RCW.*

*Special district creation and operation: Chapter 85.38 RCW.*

**85.08.010 Definitions.** "System", "improvement", and "system of improvement", as used in this chapter, shall be held to include a dike, ditch, drain or watercourse, or sewer, and any side, lateral, spur or branch dike, ditch, drain or watercourse, or sewer, or other structure, necessary to secure the object of the improvement. Any number of dikes, ditches, drains or watercourses, or sewers, with their laterals, spurs, and branches with separate outlets, or in the case of sewers with one or more septic tanks, may constitute one system for the protection or reclamation of the land included in any district. But no system shall be established or constructed unless sufficient outlet or outlets, or in the case of sewers, sufficient septic tank or tanks, are provided for any drainage or sewerage of such district. Such outlet or outlets, or septic tank or tanks, may be either within or without the boundaries of the improvement district hereinafter provided for. Any natural watercourse may be improved in accordance with the provisions of this chapter.

"Damages", as used in this chapter, shall be held to include the value of the property taken and injury to property not taken, or either, as the case may be. "Property benefited" and "property damaged", as used in this chapter, shall be held to include land, platted or unplatted, whether subject to or exempt from general taxation, and roads other than public roads. "Public roads", as used in this chapter, shall be held to include state and county roads, streets, alleys and other public places; and "other roads", as used in this chapter shall be held to include railroads, street railroads, interurban railroads, logging roads, tramways and private roads and the right-of-way, roadbeds and tracks thereof.

"Public utilities", as used in this chapter, shall be held to include irrigation, power and other canals, flumes, conduits and ditches, telegraph, telephone and electric transmission and pole lines, and oil, gas and other pipe lines. "County engineer", as used in this chapter, shall be held to include any engineer specially employed by the board of county commissioners or the board of supervisors to report upon and prepare plans for or to superintend the construction of a system or the maintenance thereof under the provisions of this chapter. "Prosecuting attorney", as used in this chapter, shall be held to include any attorney specially employed by the board of county commissioners in connection with the carrying out of the provisions of this chapter to advise or carry on proceedings in court with reference to a system of improvement initiated and constructed under the provisions of this chapter. [1923 c 46 § 2; 1917 c 130 § 13; 1913 c 176 § 2; RRS § 4406. FORMER PART OF SECTION: 1925 ex.s. c 189 § 1, part, now codified as RCW 85.08.230.]

**Reviser's note:** The term "county engineer" is defined in the last paragraph of this section. Throughout this chapter the terms "engineer," "district engineer," and "county engineer" appear to have been used interchangeably in the session laws and the usage of the latest session law language has been retained herein.

**Inapplicability of prior laws (1917 c 130 § 39):** "Sec. 39. Nothing in this act contained shall be construed as in anywise modifying or repealing any of the provisions of chapter 115 or of chapter 117 of the Laws of 1895, or the acts amendatory thereof or supplemental thereto, or affecting any proceedings heretofore or that may hereafter be had under the provisions of said acts."

*County road engineer: Chapter 36.80 RCW.*

**85.08.015 Certain powers and rights governed by chapter 85.38 RCW.** Diking, drainage, or sewerage improvement districts shall possess the authority and shall be created, district voting rights shall be determined, and district elections shall be held as provided in chapter 85.38 RCW. [1985 c 396 § 33.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.08.025 Voting rights.** Each qualified voter of a diking improvement or drainage improvement district who owns more than ten acres of land within the district shall be entitled to two additional votes for each ten acres or major fraction thereof located within the district, up to a maximum total of forty votes for any voter, or in the case of community property, a maximum total of twenty votes per member of the marital community: PROVIDED, That this additional voting provision shall only apply in districts that were not in operation and did not have improvements as of May 14, 1925. [1991 c 349 § 3; 1985 c 396 § 21. Formerly RCW 85.05.015.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.08.190 Eminent domain—Consolidation of actions.** For the purpose of taking or damaging property for the purposes of this chapter, counties shall have and exercise the power of eminent domain in behalf of the proposed improvement district, and the mode of procedure therefor shall be as provided by law for the condemnation of lands by counties for public highways: PROVIDED, That the county, at its option, pursuant to resolution to that end duly passed by the board of county commissioners, may unite in a single action, proceedings for the acquisition and condemnation of different tracts of land required for rights of way which are held by separate owners. The court may, on motion of any party, consolidate into a single action separate suits for the condemnation of different tracts of land held by separate owners whenever from motives of economy or the expediting of business it appears advisable to do so. In such cases the jury shall render separate verdicts for the different tracts of land. [1917 c 130 § 21; 1913 c 176 § 13; RRS § 4418.]

**85.08.200 Verdict to fix damages and benefits—Judgment.** The jury in such condemnation proceedings shall find and return a verdict for the amount of damages sustained: PROVIDED, That the jury, in determining the amount of damages, shall take into consideration the benefits, if any, that will accrue to the property damaged by reason of the proposed improvement, and shall make special findings in the verdict of the gross amount of damages to be sustained and the gross amount of benefits that will accrue. If it shall

appear by the verdict of the jury that the gross damages exceed the gross benefits, judgment shall be entered against the county, and in favor of the owner or owners of the property damaged, in the amount of the excess of damages over the benefits, and for the costs of the proceedings, and upon payment of the judgment into the registry of the court for the owner or owners, a decree of appropriation shall be entered, vesting the title to the property appropriated in the county for the benefit of the improvement district. If it shall appear by the verdict that the gross benefits as found by the jury equal or exceed the gross damages, judgment shall be entered against the county and in favor of the owner or owners for the costs only, and upon payment of the judgment for costs a decree of appropriation shall be entered, vesting the title to the property appropriated in the county for the benefit of the improvement district. The verdict and findings of the jury as to damages and benefits shall be binding upon the board appointed to apportion the cost of the improvement upon the property benefited as hereinafter provided. [1913 c 176 § 14; RRS § 4419.]

**85.08.210 Warrant for damages.** Upon the entry of judgment as provided in RCW 85.08.200, the county auditor shall, under the direction of the county legislative authority, draw a warrant upon the county treasurer for the payment of the amount of damages agreed to or the amount of the judgment, as the case may be, to be paid out of the current expense fund of the county. [1986 c 278 § 31; 1913 c 176 § 15; RRS § 4420.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.08.220 Construction to be directed, when.** When the board of county commissioners shall have finally determined and fixed the route and plans for the proposed system of improvement and the boundaries of the improvement district, and when it shall appear that the damages for property to be taken or damaged have been settled in the manner hereinabove provided, or when it shall appear that such damages have been settled as to a particular portion of the proposed improvement, and that construction of such portion of such proposed improvement is feasible, thereupon such system of improvement or such portion thereof, as the case may be, shall be constructed in the manner hereinafter provided. [1917 c 130 § 22; 1913 c 176 § 16; RRS § 4421.]

**85.08.230 Levy for preliminary expenses—Collection—"Preliminary expenses" defined.** Whenever the board of county commissioners has passed a resolution establishing a district, the county commissioners may at their meeting on the first Monday in October next ensuing and at the same time in each year thereafter until the improvement has been completed and a statement of total costs has been filed, levy an assessment against the property within the district to defray the preliminary expenses of the district, the levy to be based upon the estimated benefits as shown by the report of the county engineer on file in the auditor's office. The assessment so made shall be considered and credited to the respective pieces of property by the board of appraisers and by the county commissioners at the hearing on the assessment roll and the final apportionment. The preliminary

assessments herein provided for shall be levied and collected in the same manner as the final assessment and shall be credited to the construction fund and used for the redemption of warrants issued against the same. Preliminary expenses shall mean all of the expenses incurred in the proceedings for the organization of the district and in other ways prior to the beginning of the actual construction of the improvement. [1925 ex.s. c 189 § 1; RRS § 4421-1. Formerly RCW 85.08.010, part and 85.08.230.]

**85.08.285 Special assessment bonds.** Special assessment bonds and notes shall be issued and sold in accordance with chapter 85.38 RCW. [1986 c 278 § 25.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.08.300 Supervisors—Election—Duties.** The board of supervisors of the district shall consist of three elected supervisors. The initial supervisors shall be appointed, and the first elected supervisor elected, as provided in chapter 85.38 RCW. The board of supervisors shall have charge of the construction and maintenance of the systems of improvements, subject to the limitations hereinafter set forth, and may employ a superintendent of construction and maintenance who may be one of the two elected supervisors. The supervisors may be employed upon the construction or maintenance, receiving the same compensation as other labor of like character.

When a district contains not more than five hundred acres, or when a petition is presented to the county legislative authority signed by the owners of fifty percent of the acreage of the district praying for such action, the county engineer shall act as the sole supervisor of the district; and in such case the allowance of all claims against the district shall be by the county legislative authority. [1985 c 396 § 45; 1965 c 120 § 1; 1955 c 338 § 1; 1921 c 157 § 4; 1917 c 130 § 26; 1913 c 176 § 20; RRS § 4425.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.08.305 Supervisors—Terms of office—County engineer to act as supervisor.** The county engineer shall continue to act as a supervisor of a diking, drainage, or sewerage improvement district that is governed by a three-member board of supervisors until a replacement assumes office after being elected at the 1987 special district general election. At that election two supervisors shall be elected, with the person receiving the greatest number of votes being elected to a six-year term, and the person receiving the second greatest number of votes being elected to a four-year term. Thereafter, all supervisors shall be elected to six-year terms. [1985 c 396 § 23.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.08.310 Construction of improvements—Contracts with United States.** The said board of supervisors shall, immediately upon their election and qualification, begin the construction of such system of improvement and shall proceed with the construction thereof in accordance with the plans adopted therefor. In the construction of any system of drainage, construction shall be begun at the outlet or outlets thereof and at such other points as may be deemed

advisable from time to time. In the construction of any system of improvement the board of supervisors with the approval of the board of county commissioners may modify, curtail, enlarge or add to the original plans wherever the same may be found necessary or advisable in the course of actual construction. But such changes shall not in the aggregate increase the estimated cost of the entire system by more than one-fifth, and all additional or different rights of way required shall be obtained as hereinbefore prescribed. The board of county commissioners may in its discretion let the construction of said system or any portion thereof by contract, in the manner provided for letting contracts for the construction of county roads and bridges. The board of county commissioners may, upon such terms as may be agreed upon by the United States acting in pursuance of the National Reclamation Act approved June 17, 1902 (32 Statutes at Large 388), and the acts amendatory thereof and supplemental thereto, or in pursuance to any other act of congress appropriate to the purpose, contract for the construction of the system of improvement or any part thereof, by the United States, or in cooperation with the United States therein. In such case, no bond shall be required, and the work shall be done under the supervision and control of the proper officers of the United States.

Unless the work of construction is let by contract as hereinbefore provided, or for such part of such work as is not covered by contract, the board of supervisors shall employ such number of men as shall be necessary to successfully carry on the work of such construction, and shall give preference in such employment to persons owning land to be benefited by the improvement.

The provisions of this section shall not be construed as denying to the supervisors, in case the construction work is left in their hands, the power to enter into an agreement with any contractor to furnish labor, material, equipment and skilled supervision, the contractor to be compensated upon the basis of a specific sum, or upon a percentage of the cost of the work, the services of the contractor to cover the use of equipment and the value of skilled supervision: PROVIDED, HOWEVER, That there is retained in the said board by the contract the right of termination thereof at any time, on reasonable notice, and fixing in the said contract, or reserving in said board, the right to fix the rates of wages to be paid to the men employed in said work. The board of supervisors may also let contracts in such manner and on such notice as they deem advisable for items of construction not exceeding one thousand dollars in amount of expenditures. [1921 c 157 § 5; 1917 c 130 § 27; 1913 c 176 § 22; RRS § 4427.]

**85.08.320 Costs paid by voucher, payroll, or warrant—Temporary warrants—Priority—Compensation and expenses of officers and employees.** The compensation of the superintendent of construction, the board of appraisers hereinafter provided for, and any special engineer, attorney or agent employed by the district in connection with the improvement, the maximum wages to be paid, and the maximum price of materials to be used, shall be fixed by the district board of supervisors. Members of the board of supervisors may receive compensation up to seventy dollars for attending each official meeting of the district and for each day or major part thereof for all necessary services actually

performed in connection with their duties as supervisors: PROVIDED, That such compensation shall not exceed six thousand seven hundred twenty dollars in one calendar year. Each supervisor shall be entitled to reimbursement for reasonable expenses actually incurred in connection with business, including subsistence and lodging while away from the supervisor's place of residence and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW. All costs of construction or maintenance done under the direction of the board of supervisors shall be paid upon vouchers or payrolls verified by two of the said supervisors. All costs of construction and all other expenses, fees and charges on account of such improvement shall be paid by warrants drawn by the county auditor upon the county treasurer upon the proper fund, and shall draw interest at a rate determined by the county legislative authority until paid or called by the county treasurer as warrants of the county are called.

Any supervisor may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the supervisor's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. [1998 c 121 § 10; 1991 c 349 § 22; 1986 c 278 § 32; 1985 c 396 § 46; 1981 c 156 § 23; 1917 c 130 § 28; 1913 c 176 § 23; RRS § 4428. Formerly RCW 85.08.320 and 85.08.330.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Severability—1985 c 396:** See RCW 85.38.900.

**85.08.340 Crossing roads or public utilities—Procedure—Costs.** Whenever in the progress of the construction of the system of improvement it shall become necessary to construct a portion of such system across any public or other road or public utility, the board of supervisors, or in case the work is being done by contract the board of county commissioners, shall serve notice in writing upon the public officers, corporation or person having charge of, or controlling or owning such road or public utility, as the case may be, of the present necessity of such crossing, giving the location, kind, dimensions and requirement thereof, for the purpose of the system of improvement, and stating a reasonable time, to be fixed by the county engineer, within which plans for such crossing must be filed for approval in case the public officers, corporation or person controlling or owning such road or public utility desire to construct such crossing. As soon as convenient, within the time fixed in the notice, the public officers, corporation or person shall, if they desire to construct such crossing, prepare and submit to the county engineer for approval duplicate detailed plans and specifications for such crossing. Upon submission of such plans, the county engineer shall examine and may modify the same to meet the requirements of the system of improvement, and when such plans or modified plans are satisfactory to the county engineer he shall approve the same and return one thereof to the public officers, corporation or person submitting the same, and file the duplicate in his office, and shall notify such public officers, corporation or person of the time within which

said crossing must be constructed. Upon the return of such approved plans, the public officers, corporation or person controlling such road or public utility shall, within the time fixed by the county engineer, construct such crossing in accordance with the approved plans, and shall thereafter maintain the same. In case such public officers, corporation or person controlling or owning such road or public utility shall fail to file plans for such crossing within the time prescribed in the notice, the board of supervisors or of county commissioners, as the case may be, shall proceed with the construction of such crossing in such manner as will cause no unnecessary injury to or interference with such road or public utility. The cost of construction and maintenance of only such crossings or such portion of such cost as would not have been necessary but for the construction of the system of improvement shall be a proper charge against the improvement district, and only so much of such cost as the board of county commissioners shall deem reasonable shall be allowed as a charge against the district in the case of crossings constructed by others than the district. The amount of costs of construction allowed as a charge against the district by the board of county commissioners shall be credited on the assessments against the property on which the crossing is constructed, and any excess over such assessment shall be paid out of the funds of the district. [1917 c 130 § 29; 1913 c 176 § 24; RRS § 4429. Formerly RCW 85.08.340 and 85.08.350.]

**85.08.360 Total costs—Apportionment—Board of appraisers.** When the improvement is fully completed and accepted by the county engineer, the clerk of the board shall compile and file with the board of county commissioners an itemized statement of the total cost of construction, including engineering and election expenses, the cost of publishing and posting notices, damages and costs allowed or awarded for property taken or damaged, including compensation of attorneys, including the costs of crossings constructed by the district and the cost of crossings constructed by others and allowed by the board of county commissioners, and including the sum paid or to be paid to the United States, and the discount, if any, on the bonds and warrants sold and including all other costs and expenses, including fees, per diem and necessary expenses of nonsalaried officers incurred in connection with the improvement, together with interest on such costs and expenses from the time when incurred at the rate of interest borne by the warrants issued for the cost of construction. There shall also be included in said statement, in case the county engineer is a salaried officer, a statement of the services performed by him in connection with said improvement at a per diem of five dollars per day and his necessary expenses, and a reasonable sum to be fixed by the board of county commissioners on account of the services rendered by the prosecuting attorney. Upon the filing of such statement of costs and expenses the board of county commissioners shall revise and correct the same if necessary and add thereto a reasonable sum which shall be not less than five percent nor more than ten percent of the total thereof in drainage improvement districts, and not less than ten percent nor more than fifteen percent of the total thereof in diking improvement districts, to cover possible errors in the statement or the apportionment hereinafter provided for, and the cost of such apportionment and other subsequent expenses, and interest

on the costs of construction from the date of the statement until fifty days after the filing of the assessment roll with the treasurer; and unless the same have been previously appointed, shall appoint a board of appraisers consisting of the county engineer and two other competent persons, to apportion the grand total as contained in said statement as hereinafter provided. Each member of said board of appraisers shall take, subscribe and file with the board of county commissioners an oath to faithfully and impartially perform his duties to the best of his ability in making said apportionment, and said board of appraisers shall proceed to carefully examine the system and the public and private property within the district and fairly, justly and equitably apportion the grand total cost of the improvement against the property and the county or counties, cities and towns within the district, in proportion to the benefits accruing thereto. [1917 c 130 § 30; 1913 c 176 § 25; RRS § 4430.]

**85.08.370 Benefits to public roads, sewer systems—Apportionment of cost against city, county and state.** Whenever any system of improvement constructed under the provisions of this chapter will drain, protect or otherwise improve the whole or any part of any public road, roadbed or track thereof, or where any such system of improvement will furnish an outlet for or facilitate the construction or maintenance of any sewer system in any city or town, there shall be apportioned against the state, in the case of state primary and secondary highways, and against the county in which any other such state or county road outside of any incorporated city or town is located, or against the city or town in which any such public road is located, or against any such other road or part thereof so drained, protected or otherwise improved, or against the city or town for which an outlet for sewage will be furnished or wherein the construction or maintenance of a sewer system will be facilitated, the proper amount of the total sum to be apportioned. The board of county commissioners may pay such portion as they deem proper of the amount assessed against the county on account of the drainage, protection or improvement of the roads, out of the funds of the road district in which such drainage, protection or improvement is made. The amount assessed against the state shall be paid out of the appropriate fund of the state. [1923 c 46 § 8; 1917 c 130 § 31; 1913 c 176 § 26; RRS § 4431. FORMER PART OF SECTION: 1913 c 176 § 28 now codified as RCW 85.08.375.]

**85.08.375 Benefits to state lands—Apportionment of costs.** There shall be apportioned against all state school, granted, and other lands, in the district the proper amount of the total sum to be apportioned in proportion to the benefits accruing thereto. [1913 c 176 § 28; RRS § 4433. Formerly RCW 85.08.370, part.]

**85.08.380 Benefits to and protection from irrigation system.** In the plans for and in the construction of a drainage system in an irrigated region, under the provisions of this chapter, provision may be made for the prevention of, or affording an outlet for drains to prevent, injury to land from seepage of or saturation by irrigation water, and for the carrying off of necessary waste water from irrigation, and benefits

resulting from such provision shall be considered in making the apportionment of the cost of such system. [1913 c 176 § 27; RRS § 4432. FORMER PART OF SECTION: 1921 c 160 § 3 now codified as RCW 85.08.385.]

**85.08.385 Drainage ditches along highway, etc.** Drainage ditches of any drainage improvement district heretofore or hereafter created may be constructed and maintained along any public highway, street, alley or road within the limits of any drainage district. [1921 c 160 § 3; RRS § 4409. Formerly RCW 85.08.380, part.]

**85.08.390 Schedule of property and benefits—Filing.** Upon the completion of the apportionment the board of appraisers shall prepare upon suitable blanks, to be prescribed by the \*bureau of inspection and supervision of public offices, sign and file with the clerk of the board of county commissioners a schedule giving the name of each county, city and town and the description of each piece of property found to be benefited by the improvement in the following order: First, counties, cities and towns and the respective amounts apportioned thereto for benefits accruing to public roads and sewer systems therein; second, other roads (1) railroads, (2) street railroads, (3) interurban railroads, (4) logging roads, and (5) tramways, giving the location of the particular portion or portions of each road benefited and the respective amounts apportioned thereto; third, unplatted lands giving a description of each tract arranged in the numerical order of the townships, ranges and sections, and giving the legal subdivisions and such other subdivisions and metes and bounds descriptions as may be necessary to show a different rate of apportionment, or different ownership, and giving the respective amounts apportioned to each tract; fourth, platted lands arranged by cities and towns and platted acreage in alphabetical order, giving under each the names of the plats in alphabetical order and the numbers of blocks and lots, and such other subdivisions and metes and bounds descriptions as may be necessary to show a different rate of apportionment, or different ownership, and giving the respective amounts apportioned to each plat, block, lot, or other description, as the case may be. [1913 c 176 § 29; RRS § 4434.]

**\*Reviser's note:** The "bureau of inspection and supervision of public offices" has been abolished and its powers and duties transferred and devolved upon the state auditor through the division of municipal corporations by a chain of statutes as follows: 1921 c 7 §§ 55, 135; 1925 c 18 § 11; and 1927 c 280 § 11. The division of municipal corporations was repealed by 1995 c 301 § 79.

**85.08.400 Hearing on schedule—Notice—Levy of assessment—State lands.** Upon the filing of the schedule of apportionment, the county legislative authority shall fix the time and place for a hearing thereon, which time shall be not more than sixty days from the date of the filing of the schedule. Notice of the hearing shall be given in the manner provided for giving notice of a hearing in \*RCW 85.08.150. The notice shall fix the time and place of the hearing on the roll, and shall state that the schedule of apportionment showing the amount of the cost of the improvement apportioned to each county, city, town, and piece of property benefited by the improvement is on file in the office of the county legislative authority and is open to public inspection, and shall

notify all persons who may desire to object thereto that they may make their objections in writing and file them with the clerk of the county legislative authority at or before the date fixed for the hearing. The notice shall also state that at the time and place fixed and at such other times and places as the hearing may be continued to, the county legislative authority will sit as a board of equalization for the purpose of considering the schedule and at the hearing or hearings will also consider any objections made thereto, or any part thereof, and will correct, revise, raise, lower, change, or modify the schedule or any part thereof, or set aside the schedule and order that the apportionment be made de novo as to such body shall appear just and equitable, and that at the hearing the board will confirm the schedule as finally approved by them and will levy an assessment against the property described thereon for the amounts as fixed by them. The county legislative authority shall serve by mail, at least ten days before the hearing, upon the commissioner of public lands of the state of Washington a like notice, in duplicate, showing the amount of the cost of the improvements apportioned against all state, school, granted, or other lands owned by the state of Washington in the district. The county legislative authority shall serve a like notice upon the state secretary of transportation showing the amount apportioned against any state primary or secondary highways. Upon receipt of the notice the commissioner of public lands or the secretary of transportation, as the case may be, shall endorse thereon a statement either that he elects to accept or that he elects to contest the apportionment, and shall return the notice, so endorsed, to the county legislative authority. At or before the hearing any person interested may file with the clerk of the county legislative authority written objections to any item or items of the apportionment. [1984 c 7 § 377; 1923 c 46 § 9, part; 1917 c 130 § 32; 1913 c 176 § 30; RRS § 4435-1.]

**Reviser's note:** \*(1) RCW 85.08.150 was repealed by 1985 c 396 § 87. See RCW 85.38.040, 85.38.050.

(2) The powers and duties of the commissioner of public lands have been transferred to the department of natural resources. See 1957 c 38 §§ 1, 13; RCW 43.30.010, 43.30.411.

**Severability—1984 c 7:** See note following RCW 47.01.141.

**85.08.410 Schedule approved or modified—Maintenance assessment.** At such hearing, which may be adjourned from time to time and from place to place, until finally completed, the board of county commissioners shall carefully examine and consider said schedule and any objections filed or made thereto and shall correct, revise, raise, lower, change or modify such schedule or any part thereof, or strike therefrom any property not benefited, or set aside such schedule and order that such apportionment be made de novo, as to such body shall appear equitable and just. The board shall cause the clerk of the board to enter on such schedule all such additions, cancellations, changes, modifications and reapportionments, all credits for damages allowed or awarded to the owner of any piece of property benefited, but not paid, as provided in RCW 85.08.200; also a credit in favor of the county on any apportionment against the county, of all sums paid on account of said improvement, as provided in RCW 85.08.210; and all sums allowed the county on account of services rendered by the county engineer or prosecuting attorney, as provided in RCW 85.08.360; and all

credits allowed to property owners constructing crossings as provided in RCW 85.08.340. When the board of county commissioners shall have finally determined that the apportionment as filed or as changed and modified by the board is a fair, just and equitable apportionment, and that the proper credits have been entered thereon, the members of the board approving the same shall sign the schedule and cause the clerk of the board to attest their signature under his seal, and shall enter an order on the journal approving the final apportionment and all proceedings leading thereto and in connection therewith, and shall levy the amounts so apportioned against the property benefited, and the determination by the board of county commissioners in fixing and approving such apportionment and making such levy shall be final and conclusive.

The board of county commissioners shall also at said hearing, levy, in the manner hereinafter provided for the levy of maintenance assessments, such assessment as they shall deem necessary to provide funds for the maintenance of the system of improvement until the first annual assessment for maintenance shall fall due. [1983 c 3 § 230; 1923 c 46 § 9, part; 1917 c 130 § 32; 1913 c 176 § 30; RRS § 4435-2.]

**85.08.420 Assessment roll—Form—Notice—Publication.** Upon the approval of said roll the county auditor shall immediately prepare a completed assessment roll which shall contain, first, a map of the district showing each separate description of property assessed; second, an index of the schedule of apportionments; third, an index of the record of the proceedings had in connection with the improvement; fourth, a copy of the resolution of the board of county commissioners fixing the method of payment of assessments; fifth, the warrant of the auditor authorizing the county treasurer to collect assessments; and sixth, the approved schedule of apportionments of assessments; and shall charge the county treasurer with the total amount of assessment and turn the roll over to the treasurer, for collection in accordance with the resolution of the board of county commissioners fixing the method of payment of assessments. As soon as the assessment roll has been turned over to the treasurer for collection, he shall publish a notice in the official newspaper of the county for once a week for at least two consecutive weeks, that the said roll is in his hands for collection and that any assessment thereon or any portion of any such assessment may be paid at any time on or before a date stated in such notice, which date shall be thirty days after the date of the first publication, without interest, and the treasurer shall accept such payment as in said notice provided. Upon the expiration of such thirty-day period the county treasurer shall certify to the county auditor the total amount of assessments so collected by him and the total amount of assessments remaining unpaid upon said roll. [1923 c 46 § 9, part; 1917 c 130 § 32; 1913 c 176 § 30; RRS § 4435-3.]

**85.08.430 Payment of assessments—Interest—Lien.** After the expiration of said thirty-day period, payment of assessments in full, with interest to the next interest payment date which is more than thirty days from the date of such payment, may be made at any time; PROVIDED, That the aggregate amount of such advance payments in any year, together

with the total amount of the assessments due at the beginning of said year, shall not exceed the total amount of the bonds which may be called in that year according to the applicable bond redemption schedule. The treasurer shall accept payments of assessments in advance, in the order tendered, until the limit herein set forth has been reached.

The assessments contained in the assessment roll shall bear interest from the expiration of the thirty-day period at a rate determined by the county legislative authority and interest upon the entire assessment then unpaid shall be due and payable at the time each of said installments becomes due and payable as a part thereof.

The assessments contained in said assessment roll shall be liens upon the property assessed, such lien shall be of equal rank with other liens assessed against the property for local improvements and paramount to all other liens except the lien of general taxes, and shall relate back to and take effect as of the date when the county legislative authority determined to proceed with the construction of the improvement as provided in RCW 85.08.220. [1983 c 167 § 195; 1981 c 156 § 24; 1923 c 46 § 9, part; 1917 c 130 § 32; 1913 c 176 § 30; RRS § 4435-4.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**85.08.440 Appeal from apportionment—Procedure—Appellate review.** The decision of the board of county commissioners upon any objections made within the time and in the manner prescribed in RCW 85.08.400 through 85.08.430, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the clerk of such board and with the clerk of the superior court of the county in which such drainage or diking improvement district is situated, or in case of joint drainage or diking improvement districts with the clerk of the court of the county in which the greater length of such drainage or diking improvement system lies, within ten days after the order confirming such assessment roll shall have become effective, and such notice shall describe the property and set forth the objections of such appellant to such assessment; and, within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of said court a transcript consisting of the assessment roll and his objections thereto, together with the order confirming such assessment roll, and the record of the board of county commissioners with reference to said assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by such clerk of the board of county commissioners, and by him certified to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court, the appellant shall execute and file with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with good and sufficient surety, to be approved by the judge of said court, conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all

costs to which the county or the drainage or diking improvement district is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require; within three days after such transcript is filed in the superior court as aforesaid, the appellant shall give written notice to the prosecuting attorney of the county, and to the clerk of the board of county commissioners that such transcript is filed. Said notice shall state a time (not less than three days from the service thereof) when the appellant will call up the said cause for hearing; and the superior court of said county shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury. The judgment of the court shall confirm, correct, modify or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have custody of the assessment roll, and he shall modify and correct such assessment roll in accordance with such decision. Appellate review of the judgment of the superior court may be sought as in other civil cases. However, the review must be sought within fifteen days after the date of the entry of the judgment of such superior court. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision. [1988 c 202 § 77; 1971 c 81 § 162; 1921 c 157 § 1; RRS § 4436.]

**Rules of court:** Cf. *RAP* 5.2, 8.1, 18.22.

**Severability—1988 c 202:** See note following RCW 2.24.050.

**85.08.450 Regularity and validity of proceedings conclusive.** Whenever any schedule of apportionment of any drainage or diking improvement district shall have been confirmed, and the assessment therefor shall have been levied, by the board of county commissioners, as provided by RCW 85.08.400 through 85.08.430, the regularity, validity and correctness of the proceedings relating to such improvement, and to the assessment therefor, including the action of the board of county commissioners upon such assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll in the manner and within the time provided in RCW 85.08.400 through 85.08.430, and not appealing from the action of the board of county commissioners in confirming such assessment roll in the manner and within the time in this chapter provided. No proceeding of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of any property to pay such assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor: PROVIDED, That this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds:

(1) That the property about to be sold does not appear upon the assessment roll, or

(2) That said assessment has been paid. [1921 c 157 § 2; RRS § 4437.]

**85.08.460 District liable on judgments—Supplemental levy.** Any judgment that heretofore has been obtained or that hereafter may be obtained against a county on account of any contract lawfully made by its officials for or on behalf of any drainage, diking, or sewerage improvement district, or on account of the construction or maintenance of any drainage, diking, or sewerage system of a drainage, diking, or sewerage improvement district shall be collected and reimbursed to the county from said improvement district, and the amount of such judgment shall be included in the construction costs of said district: PROVIDED, That if such judgment be recovered after the assessment to pay the construction costs shall have been levied, then the county commissioners are hereby empowered and they shall make a supplemental levy upon the lands of the district, and from the funds collected under such levy said reimbursements shall be made. [1923 c 46 § 10; 1921 c 157 § 3; RRS § 4438.]

**85.08.470 District funds.** There shall be established in the county treasury of any county in which any drainage or diking or sewerage improvement is established under the provisions of this chapter, appropriate funds as follows:

(1) The construction fund, into which shall be paid the proceeds of all bonds or warrants sold and the proceeds of all assessments paid prior to the sale of bonds or warrants. In case no bonds have been issued or warrants have been sold, the proceeds of all assessments levied to pay the cost of construction shall be paid into such fund. All warrants including temporary warrants, issued in payment of cost of construction shall be paid out of such fund.

(2) A fund for the redemption of all bonds issued or warrants sold, to be known as the redemption fund, into which shall be paid all proceeds derived from assessments levied to pay cost of construction which shall not have been paid prior to the sale of bonds or warrants, in case bonds have been issued or warrants sold, and also all moneys, if any, remaining in the construction fund after the payment of all warrants drawn against it as above provided. The redemption fund shall be applied, first, to the payment of the interest due upon all such outstanding bonds issued or warrants sold and, second, to the payment of the principal thereof. After the payment of the principal and interest of all such bonds or warrants, the balance, if any, remaining in such fund shall be applied to the payment of any warrants outstanding, including temporary warrants, which may have been issued in payment of cost of construction which for any reason may remain unpaid. Any balance, if any, thereafter remaining shall be paid into the maintenance fund.

(3) The maintenance fund, into which shall be paid the proceeds of all assessments for maintenance, and all other funds received by the district which are not required by the provisions of this chapter to be paid into the construction fund or the redemption fund. [1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439-1.]

**85.08.480 Collection of assessments—Certificates of delinquency—Foreclosure.** The respective installments of assessments for construction or maintenance of improvements made under the provisions of this chapter, shall be collected in the same manner and shall become delinquent at the same time as general taxes, certificates of delinquency shall

be issued, and the lien of the assessment shall be enforced by foreclosure and sale of the property assessed, as in the case of general taxes, all according to the laws in force on January 1, 1923, except as hereinafter specifically provided.

The annual assessments or installments of assessments, both for construction and for maintenance and repairs of the diking and/or drainage system shall become due in two equal installments, one-half being payable on or before May 30th, and the other half on or before November 30th; and delinquency interest thereon shall run from said dates on said respective halves of said assessments.

The rate of interest thereon after delinquency, also the rate of interest borne by certificates of delinquency, shall be ten percent per annum. Certificates of delinquency for any assessment or installment thereof shall be issued upon demand and payment of such delinquent assessment and the fee for the same at any time after the expiration of twelve months after the date of delinquency thereof. In case no certificate of delinquency be issued after the expiration of four years from date of delinquency of assessments for construction costs, or after the expiration of two years from date of delinquency of assessments for maintenance or repairs, certificates of delinquency shall be issued to the county, and foreclosure thereof shall forthwith be effected in the manner provided in \*sections 11292 to 11317 inclusive.

The holder of a certificate of delinquency for any drainage, diking or sewerage improvement district or consolidated district assessment or installment thereof may pay any delinquent general taxes upon the property described therein, and may redeem any certificate of delinquency for general taxes against said property and the amount so paid together with interest thereon at the rate provided by law shall be included in the lien of said certificate of delinquency.

The expense of foreclosure proceedings by the county shall be paid by the districts whose liens are foreclosed: Costs of foreclosure by the county or private persons as provided by law, shall be included in the judgment of foreclosure. [1933 c 125 § 2; 1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439-2.]

**\*Reviser's note:** "sections 11292 to 11317 inclusive" refer to RRS 11292 through 11317 which sections were repealed by 1925 ex.s. c 130 § 138, with the exception of 11312, 11313, and 11314 now in RCW 78.16.010, 78.16.020, and 78.16.030 and which are not in point for purposes of this internal reference. Existing provisions generally as to certificates of delinquency and foreclosure, see chapter 84.64 RCW.

**85.08.490 Title acquired at sale—Foreclosure for general taxes—Lien of assessments preserved.** The purchaser, upon the foreclosure of any certificate of delinquency for any assessment or installment thereof, shall acquire title to such property subject to the installments of the assessment not yet due at the date of the decree of foreclosure, and the complaint, decree of foreclosure, order of sale, sale, certificate of sale and deed shall so state.

The holder of any certificate of delinquency for general taxes may, before commencing any action to foreclose the lien of such certificate, pay in full all drainage or diking or sewerage improvement district assessments or any installment thereof due and outstanding against the whole or any portion of the property included in such certificate of delinquency and the amount of all assessments so paid together

with interest at ten percent per annum thereon shall be included in the amount for which foreclosure may be had; or, if he elects to foreclose such certificate without paying such assessments in full, the purchaser at such foreclosure sale shall acquire title to such property subject to all such drainage or diking or sewerage improvement district assessments. Any property in any drainage or diking or sewerage improvement district sold under foreclosure for general taxes shall remain subject to the lien of all drainage and diking or sewerage improvement district assessments or installments thereof not yet due at the time of the decree of foreclosure and the complaint, decree of foreclosure, order of sale, sale, certificate of sale and deed shall so state. [1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439-3.]

**85.08.500 Resale or lease by county—Disposition of proceeds—Tax statements.** Property subject to a drainage or diking or sewerage improvement district assessment, acquired by a county pursuant to a foreclosure and sale for general taxes, when offered for sale by the county, shall be offered for the amount of the general taxes for which the same was struck off to the county, together with all drainage or diking or sewerage improvement district assessments or installments thereof, due at the time of such resale, including maintenance assessments, and supplemental assessments levied pursuant to the provisions of RCW 85.08.520, coming due while the property was held in the name of the county; and the property shall be sold subject to the lien of all drainage or diking or sewerage improvement district assessments or installments thereof not yet due at the time of such sale, and the notice of sale and deed shall so state. PROVIDED, That the county board may in its discretion, sell said property at a lesser sum than the amount for which the property is offered in the notice of sale. The proceeds of such sale shall be applied first to discharge in full the lien or liens for general taxes for which said property was sold, and the remainder, or such portion thereof as may be necessary, shall be applied toward the discharge of all drainage or diking or sewerage improvement district assessment liens upon such property, and the surplus, if any, shall be applied toward the payment of any delinquent or due local assessments or local assessment installments outstanding against the property levied by any authority other than that of the county, taking them in the order of their maturities, beginning with the earliest; after which if any money remains the treasurer shall hold the same for the person whose interest in the property entitles him thereto. If there be no purchaser, the property shall again be offered for sale within one year thereafter, and shall be successively offered for sale each year until a sale thereof be effected.

Property struck off to or bid in by a county may be leased pursuant to resolution of the county commissioners on such terms as the commissioners shall determine for a period ending not later than the time at which such property shall again be offered for sale as required by law. Rentals received under such lease shall be applied in the manner hereinabove provided for the proceeds of sale of such property.

All statements of general state taxes where drainage, diking or sewer improvement district assessments against the land described therein are due shall include a notation thereon or be accompanied by a statement showing such fact.

[1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439-4.]

**85.08.510 Invalid levy—Reassessment.** Whenever any improvement, any extension or betterment thereof shall have been constructed in whole or in part, either heretofore in a district established or attempted to be established under and by virtue of \*chapter 66 of the Laws of 1901, or in a district heretofore or hereafter established or attempted to be established under this chapter, and the assessment therefor or any part thereof shall be invalid by reason of any omission, irregularity or defect in any proceeding whatever, a reassessment shall be made upon the property benefited by the improvement to provide a fund for the payment of the costs thereof, and any bonds or warrants issued therefor in the following manner:

The board of county commissioners shall by order cause the clerk of the board to compile and file with the board an itemized statement of the total cost of the improvement in the manner prescribed by RCW 85.08.360. Upon the filing of such statement the same proceedings shall be had assessing the costs of said improvement against the lands benefited thereby and the counties, cities and towns within the district, as are prescribed by RCW 85.08.360 and \*\*subsequent sections of this act. In case no bonds have been issued or warrants sold to pay the costs of said improvement, the same may be issued and sold and disposed of as hereinbefore provided. In case an assessment for such improvement shall have been theretofore made or attempted, and any payment has been made thereon, proper credit for the amount of such payment shall be made upon the reassessment. [1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439-5.]

**Reviser's note:** \*(1) "chapter 66 of the Laws of 1901" refers to a prior drainage district law which was repealed by the basic act, 1913 c 176, codified in this chapter; see 1913 c 176 §§ 39, 40; see notes following chapter digest.

\*\* (2) The language "subsequent sections of this act" first appears in 1917 c 130 § 33 amending 1913 c 176 § 31. The 1917 amendatory act was a 39 section act with sections 34 through 39 being codified as RCW 85.08.530, 85.08.540, 85.08.560, and 85.08.680. Section 34 thereof was repealed by 1949 c 26 § 18 and new subject matter thereof is in chapter 85.16 RCW. Section 39 was a construction section. The basic act in chapter 176, Laws of 1913 was a 42 section act with sections 32 through 41 being codified as RCW 85.08.530, 85.08.540, 85.08.560, 85.08.570, 85.08.670, and 85.08.680. Section 32 was repealed in the 1949 act and the new subject matter is in chapter 85.16 RCW. The other sections being construction sections are footnoted herein following the chapter digest. Notice that this section itself was a single section in the basic act of 1913 but it was divided into separate sections in 1923 c 46 § 11 codified herein as RCW 85.08.470 through 85.08.520.

**85.08.520 Supplemental assessments.** If upon the foreclosure of the assessment upon any property the same shall not sell for enough to pay the assessment against it, or if any property assessed was not subject to assessment, or if any assessment made shall have been eliminated by foreclosure of a tax lien or made void in any other manner, the board of county commissioners shall cause a supplemental assessment to be made on the property benefited by the improvement, including property upon which any assessment shall have been so eliminated or made void, and against the county, cities and towns chargeable therewith in the manner provided for the original assessment, to cover the deficiency so caused in the original assessment.

If by inadvertence or for any cause the assessment levied shall be found to be insufficient to meet the entire cost of construction, a supplemental assessment shall be made by the board of county commissioners upon the lands of the district in the same proportion as the original assessment is levied, same being spread over not to exceed three years as the commissioners may determine.

Duplicate assessments or other errors that may by inadvertence be found to have been incorporated in the assessment roll may be corrected by order of the county commissioners upon same being certified to them by the treasurer and the engineer. [1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439-6.]

**85.08.530 Levies against county, city or town, how paid.** The amount of the costs of construction or maintenance of any system of improvement assessed against any city, town or county may be met by levies to be paid in similar installments and extending over a like period of time as the assessments against property benefited are spread, or such amounts may be met by the issue and sale of the bonds of such city, town or county in the manner in which bonds to meet general indebtedness of such city, town or county are issued. The proper authorities of such city, town or county shall make the necessary levies to meet such amounts thus apportioned thereto as a general levy on all property therein. [1917 c 130 § 35; 1913 c 176 § 33; RRS § 4441.]

**85.08.540 Abandonment or change in system—Sub-districts.** Upon a petition and bond being filed by one or more landowners, either within or without the boundaries of a district, and like proceedings being had as in the case of the original establishment and construction of a system of improvement, the county commissioners may declare any system of improvement or any part thereof, abandoned or may strike from the district lands no longer benefited or served thereby, or they may cause any system of improvement to be altered, reduced, enlarged, added to or in any other manner bettered or improved, either within or without the district, and to effect such subsequent improvements, may exercise any of the powers which are in this chapter, or may be hereafter conferred upon such districts. But the striking of any lands from a district shall not in any way affect any assessment theretofore levied against such lands. When such improvements shall have been completed the costs thereof shall be apportioned and assessed against the lands benefited thereby in the manner hereinbefore provided for such apportionment and assessment in the case of original proceedings. New lands assessed for any such improvement shall become a part of such district. The construction and maintenance of any such new improvement, unless let by contract by the board of county commissioners, shall be under the direction of the board of supervisors of the district in which they are made or to which said improvement is added. The lands assessed for such new improvements, of less than the entire district, shall be designated, alphabetically, "subdistrict . . . . . of . . . . . improvement district No. . . . ." [1917 c 130 § 36; 1913 c 176 § 34; RRS § 4442.]

(2006 Ed.)

**85.08.560 Extension of existing system—Apportionment of cost.** When any extension of or addition to any existing system of improvement shall be thus constructed, the cost thereof shall be assessed to all the property, counties, cities and towns in the enlarged district benefited thereby in proportion to the benefits received therefrom. Any new lands thus brought into the district shall be assessed in addition a proper and equitable share of the then value of the original system of improvement in proportion to the benefits which such new lands derive therefrom. In determining the value to be so assessed the board of appraisers shall take into consideration the amount, if any, which the property to be assessed has already paid toward the construction of the original system and all other matters that may be pertinent. If at any time it shall appear to the board of supervisors of any drainage or diking improvement district that any lands without the boundaries of such district are being benefited by the improvements of the district and are not being assessed for the benefits received, they shall file a petition with the board of county commissioners praying the benefits received by such lands be determined and an assessment made upon such lands for the benefits so received. Thereupon, the board of county commissioners shall appoint a board of appraisers as provided in RCW 85.08.360 for the apportionment of the cost of construction of the original system of improvement, and an apportionment of the then value of the improvements of the district shall be made to such lands in proportion to the benefits received therefrom as nearly as may be in the manner provided for the apportionment of the cost of the original system of improvement. In determining what share of the value of the improvements of the district shall be apportioned to such lands the board of appraisers shall take into consideration the benefits already received by such lands and all other matters that may be pertinent. The amount of the value of the original system assessed upon any new property brought within the district shall be rebated pro rata upon the assessments, if any, outstanding against the lands of the district on account of the construction of such original system. If the assessment against any land has been paid in full, or if the assessment remaining outstanding against such land is less than the rebate apportioned to such land, the amount so rebated or excess of rebate over assessment shall be paid into the maintenance fund of the district and a proper credit on any existing or future assessment for maintenance shall be entered in favor of the land entitled thereto. The lands in the original district shall remain bound for the whole of the original unpaid assessment thereon for the payment of any outstanding unpaid warrants or bonds secured to be paid by such assessments. [1917 c 130 § 37; 1913 c 176 § 35; RRS § 4443.]

**85.08.565 Special assessments—Budgets—Alternative methods.** RCW 85.38.140 through 85.38.170 constitute a mutually exclusive alternative method by which diking, drainage, or sewerage improvement districts in existence as of July 28, 1985, may measure and impose special assessments and adopt budgets. RCW 85.38.150 through 85.38.170 constitute the exclusive method by which diking, drainage, or sewerage improvement districts created after July 28, 1985, may measure and impose special assessments and adopt budgets. [1985 c 396 § 26.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.08.570 Districts in two or more counties—Notice—Hearings.** When a drainage, diking or sewerage system is proposed which will require a location, or the assessment of lands, in more than one county, application therefor shall be made to the board of county commissioners in each of said counties, and the county engineers shall make preliminary reports for their respective counties. The lines of such proposed improvement shall be examined by the county engineers of the counties wherein said improvements will lie, jointly. The hearings in regard to such improvements, provided for by RCW \*85.08.150, and 85.08.400 through 85.08.430 shall be had by the boards of county commissioners of the two counties in joint sessions, and all other matters required to be done by the county commissioners in regard to such improvement and the improvement district shall be had and done by the boards of county commissioners of the counties wherein such system of improvements shall lie, either in joint session at such place as the said board shall order, or by concurrent order entered into by the said boards at their respective offices. Notice of the hearings shall be given by the auditors of both counties jointly by publication in the official paper of each of said counties. The county engineer of the county wherein the greatest length of drainage, diking or sewerage system will lie, shall have charge of the engineering work and be ex officio a member of the boards in this chapter provided for. The schedule of apportionment shall be prepared in separate parts for the land in the respective counties; and that part of said roll containing the assessments upon the lands in each respective county shall be transmitted to the treasurer thereof, and the treasurer of said county shall give notice of said assessments as provided in RCW 85.08.400 through 85.08.430, and shall collect the assessments therein contained and shall also extend and collect the annual maintenance levies of said district upon the lands of said district lying in his county. The auditor of the county in which the greater length of the drainage, diking or sewerage system shall lie shall act as clerk of the joint session of the boards of county commissioners, and shall issue the warrants of the improvement district, and shall attest the signatures of the two boards of county commissioners on the bonds. He shall furnish to the auditor of the other county duplicate copies of the records of proceedings of such joint sessions. Duplicate records of all proceedings had and papers filed in connection with such improvements shall be kept, one with the auditor of each county. Protests or other papers filed with the auditor who is not clerk of the joint sessions shall be forwarded forthwith by him to the auditor who acts as clerk of such joint sessions. The treasurer of said county shall register and certify and pay the warrants and the bonds, and shall have charge of the funds of the district; and to him, the treasurer of the county in which the lesser portion of such system of improvements lie, shall remit semiannually, in time for the semiannual warrant and bond calls, all such collections made in such other county. A drainage, diking or sewerage improvement district lying in more than one county shall be designated "joint drainage (or diking) or sewerage improvement district No. . . . of . . . . . and . . . . . counties." All proceedings in regard to joint drainage, diking improvement districts, which have heretofore been had and done substantially in accordance with the amendatory provisions of this chapter are

hereby approved and declared to be valid. [1923 c 46 § 13; 1921 c 157 § 6; 1913 c 176 § 38; RRS § 4446.]

\*Reviser's note: RCW 85.08.150 was repealed by 1985 c 396 § 87. See RCW 85.38.040, 85.38.050.

**85.08.630 Waters developed—Defined—Disposal of.** The use of any waters developed by the drainage system of any drainage improvement district shall be subject to the control of the drainage improvement district and such district shall have the right to dispose of and contract for the use of such waters for irrigation or other uses, as hereinafter provided: PROVIDED, That the waters developed by any existing drainage system, and the waters developed by any drainage system hereafter constructed which shall remain undisposed of for three years after the completion of the improvement and the levy of the assessment to pay the cost thereof, shall not be subject to disposal by such district where such waters shall have been appropriated by any person at a point below the outlet of the drainage system of such district. The term "waters developed" as used in this chapter shall not be held to include surface waste waters from irrigation. [1917 c 130 § 7; RRS § 4455.]

**85.08.640 Waters developed—Contracts for use and sale.** The board of supervisors may enter into any contract for the use, sale or disposal of such waters that in their judgment shall be for the best interests of the district; but no such sale, contract or disposition shall be made except by the unanimous vote of the board. The district shall not guarantee nor warrant the amount or flow of, nor the title to, such waters; and no use, sale or disposition of such waters shall be lawful that will interfere with the efficiency of said drainage system. [1917 c 130 § 8; RRS § 4456.]

**85.08.650 Waters developed—Application for use.** Any person or corporation desiring to acquire and use the waters developed by any drainage system, may make application therefor in writing to the board of supervisors of the district, accompanying such application with a bond to be approved by the board, conditioned that the applicant will pay the costs of the investigation and hearing in case no disposal of said waters be made thereat. Successive applications and proceedings may be made and had as long as there is any water remaining undisposed of in said drainage system. [1917 c 130 § 9; RRS § 4457.]

**85.08.660 Waters developed—Notice of hearing—Form of application—Bond.** When any such application shall be filed, the board of supervisors of the district shall cause to be published in the county official paper, once a week for three successive weeks prior to the date of the hearing hereinafter referred to, a notice fixing the time and place within the district when the board will hear and consider such applications. All applications shall be in writing and contain a statement of the proposed use to be made of the water, specifying the time, place and manner of such proposed use; and in entering into any such contract, the board of supervisors of the district may require such security as they may deem reasonable for the proper construction and installation of works

of diversion and for the use of said water by the party proposing to use the same. [1917 c 130 § 10; RRS § 4458.]

**85.08.670 Prosecuting attorney—Duties.** It shall be the duty of the prosecuting attorney of each county to prepare suitable blanks for the use of the board of county commissioners under this chapter, not otherwise provided for, and to advise the board of county commissioners and other officers of the county and the boards provided for by this chapter in regard to the proceedings and in the performance of their duties under this chapter, and perform such other duties as in this chapter provided and required. [1913 c 176 § 36; RRS § 4444.]

**85.08.680 Rules and regulations.** The board of supervisors of each district shall make reasonable rules and regulations whereby any owner of land in the district may make connection for drainage, or sewerage purposes, with any drainage, or sewerage system thereof. They shall also maintain and keep efficient the system of improvement of the district. [1923 c 46 § 12; 1917 c 130 § 38; 1913 c 176 § 37; RRS § 4445.]

**85.08.690 Penalty for injury to or interference with improvement.** Every person who shall wilfully damage or interfere with the operation of any dikes, drains, ditches or other improvements of any diking or drainage improvement district shall be guilty of a misdemeanor. [1917 c 130 § 11; RRS § 4459.]

**85.08.820 Drainage bonds owned by state—Cancellation of interest and assessments—Levy omitted.** Whenever the department of ecology shall have purchased and the state of Washington owns the entire issue of any series of bonds of any county in the state, the payment of which is to be made from and is secured by assessments upon the property included within any drainage improvement district organized and existing in such county, and it shall appear to the satisfaction of the director of ecology that owing to and by reason of the nature of the soil within and the topography of such drainage improvement district the lands contained therein were not or will not be drained sufficiently to permit the cultivation thereof within the time when assessments for the payment of the interest on said bonds and to constitute a sinking fund to retire said bonds as provided by law became or will become due, and that by reason thereof the owners of said lands were or will be unable to meet said assessment, the director of ecology shall have the power and he is hereby authorized under such terms and conditions as he shall deem advisable to enter into a contract in writing with the board of county commissioners of the county issuing such bonds, waiving the payment of interest upon such bonds from the date of their issue for not to exceed five years, and extending the time of payment of said bonds for not to exceed five years; and upon the execution of said contract the board of county commissioners of said county shall have the power and is hereby authorized to cancel all assessments made upon the lands included within such drainage improvement district for the payment of principal and/or interest on said bonds prior to the date of said contract, and to omit the levy of any

assessments for said purposes until the expiration of the time of the waiver of interest payments upon said bonds specified in said contract. [1988 c 127 § 38; 1925 ex.s. c 140 § 1; RRS § 4332-1.]

**85.08.830 Merger of improvement district with irrigation district—Authorized.** Whenever a drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district within an irrigation district or irrigation districts desires to merge with an irrigation district or irrigation districts in which lands of the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district are located, it may petition the board or boards of county commissioners, as the case may be, to do so: PROVIDED, That only that portion of the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district within a particular irrigation district may merge with the irrigation district within which it is situated. [1957 c 94 § 2.]

*Merger of improvement district with irrigation district: RCW 87.03.720 through 87.03.745.*

**85.08.840 Merger of improvement district with irrigation district—Jurisdiction to hear, supervise and conduct proceedings—Clerk, notice, records.** The boards of county commissioners of the counties in which a joint drainage improvement district is situated shall have jurisdiction in joint session to hear, supervise and conduct the merger proceedings relating to such a district. The auditor of the county in which the greater length of the system of improvements lies shall act as clerk of the joint sessions of the boards of county commissioners, and shall give the notice provided for in RCW 85.08.870. He shall furnish to the auditor of the other county duplicate copies of the records of proceedings of the joint sessions. Duplicate records of all proceedings had and papers filed in connection with the merger of a joint drainage improvement district shall be kept with the auditor of each county. The board of county commissioners of the county in which a drainage improvement district or consolidated drainage improvement district is situated shall have exclusive jurisdiction to hear, supervise and conduct merger proceedings relating to such districts. [1957 c 94 § 3.]

**85.08.850 Merger of improvement district with irrigation district—Petition—Signing—Presentation.** The petition requesting the merger shall be signed by the board of supervisors of, or by ten landowners located within, the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district and presented to the clerk or clerks of the appropriate county legislative authority or authorities, at a regular or special meeting. [2001 c 149 § 2; 1996 c 313 § 1; 1957 c 94 § 4.]

**85.08.860 Merger of improvement district with irrigation district—Assent by irrigation district—Election, order, notice.** If it appears to the board or boards of county commissioners that all portions of the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district will, as a result of the proceed-

ings, be merged with the irrigation district or irrigation districts and that the board or boards of directors of the irrigation district or irrigation districts into which the drainage improvement, joint drainage improvement district, or consolidated drainage improvement district will be merged, which irrigation district or irrigation districts shall be named in the petition, are agreeable to the merger, and that the assent or assents thereto, in writing, by said irrigation district board or boards have been filed with the board or boards of county commissioners, the board or boards of county commissioners shall order an election to be held in the drainage improvement district, joint drainage improvement district or consolidated drainage improvement district to approve or disapprove the merger and shall fix the time thereof and cause notice to be published. [1957 c 94 § 5.]

**85.08.870 Merger of improvement district with irrigation district—Notice, contents—Election, ballots.** The notice shall be given and the election conducted in the manner, so far as is applicable, as for the election of members of the board of supervisors of a drainage improvement district. The notice shall advise of the election so ordered and the date, time and place thereof, state the filing of the petition, the names of those signing the petition and prayer thereof, and shall require the voters to cast ballots with the words "Merger, Yes" or "Merger, No." [1957 c 94 § 6.]

**85.08.880 Merger of improvement district with irrigation district—Proceedings and costs on approval or disapproval.** If a majority of the votes cast favor merger, the board or boards of county commissioners shall enter an order approving the petition and ordering the merger and file a certified copy thereof with the county auditor or auditors of the county or counties in which the district is situated, and the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district shall thereupon be dissolved and its system of improvements vested in the irrigation district or irrigation districts without further proceedings. If a majority of the votes cast are against merger, the board of commissioners shall enter an order dismissing the proceedings. If the merger is approved, the expenses of the county or counties in connection with the election will be paid by the irrigation district or irrigation districts, with each irrigation district, if there is more than one, paying the same portion of the expenses as that portion of the drainage improvement district, joint drainage improvement district, or consolidated drainage district which is merged into the irrigation district. If the merger is not approved, the expenses of the county or counties in connection with the election will be paid by the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district. [1957 c 94 § 7.]

**85.08.890 Merger of improvement district with irrigation district—Prior indebtedness.** None of the indebtedness of the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district, or of the drainage improvement districts taken into the consolidated drainage improvement district, shall be affected by the merger and dissolution, and all lands liable to

be assessed to pay such indebtedness shall remain liable to the same extent as if the merger and dissolution had not taken place, and all assessments theretofore levied shall remain unimpaired and shall be collected in the same manner as if no merger had taken place. The board or boards of directors of the irrigation district or irrigation districts with which the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district was merged shall have all the powers possessed at the time of the merger by the board of supervisors of the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district and the board or boards of county commissioners may levy and cause to be collected any and all assessments against any of the lands formerly within the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district necessary for the payment of all indebtedness thereof, and of the drainage improvement districts taken into the consolidated drainage improvement district. Until the assessments are collected and all indebtedness of each drainage improvement district or joint drainage improvement district included in the merger, either as such or, in the case of the former, as a part of a consolidated drainage improvement district, is paid, separate funds shall be maintained for each such drainage improvement district or joint drainage improvement district as were maintained before the merger. [1957 c 94 § 8.]

**85.08.895 Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation.** Diking or drainage improvement districts may annex territory, consolidate with other special districts, and have their operations suspended and be reactivated, in accordance with chapter 85.38 RCW. [1986 c 278 § 13.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.08.900 Alternative methods of formation of improvement districts.** Whenever an improvement district is sought to be established, in addition to the procedures authorized by this chapter there may be employed any other method authorized by law for the formation of districts or improvement districts so that the improvement district will qualify under the provisions of chapter 89.16 RCW. [1959 c 104 § 6.]

**85.08.905 Sewerage improvement districts—Powers.** Sewerage improvement districts may investigate, plan, construct, acquire, repair, maintain, and operate improvements, works, projects, and facilities to collect, treat, and dispose of sanitary, industrial, and other sewage. Such facilities include on-site and off-site sewerage facilities, including approved septic tanks or septic tank systems. [1985 c 396 § 30.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.08.910 Sewerage improvement districts located in counties with populations of from forty thousand to less than seventy thousand become water-sewer districts.** See RCW 57.04.120.

**85.08.920 Sewerage improvement districts operating as sewer districts become water-sewer districts—Procedure.** See RCW 57.04.130.

### Chapter 85.12 RCW

#### FEDERAL AID TO DIKING, DRAINAGE, AND SEWERAGE IMPROVEMENT DISTRICTS

##### Sections

- 85.12.010 Commissioners may accept federal aid, or contract for work by federal agency—No bond required.  
85.12.030 Disposition of federal aid funds.

**85.12.010 Commissioners may accept federal aid, or contract for work by federal agency—No bond required.** Whenever, under the provisions of any act of the congress of the United States, the corps of engineers of the United States army, or any other agency of the United States, shall be authorized to reconstruct, improve, repair or maintain any system of improvements of any diking, drainage or sewerage improvement district under the laws of the state of Washington, the board of county commissioners of the county in which such district is situated, on behalf of such district may consent to and permit the United States, or any agency thereof, to perform any work or service upon or with regard to such district's system of improvements which shall by the board be found to be for the benefit of such district and the property therein, or, if the enlargement, betterment or other improvement of such district's system of improvements, or the performance of extraordinary maintenance work upon or with respect to its existing system of improvements shall have been authorized, the board may contract, on behalf of said district, upon such terms as may be agreed upon by the United States and the board for the performance of the work so authorized by said corps of engineers, or other agency of the United States. No bond shall be required by the district for any work performed by or under the supervision of said corps of engineers, or other agency of the United States. [1949 c 175 § 1; RRS § 4459-50. Formerly RCW 85.12.010 and 85.12.020.]

**85.12.030 Disposition of federal aid funds.** If at any time, whether prior or subsequent to the making of any contract authorized by the preceding section, there shall be made available and paid to a district fund appropriated by the congress of the United States to pay the costs and expenses of reconstruction, improvement, repair or maintenance of the district's system of improvements or any part thereof, said funds shall be paid into the district's maintenance or construction fund, according as the work is maintenance or new construction, and thereafter used and disbursed upon the order of the board, provided that if the district shall have theretofore issued extraordinary maintenance warrants or maintenance bonds or construction bonds, said funds shall be used to pay and retire said bonds or warrants to the extent of said funds. When all said warrants or bonds have been paid, the assessment levied to pay said warrants or bonds, or those installments of such assessment not then due and payable, shall be canceled. If the funds made available and paid to the district by the United States shall be more than sufficient to pay and retire all then outstanding warrants or bonds issued to

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pay the cost of the particular work, whether maintenance or new construction, then the excess of such federal aid funds, up to the amount of the total of the assessments to pay for such work theretofore paid, shall be paid by the treasurer to those who have paid such assessment or assessments in the proportion that the total of all such assessments paid by any one bears to the total of all such assessments theretofore paid, and any balance of such federal aid funds remaining shall become and be part of the maintenance fund of the district. Any assessment or installment of assessment not canceled under the provisions hereof, or any balance thereof which when collected shall not be required for the payment of interest or principal of any of said warrants or bonds, shall, after all said warrants or bonds have been paid, be paid into and become part of the maintenance fund of the district. [1949 c 175 § 2; RRS § 4459-51.]

### Chapter 85.15 RCW

#### DIKING, DRAINAGE, SEWERAGE IMPROVEMENT DISTRICTS—1967 ACT

##### Sections

- 85.15.010 Declaration of purpose.  
85.15.020 Definitions.  
85.15.030 Property roll—Basis and requisites—Separate levies for prior indebtedness.  
85.15.040 Public hearing—Notice, publication.  
85.15.050 Written objections—Filing—Grounds—Waiver.  
85.15.060 Reexamination of properties on roll—Adjustment, periodic revision, of valuations.  
85.15.070 Roll constitutes valuations against which levy made and collected—Hearing on adjustments.  
85.15.080 Roll and proceedings conclusive—Remedies.  
85.15.090 Review by superior court—How taken.  
85.15.100 Review by superior court—Transcript—Contents—Filing.  
85.15.110 Review by superior court—Filing fees—Bond—Priority of cause.  
85.15.120 Review by superior court—Scope—Judgment.  
85.15.130 Appellate review.  
85.15.140 Levy is for continuous benefits to protected property.  
85.15.150 Annual estimate of costs—Levy added to general taxes—Delinquencies—Disposition of revenue.  
85.15.160 Emergency expenditures—Warrants.  
85.15.170 Concurrent use of other methods of raising revenue.

**85.15.010 Declaration of purpose.** The maintenance, enlargement and extension of diking, drainage and sewerage improvement districts formed under chapter 85.08 RCW is essential to the public welfare and economy of the state. The influx of population and changes in land use since many such districts were formed, has made obsolete, expensive and unjust the method used under existing law to provide funds for the operation of such districts and for the maintenance and expansion of their systems of improvement. [1967 c 184 § 2.]

**Severability—1967 c 184:** See note following RCW 85.05.610.

**85.15.020 Definitions.** As used in this chapter: "District" means a diking, drainage or sewerage improvement district organized under chapter 85.08 RCW.

"Maintenance" means and includes not merely operating expenses and such upkeep and other work commonly classed as maintenance as shall be necessary to restore and preserve the district's systems of improvement and the machinery and equipment operated in connection therewith in the same or as good condition as when originally constructed and installed,

but also the making of such changes in and betterments to the original works, improvements and installations as shall, subject to approval of the board of county commissioners, be by the board deemed necessary to put the systems of improvements into such condition as will provide protection and services as contemplated and intended by the original construction and any enlargement and extensions thereof thereafter made. [1967 c 184 § 3.]

**85.15.030 Property roll—Basis and requisites—Separate levies for prior indebtedness.** To operate under this chapter, the board of commissioners of the improvement district shall cause to be prepared and filed with the board of county commissioners a property roll. The roll shall contain: (1) A description of all properties benefited and improvements thereon which receive protection and service from the systems of the district with the name of the owner or the reputed owner thereof and his address as shown on the tax rolls of the assessor or treasurer of the county wherein the property is located and (2) the determined value of such land and improvements thereon as last assessed and equalized by the assessor of such county or counties. Such assessed and equalized values shall be deemed prima facie to be just, fair and correct valuations against which annual taxes shall be levied for the operation of the district and the maintenance and expansion of its facilities.

If property outside of the limits of the original district are upon the roll as adopted ultimately, and the original district has outstanding bonds or long-term warrants, the board of county commissioners shall set up separate dollar rate levies for the full retirement thereof. [1973 1st ex.s. c 195 § 111; 1967 c 184 § 4.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.15.040 Public hearing—Notice, publication.** When a property roll is filed with the county legislative authority, the county legislative authority shall hold a public hearing to determine whether the facts and conditions heretofore recited in this chapter as a prerequisite to its application do or do not exist, and shall give notice of hearing as follows:

The notice shall be published at least once a week for three consecutive weeks in a newspaper having general circulation in the area involved. The last publication shall be more than fifteen days prior to date of hearing. [1985 c 469 § 75; 1967 c 184 § 5.]

**85.15.050 Written objections—Filing—Grounds—Waiver.** Any person, owner or reputed owner having any interest in any property against which the board of county commissioners seeks to make a protection and service charge under this chapter, may object thereto. All such objections must be in writing and filed with the board of county commissioners before the hearing is commenced upon the roll containing such properties and must state clearly the grounds of such objection. Objections not made within this time and in this manner shall be deemed conclusively to have been waived. [1967 c 184 § 6.]

**85.15.060 Reexamination of properties on roll—Adjustment, periodic revision, of valuations.** The board of county commissioners may at any time reexamine the properties on any roll, and upon receipt of a petition from the board of supervisors of the district or the written request of a property owner shall do so. If it is found that the condition of such property or properties has changed so that such property should be eliminated from any rolls on file, or the valuation against which dollar rate is levied should be lowered, it shall so determine and enter an order adjusting the valuation as to such properties and shall certify and file a copy thereof with the treasurer of the county wherein the property is situated, and the treasurer shall alter and change the existing rolls accordingly. Valuations may be revised periodically to reflect changes in real property valuations by the county assessor. [1973 1st ex.s. c 195 § 112; 1967 c 184 § 7.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.15.070 Roll constitutes valuations against which levy made and collected—Hearing on adjustments.** The roll approved and certified to the county officers by the board of county commissioners as in this chapter provided shall constitute the valuations of land, buildings and improvements furnished protection and services by the systems of the district against which valuation taxes shall be levied and collected annually in the same manner as general taxes for the continuing operations of the district and its systems. The valuations on said roll shall be subject to adjustment from time to time in the manner provided in RCW 85.15.060.

The board of county commissioners shall hold a hearing on such adjustments at the county seat at the time of equalization of real property assessments for the purpose of considering written objections to any revision of valuations filed at least ten days prior to the hearing and shall give published notice only of such hearing as provided in RCW 85.15.040. [1973 1st ex.s. c 195 § 113; 1967 c 184 § 8.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.15.080 Roll and proceedings conclusive—Remedies.** Wherever any roll shall have been adopted by the board of county commissioners, the regularity, validity and correctness of the proceedings relating thereto shall be conclusive upon all parties, and it cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to the roll as provided in RCW 85.15.050 and appealing from the action of said board in confirming the roll in the manner and within the time in this chapter provided. No proceeding of any kind, except proceedings had throughout the process of appeal as in this chapter provided, shall be commenced or prosecuted or may be maintained, for the purpose of defeating or contesting any assessment or charge made through levies under this chapter, or the sale of any property to pay such charges: PROVIDED, That suit in injunction may be brought to prevent collection of charges of assessments or sale of property thereunder upon the following grounds and no other:

- (1) That the property charged or about to be sold does not appear upon the district roll, or
- (2) The charge has been paid. [1967 c 184 § 9.]

**85.15.090 Review by superior court—How taken.**

The decision of the board of county commissioners upon any objection made within the time and in the manner prescribed may be reviewed by the superior court of the county wherein the property in question is located, upon appeal thereto taken in the following manner: Any person aggrieved must file his petition for writ of review with the clerk of the superior court wherein the property is located within ten days after the roll affecting such aggrieved party was adopted by resolution, and serve a copy thereof upon the county treasurer. The petition shall describe the property in question, shall set forth the written objections which were made to the decision, and the date of filing of such objections, and shall be signed by such party or someone in his behalf. The court shall forthwith grant such petition if correct as to form and filed in accordance with this chapter. [1967 c 184 § 10.]

**85.15.100 Review by superior court—Transcript—**

**Contents—Filing.** Within ten days from the filing of such petition for review, the county treasurer, unless the court shall grant additional time, shall file with the clerk of the superior court its certified transcript containing such portion of the roll as is subject to review, any written objections thereto filed with the board by the person reviewing before the roll was adopted, and a copy of the resolution adopting the roll. [1967 c 184 § 11.]

**85.15.110 Review by superior court—Filing fees—**

**Bond—Priority of cause.** The county clerk shall charge the same filing fees for petitions for review as in civil actions. At the time of the filing of such a petition with the clerk, the appellant shall execute and file a bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of the court, conditioned upon his prosecuting his appeal without delay and to guarantee all costs which may be assessed against him by reason of such review. The court shall, on motion of either party to the cause, with notice to the other party, set the cause for trial at the earliest time available to the court, fixing a date for hearing and trial without a jury. The cause shall have preference over all civil actions pending in the court except eminent domain and forcible entry and detainer proceedings. [1967 c 184 § 12.]

**85.15.120 Review by superior court—Scope—Judgment.**

At the trial the court shall determine whether the board of county commissioners has acted within its discretion and has correctly construed and applied the law. If it finds that it has, the finding of the board shall be affirmed; otherwise it shall be reversed or modified. The judgment of the court may change, confirm, correct, or modify the values of the property in question as shown upon the roll, and a certified copy thereof shall be filed with the county treasurer, who shall change, modify, or correct the roll as and if required by the judgment. [1967 c 184 § 13.]

**85.15.130 Appellate review.**

Appellate review may be sought as in other civil cases: PROVIDED, That review must be sought within fifteen days after the date of entry of the judgment of the superior court. The supreme court or the court of appeals may change, conform, correct, or modify the

values of the property in question as shown upon the roll. A certified copy of any judgment of the supreme court or the court of appeals shall be filed with the county treasurer having custody of such roll, who shall thereupon change, modify, or correct such roll in accordance with such judgment as and if required. [1988 c 202 § 78; 1971 c 81 § 163; 1967 c 184 § 14.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**85.15.140 Levy is for continuous benefits to protected property.**

The dollar rate levies collected from time to time under this chapter are solely assessments for benefits received continuously by the protected properties, calculated in the manner specified in this chapter as a just and equitable way for all protected property to share the expense of such required protection and services. [1973 1st ex.s. c 195 § 114; 1967 c 184 § 15.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.15.150 Annual estimate of costs—Levy added to general taxes—Delinquencies—Disposition of revenue.**

The board of any improvement district proceeding under this chapter shall, on or before the first day of September of each year, make an estimate of the costs reasonably anticipated to be required for the effective functioning of the district during the ensuing year and until further revenue therefor can be made available, and shall cause its chairman or secretary to file the same with the board of county commissioners of the county containing the district and other benefited area. The board of county commissioners shall, on or before the first Monday in October next ensuing, certify the amount of the district's estimate, or such amount as it shall deem advisable, to the county treasurer. The amount so certified shall be applied by the regular taxing agencies against the benefit valuation of lands, buildings and improvements as shown by the then current complete roll of such properties certified to and filed with such county treasurer by the board of county commissioners. When thus levied, the amount of assessment produced thereby shall be added by the general taxing authorities to the general taxes against said lands and collected therewith as a part thereof. If unpaid, any delinquencies in such assessments shall bear interest at the same rate and in the same manner as general taxes and they shall be included in and be made a part of any general tax foreclosure proceedings, according to the provisions of law with relation to such foreclosures. As assessment collections are made, the county treasurer shall credit the same to the funds of the district. [1967 c 184 § 16.]

**85.15.160 Emergency expenditures—Warrants.**

In the case of an emergency or disaster occurring after the time of making the annual estimate of costs, declared to be such by resolution of the board, the board of the district may incur additional obligations and issue valid warrants therefor in excess of such estimate, in the manner provided by law for issuance of warrants by districts and the servicing thereof. All such warrants so issued shall be valid and legal obligations of the district and its taxable lands and improvements as shown

upon the then current roll of the district filed with the county treasurer. [1967 c 184 § 17.]

**85.15.170 Concurrent use of other methods of raising revenue.** Any diking, drainage, or sewerage improvement district operating under this chapter shall not use concurrently the processes provided for raising revenue for maintenance purposes under any other law: PROVIDED, That any other method of raising such revenue provided by law may be used concurrently for the sole purpose of extinguishing indebtedness incurred before the district adopts the procedures of this chapter, and no funds raised hereunder shall be used to pay such prior indebtedness. [1967 c 184 § 18.]

### Chapter 85.16 RCW

#### MAINTENANCE COSTS AND LEVIES— IMPROVEMENT DISTRICTS

##### Sections

85.16.010	Definitions.
85.16.020	Maintenance estimate and levy.
85.16.030	Excess expenditures.
85.16.060	Determination of special benefits—Hearing.
85.16.070	Notice of hearing.
85.16.080	Appraisal of special benefits.
85.16.090	Factors to be considered in making appraisal—Report and schedule.
85.16.110	Separate appraisals and schedules for diking and drainage benefits.
85.16.115	Determining special benefit to portion of lot, tract, or parcel.
85.16.120	Apportionment of levy for extraordinary expenditures—Appraisal and hearing.
85.16.130	Conduct of hearing on appraisers' report—Correction, etc., of schedules.
85.16.150	Approval of schedules—Separate funds for diking, drainage systems.
85.16.160	Roll of benefits—Benefits to be basis of levies.
85.16.170	Levy for extraordinary expenditures—Roll.
85.16.180	Authorizing extraordinary work—Temporary construction warrants.
85.16.190	Judicial review—Regularity, validity of proceedings.
85.16.200	Redetermination of special benefits—Hearing.
85.16.210	Conduct of hearing on special benefits—Modification of schedules—Judicial review.
85.16.220	Other provisions shall apply—Exceptions.
85.16.230	Erroneous assessment—Correction.
85.16.900	Severability—1949 c 26.

**85.16.010 Definitions.** As used in this chapter:

- (1) "Appraisers" means the board of appraisers;
- (2) "Supervisors" means the district board of supervisors;
- (3) "Board" means the board of county commissioners;
- (4) "Auditor" means the county auditor;
- (5) "Treasurer" means the county treasurer; and
- (6) "Maintenance", "maintenance of the system of improvements", "maintenance work", and other terms of similar import, mean and include not merely operating expenses and such upkeep and other work commonly classed as maintenance as shall be necessary to restore and preserve the district's system of improvement and the machinery and equipment operated in connection therewith in the same or as good condition as when originally constructed and installed, but also: (a) The making of such changes in and betterments to the original works, improvements and installations as shall, subject to the approval of the board, be by the supervisors deemed necessary to put the system of improvements into such condition that it shall provide adequate drainage and

protection from overflow for the lands within the district as contemplated and intended by the original construction and any enlargement and extension thereof thereafter made; and (b) all costs and expenses incident to any determination or redetermination of benefits and apportionment of costs made under the terms of this chapter. [1949 c 26 § 1; Rem. Supp. 1949 § 4459-20.]

**85.16.020 Maintenance estimate and levy.** On or before the first Monday in September in each year the supervisors of each diking, drainage or sewerage improvement district shall make and file with the board of the county containing such district, a statement and estimate in writing of the amount required for the maintenance of the system of improvements of said district for the ensuing fiscal year. The board shall, on or before the first Monday in October next ensuing, levy assessments for the amount of said estimate, or such amount as it shall deem advisable, upon the property within the district and against the state, the county containing such district, and the cities, towns and other municipal corporations within such district in respect of all highways, roads and streets and other lands, improvements, and facilities chargeable therewith owned by them respectively within such district. Said assessments shall be levied in the same proportion as the assessments to pay the original cost of construction of said system of improvements: PROVIDED HOWEVER, That when a determination or redetermination of benefits accruing to the properties within the district from the maintenance of the district's system of improvements or from the maintenance of the district's diking system and drainage system separately shall have been made, as hereinafter in this chapter provided, then the assessments for maintenance shall be levied in proportion to the benefits accruing to each piece or parcel of property and improvements benefited according to the latest determination of such benefits. Each such levy as made shall be certified by the auditor to the treasurer, who shall extend the same upon the district assessment roll. [1949 c 26 § 2; Rem. Supp. 1949 § 4459-21.]

**85.16.030 Excess expenditures.** In maintaining a system of improvements of any such district the supervisors thereof may at any time, with the approval of the county legislative authority and upon determination by such county legislative authority that an emergency exists, make expenditures in excess of the last annual maintenance assessments theretofore made, which excess amount or amounts shall in such event be included in the maintenance assessments for the succeeding year except as otherwise herein provided. [1986 c 278 § 33; 1983 c 167 § 197; 1949 c 26 § 3; Rem. Supp. 1949 § 4459-22. Formerly RCW 85.16.030, 85.16.040, part and 85.16.050.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**85.16.060 Determination of special benefits—Hearing.** At any time and from time to time, after completion of the original construction of any such district's system of improvements or after the completion of any alteration, reduction, enlargement, addition to, or other improvement of

the system not constituting maintenance, as herein defined, the board may upon their own initiative, or upon petition filed by at least ten percent of the total number of owners of property within the district subject to assessments for maintenance, as shown by the latest assessment roll of the district shall, fix a date for and hold a hearing at the county seat for the purpose of determining or redetermining the special benefits accruing from the maintenance of the district's system of improvements to all property benefited thereby. [1961 c 16 § 2. Prior: 1951 c 63 § 1; 1949 c 26 § 4, part; Rem. Supp. 1949 § 4459-23, part.]

**85.16.070 Notice of hearing.** Notice of the hearing shall be given by publication in the official county newspaper and in such other newspaper published in or near the district as the county legislative authority may in its discretion direct, once a week for two consecutive weeks, the last publication of which shall be not less than seven nor more than fourteen days before the date of the hearing. Also, the county legislative authority shall serve by mail, at least ten days before the hearing, upon the commissioner of public lands of the state two copies of the published notice of the hearing together with a statement showing the amount of benefits determined by the appraisers in respect of each parcel of state, school, granted, or other lands owned by the state in the district, and shall similarly serve notice of the hearing upon the secretary of transportation, with a statement showing the amount of benefits determined by the appraisers in respect of any state primary or secondary highways within the district. [1984 c 7 § 378; 1949 c 26 § 6; Rem. Supp. 1949 § 4459-25.]

**Reviser's note:** The powers and duties of the commissioner of public lands have been transferred to the department of natural resources; see 1957 c 38 §§ 1, 13; RCW 43.30.010, 43.30.411.

**Severability—1984 c 7:** See note following RCW 47.01.141.

**85.16.080 Appraisal of special benefits.** At or within two weeks of the time of fixing the date for such hearing the board shall appoint three qualified appraisers, at least one of whom shall be a resident of the county in which said district is situated, who shall qualify as provided in RCW 85.08.360. Thereupon said appraisers shall proceed immediately to carefully examine the district's system of improvements and the public and private property within the district, and fairly, justly and equitably determine and apportion the special benefits which will accrue from the maintenance of the district's system of improvements to each piece or parcel of privately and publicly owned land, together with the buildings and other permanent improvements thereon, and to the state, county, cities, towns and other municipal corporations for their roads and streets and other property within the district. The fact that any such property shall be exempt from general taxes shall not exempt the same from the provisions hereof. [1961 c 16 § 3. Prior: 1949 c 26 § 4, part; Rem. Supp. 1949 § 4459-23, part.]

**85.16.090 Factors to be considered in making appraisal—Report and schedule.** The appraisers shall carefully consider and take into account all factors, situations and conditions which lawfully may be taken into consideration as bearing upon and determining such benefits and to that end may make such investigations, hold such hearings,

and receive such evidence as they may deem proper and shall file their sworn report, with a complete schedule of all property within the district and the special benefits determined by them as accruing to each piece and parcel thereof, not less than twenty days prior to the date fixed for the hearing by the board. [1949 c 26 § 5; Rem. Supp. 1949 § 4459-24. Formerly RCW 85.16.090 and 85.16.100.]

**85.16.110 Separate appraisals and schedules for diking and drainage benefits.** In a district which functions both as a diking and a drainage improvement district, the appraisers, if so directed in the order of the board appointing them, shall determine separately, in accordance with RCW 85.16.060 and 85.16.080, the special benefits accruing to the various properties within the district from the maintenance of the diking system and from the maintenance of the drainage system, and in such case their report shall contain separate schedules of the respective benefits accruing from the maintenance of the diking and drainage systems of improvement considered separately and, so far as may be, independently of each other. [1961 c 16 § 4; 1949 c 26 § 7; Rem. Supp. 1949 § 4459-26.]

**85.16.115 Determining special benefit to portion of lot, tract, or parcel.** When any person applies to the county treasurer to pay the diking, drainage or sewerage improvement district assessments upon a portion of a lot, tract or parcel upon which special benefits have been confirmed, the county treasurer shall refer such matter to the county engineer for investigation. The county engineer shall apportion the total benefits found as to such lot, tract or parcel between the portions thereof in such manner as may be fair, just and equitable taking into account all factors, situations and conditions which may be lawfully taken into consideration in determining such special benefits. Unless the several owners interested in said lot, tract or parcel assent to the apportionment made, the county engineer shall give notice to the apportionment by mail to them, if known. Upon assent of the interested owners or after the expiration of five days from the date of notice without the filing of a written protest to the apportionment, the county engineer shall certify in writing the apportioned benefit valuations to the county treasurer. The county treasurer, upon receipt of such certification, shall accept payment and issue receipt on the certified apportionment. If a written protest to such apportionment is filed with the county treasurer, the matter shall be heard by the county commissioners at their next regular session for final apportionment and the county treasurer shall accept and receipt for such assessments as determined and ordered by the county commissioners. [1951 c 63 § 4.]

*County road engineer: Chapter 36.80 RCW.*

*District engineer: RCW 85.08.010.*

**85.16.120 Apportionment of levy for extraordinary expenditures—Appraisal and hearing.** Whenever the board shall provide that a levy to meet extraordinary maintenance expenditures shall be spread over a term of years and warrants or bonds issued as provided in RCW 85.16.030, said board shall fix a date for and hold a hearing and appoint appraisers as provided in RCW 85.16.060 and 85.16.080.

Said appraisers, in addition to discharging the duties imposed upon the appraisers by RCW 85.16.060, 85.16.080 and 85.16.090, shall: (1) Apportion the estimated costs of such extraordinary maintenance work to the properties within the district in proportion to the benefits accruing to said properties from the maintenance of the district's system of improvements as determined by them; and (2) file a complete schedule of said apportionment of costs with the board. [1961 c 16 § 5; 1949 c 26 § 8; Rem. Supp. 1949 § 4459-27.]

**85.16.130 Conduct of hearing on appraisers' report—Correction, etc., of schedules.** At the hearing upon the report of the appraisers, which may be adjourned from time to time until finally completed, the board shall carefully examine and consider the special benefits and the apportionment of estimated costs determined by the appraisers and reported in the schedule or schedules, and any objections thereto which shall have been made in writing and filed with the board on or prior to ten o'clock a.m. of the date fixed for such hearing. Each objector shall be given reasonable time and opportunity to submit evidence and be heard on the merits of his objections. At the conclusion of such hearing, the board shall so correct, revise, raise, lower, change or modify such schedule or schedules, or any part thereof, or strike therefrom any property not specially benefited, as to said board shall appear equitable and just. The board shall cause the clerk of the board to enter on each such schedule or schedules all such additions, cancellations, changes and modifications made by it. [1949 c 26 § 9; Rem. Supp. 1949 § 4459-28. Formerly RCW 85.16.130 and 85.16.140.]

**85.16.150 Approval of schedules—Separate funds for diking, drainage systems.** When the board shall have determined that the schedule or schedules of benefits and/or apportionment of costs as filed or as changed and modified by it are fair, just and equitable and, if estimated costs have been apportioned, that said benefits equal or exceed said costs apportioned, the members of the board approving the same shall sign said schedule or schedules and cause the clerk of the board to attest their signatures under his seal, and shall enter an order in the journal approving and confirming the final determination of such benefits and apportionment of costs and all proceedings leading thereto and in connection therewith. If separate schedules be established for maintenance of the diking system and of the drainage system, the board shall by order establish two separate maintenance funds, one for the maintenance of the diking system and one for the maintenance of the drainage system. [1949 c 26 § 10; Rem. Supp. 1949 § 4459-29.]

**85.16.160 Roll of benefits—Benefits to be basis of levies.** Upon the approval and final determination of benefits the auditor shall immediately prepare a completed roll thereof, which shall contain a copy of the order of the board approving and confirming said benefits as finally determined, and shall deliver said roll to the treasurer. Said benefits shall be the basis for the apportionment and collection of maintenance levies thereafter made by the board. [1949 c 26 § 11; Rem. Supp. 1949 § 4459-30.]

**85.16.170 Levy for extraordinary expenditures—Roll.** Upon the approval and final determination of the apportionment of estimated costs of extraordinary maintenance expenditures as provided in RCW 85.16.120 and 85.16.130, the board shall levy the amounts so apportioned against all the properties benefited and the amounts assessed against the state, county, cities and towns, and other municipal corporations benefited, and the auditor shall immediately prepare a completed roll thereof, which shall contain a copy of the order of the board approving and confirming said apportionment of estimated costs as finally determined and fixing and levying the assessments therefor, and shall deliver said roll to the treasurer for collection in accordance with the order of the board. [1949 c 26 § 12; Rem. Supp. 1949 § 4459-31.]

**85.16.180 Authorizing extraordinary work—Temporary construction warrants.** The county legislative authority shall thereupon enter an order authorizing the contemplated extraordinary maintenance work to be done and authorizing the issuance of temporary construction warrants to pay the cost of said work as it progresses, which warrants may bear interest at such rate or rates of interest as the county legislative authority shall determine. Warrants to pay the costs of such extraordinary maintenance may be issued and sold at one time or from time to time and in such series and amounts as may be found practicable and as determined by the board. [1986 c 278 § 34; 1983 c 167 § 198; 1970 ex.s. c 56 § 92; 1969 ex.s. c 232 § 54; 1949 c 26 § 13; Rem. Supp. 1949 § 4459-32. Formerly RCW 85.16.040 and 85.16.180.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**85.16.190 Judicial review—Regularity, validity of proceedings.** The decision of the board upon any objections to the determination of benefits and/or apportionment of costs and/or the levy of the assessments therefor, made within the time and in the manner prescribed in RCW 85.16.130, may be reviewed by the superior court of the county in which the district is situated and thereafter by the supreme court or the court of appeals within the time and in the manner and upon the conditions, so far as applicable, provided in RCW 85.08.440, with respect to appeals from and appellate review of the board's apportionment of the cost of construction of the district's system of improvements. The provisions of RCW 85.08.450, shall be controlling as to the regularity, validity, and conclusiveness of all the proceedings hereunder. [1988 c 202 § 79; 1971 c 81 § 164; 1949 c 26 § 14; Rem. Supp. 1949 § 4459-33.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**85.16.200 Redetermination of special benefits—Hearing.** Whenever, after the determination of special benefits accruing from the maintenance of the district's system of improvements, it appears to the board from a petition filed by the affected property owner or owners or otherwise, that by reason of permanent improvements or additions made,

removed, abandoned or destroyed by fire or other casualty, or of other changes in the character or condition of the property, the benefits theretofore determined in respect to any one or more pieces or parcels of property are no longer fair, just and equitable, then the board shall appoint three appraisers who shall qualify as in RCW 85.08.360 hereof. Said appraisers shall proceed immediately to carefully examine the pieces or parcels of property as to which since the last determination of special benefits thereto there have been permanent improvements or additions made, removed, abandoned or destroyed by fire or other casualty or other changes in the character or condition of the property. Said appraisers shall file their sworn report with the board setting forth the special benefits determined by them as accruing to each piece and parcel of property examined by them not less than ten days prior to the date of hearing. The board shall hold a hearing thereon at the county seat at the time of equalization of the real property assessment and shall give notice thereof as provided in RCW 85.16.070. [1951 c 63 § 2; 1949 c 26 § 15; Rem. Supp. 1949 § 4459-34.]

**85.16.210 Conduct of hearing on special benefits—Modification of schedules—Judicial review.** At such hearing, which may be adjourned from time to time as may be necessary to give all persons interested or affected a reasonable opportunity to be heard, and after consideration of all evidence offered and all factors, situations and conditions bearing upon or determinative of the benefits accruing and to accrue to such pieces or parcels of property, the board shall correct, revise, raise, lower, or otherwise change or confirm the benefits as theretofore determined, in respect of such pieces or parcels of property, as to it shall seem fair, just and equitable under the circumstances, and thereafter such proceedings shall be had with respect to the confirmation or determination of the benefits and making and filing of a roll thereof, as are in RCW 85.16.130, 85.16.150 and 85.16.160 provided. Any property owner affected by any change thus made in the determination of benefits accruing to his property who shall have appeared at the hearing by the board and made written objections thereto as provided in RCW 85.16.130, may appeal from the action of the board to the superior court and seek appellate review by the supreme court or the court of appeals, within the time, in the manner and upon the conditions, so far as applicable, provided in RCW 85.08.440, with respect to appeals from the order of the board confirming the apportionment of the original cost of construction. [1988 c 202 § 80; 1971 c 81 § 165; 1949 c 26 § 16; Rem. Supp. 1949 § 4459-35.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**85.16.220 Other provisions shall apply—Exceptions.** The provisions of \*RCW 85.08.280, 85.08.310, 85.08.320, 85.08.420, 85.08.430, and 85.08.480 through 85.08.520, shall be deemed and hereby are made a part of this chapter insofar as they may be applicable hereto, except that the unpaid assessments or installments thereof, which may have been levied for extraordinary maintenance costs as provided in RCW 85.16.170, shall bear interest at a rate determined by the county legislative authority. [1981 c 156 § 25; 1949 c 26 § 17; Rem. Supp. 1949 § 4459-36.]

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\*Reviser's note: RCW 85.08.280 was repealed by 1986 c 278 § 46.

**85.16.230 Erroneous assessment—Correction.** Whenever any payer of a diking, drainage, or sewerage improvement district maintenance assessment believes that, through obvious error in name, number, description, amount of benefit valuation, double assessment, or extension, or other obvious error, property on which he has paid an assessment has been erroneously assessed, he may pay such assessment under protest. If, within thirty days after such payment under protest, he files with the board a written verified petition setting out his name, address and legal description of the property, the nature of the obvious error alleged to have been made, and the date and amount of any assessment paid thereon, the board shall cause such claim to be investigated. If upon investigation any assessment is found to be erroneous through obvious error, the board shall order such assessment to be corrected if no bond or long term warrant issue is affected. Where correction is ordered of an erroneous assessment already collected, the auditor, upon receipt of a certified copy of the board's order of correction, shall refund to the person paying the assessment the difference between the correct assessment and the erroneous assessment, plus legal interest on such difference from date of payment, by a warrant drawn on the maintenance fund of the district. [1951 c 63 § 3.]

**85.16.900 Severability—1949 c 26.** The adjudication of invalidity of any section, clause or part of a section of this act shall not impair or otherwise affect the validity of this act as a whole, or any other part hereof. [1949 c 26 § 19.]

## Chapter 85.18 RCW LEVY FOR CONTINUOUS BENEFITS— DIKING DISTRICTS

### Sections

85.18.005	Declaration of purpose.
85.18.010	Levy for continuous benefits authorized—Base benefits.
85.18.020	Roll of protected property.
85.18.030	Hearing on roll—Determining continuous base benefit.
85.18.040	Notice of hearing.
85.18.050	Procedure on hearing—Objections.
85.18.060	Additional roll as to particular property—Procedure.
85.18.070	Roll to be certified and filed.
85.18.080	Roll to provide basis for levy.
85.18.090	Roll and proceedings conclusive—Exceptions—Right to injunction.
85.18.100	Review by superior court—How taken.
85.18.110	Review by superior court—Transcript—Contents—Filing.
85.18.120	Review by superior court—Filing fee—Bond—Priority of cause.
85.18.130	Review by superior court—Scope—Judgment.
85.18.140	Appellate review.
85.18.150	Levy is for continuous benefits only.
85.18.160	Annual estimate of costs—Levy as part of general taxes.
85.18.170	Emergency expenditures—Warrants.
85.18.180	Levy is exclusive method for raising revenue—Exception.
85.18.900	Severability—1951 c 45.

**85.18.005 Declaration of purpose.** The state declares that it has an interest in protecting and preserving productive land and buildings needed to make business function continuously. Where organized diking districts, through their improvements, have reclaimed land or protected it from overflow and have enabled erection of improvements thereon or

have furnished such land and buildings protection against flood water, it is necessary to provide a just and equitable method to enable such diking districts continuously to function effectively. It is declared that there is a direct relationship, where such conditions exist, between the continuous functioning of such districts and the fair value of the lands and buildings thereon, or to be erected thereon, thus afforded protection. [1951 c 45 § 1.]

**85.18.010 Levy for continuous benefits authorized—Base benefits.** When any diking district has been organized and the improvements made afford protection to land and buildings within such district against damage or destruction from overflow waters in that the level of the land and of the foundational structures of buildings thereon is below the water level at flood or high tide stages of the waters, fresh or salt, against which such district improvements furnished protection, the board of diking commissioners of such district may, under the procedure established in this chapter, determine such fact and by resolution so declare; and may provide that the cost of continued functioning of the district shall be paid through levies of dollar rates made and collected according to this chapter against the land and buildings thus protected, based upon the determined base benefits received by such land and buildings. [1973 1st ex.s. c 195 § 115; 1951 c 45 § 2.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.18.020 Roll of protected property.** To operate under this chapter, the board shall cause to be prepared and filed with it a roll containing descriptions of the land and buildings thereon within the district to which its improvements furnish the nature of protection set forth in RCW 85.18.010. The roll shall show descriptions of the land and the name of its owner, or reputed owner, and such owner's address, as shown upon the tax roll of the treasurer of the county wherein the property is located, and the determined value of such land and any buildings thereon as last assessed and equalized by the taxing agencies of such county. [1951 c 45 § 3.]

**85.18.030 Hearing on roll—Determining continuous base benefit.** After the roll is prepared the board shall give notice of a time and place at which the board will hold a public hearing to determine whether the facts and conditions heretofore recited in this chapter as a prerequisite to its application do or do not exist, and if so found to exist by said board at said hearing, then the board shall by resolution so declare. The notice shall also state that at said hearing, or any continuance thereof, the board will sit to consider said roll and to determine the continuous base benefits which each of the properties thereon are receiving and will receive from the continued operation and functioning of such district, which shall in no instance exceed one hundred percent of the true and fair value of such property in money, will consider all objections made thereto or to any part thereof, and will correct, revise, lower, change, or modify such roll as shall appear just and equitable; that when correct benefits are fixed upon said roll by said board, it will adopt said roll by resolution as

establishing, until modified as hereinafter provided, the continuous base benefit to said protected lands and buildings against which will be levied and collected dollar rates to provide funds for the continuous functioning of said district. [1973 1st ex.s. c 195 § 116; 1951 c 45 § 4.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.18.040 Notice of hearing.** The notice of the time and place of hearing shall be given to any owner, or reputed owner, of the property which is listed on the roll as aforesaid, by mailing a copy thereof at least thirty days before the date fixed for the hearing to the owner or owners at his or their address as shown on the tax rolls of the county treasurer for the property described. In addition thereto, the notice shall be published at least once a week for three consecutive weeks in a newspaper of general circulation in the district. At least fifteen days must elapse between the last date of publication thereof and the date fixed for the hearing. [1985 c 469 § 76; 1951 c 45 § 5.]

**85.18.050 Procedure on hearing—Objections.** At said hearing, or adjournments thereof, the board shall review said roll and determine the continuous base benefits to land and buildings furnished continuous protection by the improvement system of the district; hear objections to the adoption of said roll; correct, revise, change, modify or set aside such roll, or any part thereof, as to the board shall appear equitable and just; and then adopt the same by resolution. All objections to this or any subsequent roll must be in writing and filed with the board during the hearing before the roll is adopted and must state clearly the grounds of objection. Objections not made within the time and in the manner herein prescribed shall be conclusively presumed to have been waived. [1951 c 45 § 6.]

**85.18.060 Additional roll as to particular property—Procedure.** The board shall, from time to time, examine the properties within said district, and if it finds that any protected land or buildings thereon have been omitted from the existing roll, or new buildings have been added to lands, or the condition of land or buildings has changed, and in the initial judgment of the board such land or the buildings thereon was such that it was furnished the protective benefits of the improvements of the district, the board shall cause at each such time an additional roll of such property to be filed with it, and hold a hearing to determine and make such corrections, additions, alterations and modifications of the benefits to such property only, and to hear any objections filed as to such property only. The board shall give notice of such hearing to the owner, or reputed owner, of the property involved, at the address of such owner as then shown on the tax rolls of the treasurer of the county wherein the property is located, in the same way and manner as herein provided for consideration of the original roll, but such notice need not be published.

At the hearing, or any adjournment thereof, the board shall have power to correct, revise, change, modify, or set aside such roll, or any part thereof, as shall be deemed just

and equitable, and then adopt the same by resolution. [1951 c 45 § 7.]

**85.18.070 Roll to be certified and filed.** When any roll or additional or supplemental roll be adopted by the board of commissioners, the same shall be certified to, and filed with, the auditor of the county wherein the property contained on said roll is situated, and shall supplement said original roll. [1951 c 45 § 8.]

**85.18.080 Roll to provide basis for levy.** Until further modified, amended, or changed by an additional or supplemental roll certified to the county auditor after the foregoing procedure is had, the original roll, as modified or supplemented, if the same is done, shall serve as the base of benefits to the land and buildings protected by the improvement system of said district against which dollar rate is levied and collected from time to time for the continued functioning of said diking district. [1973 1st ex.s. c 195 § 117; 1951 c 45 § 9.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.18.090 Roll and proceedings conclusive—Exceptions—Right to injunction.** Whenever any roll shall have been adopted by the board of commissioners, the regularity, validity and correctness of the proceedings relating thereto shall be conclusive upon all parties, and it cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll as provided in RCW 85.18.050 and appealing from the action of the board in confirming such roll in the manner and within the time in this chapter provided. No proceeding of any kind, except proceedings had through the process of appeal as in this chapter provided, shall be commenced or prosecuted or may be maintained, for the purpose of defeating or contesting any assessment or charge made through levies under this chapter, or the sale of any property to pay such charges: PROVIDED, HOWEVER, That suit in injunction may be brought to prevent collection of charges of assessments or sale of property thereunder upon the following grounds and no other:

- (1) That the property charged or about to be sold does not appear upon the district roll filed with the county auditor, or
- (2) The charge has been paid. [1951 c 45 § 10.]

**85.18.100 Review by superior court—How taken.** The decision of the board of commissioners upon any objection made within the time and in the manner prescribed may be reviewed by the superior court of the county wherein the property in question is located, upon appeal thereto taken in the following manner: Any person aggrieved must file his petition for writ of review with the clerk of the superior court wherein the property is located within ten days after the roll affecting such aggrieved party was adopted by resolution, and serve a copy thereof upon the commissioners. The petition shall describe the property in question, set forth the written objections which were made to the decision, the date of filing of such objections, and be signed by such party or one in his behalf. The court shall forthwith grant such petition if

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correct as to form and filed in accordance with this chapter. [1951 c 45 § 11.]

**85.18.110 Review by superior court—Transcript—Contents—Filing.** Within ten days from the filing of such petition for review, the commission, unless the court shall grant additional time, shall file with the clerk of such court its certified transcript containing such portion of the roll as is subject to review, any written objections thereto filed with the board by the person reviewing before said roll was adopted, and a copy of the resolution adopting the roll. [1951 c 45 § 12.]

**85.18.120 Review by superior court—Filing fee—Bond—Priority of cause.** The county clerk shall charge the same filing fees for petitions for review as in civil actions. At the time of the filing of such petition with the clerk, the appellant shall execute and file a bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of said court, conditioned upon his prosecuting his appeal without delay and to guarantee all costs which may be assessed against him by reason of such review. The court shall, on motion of either party to the cause, with notice to the other party, set said cause for trial at the earliest time available to the court, fixing a date for hearing and trial without a jury. Said cause shall have preference over all civil actions pending in said court except eminent domain and forcible entry and detainer proceedings. [1951 c 45 § 13.]

**85.18.130 Review by superior court—Scope—Judgment.** At the trial the court shall determine whether the board has acted within its discretion and has correctly construed and applied the law. If it finds that it has, the finding of the board shall be affirmed; otherwise it shall be reversed or modified. The judgment of the court may change, confirm, correct, or modify the values of the property in question as shown upon the roll, and a certified copy thereof shall be filed with the county auditor, who shall change, modify or correct as and if required. [1951 c 45 § 14.]

**85.18.140 Appellate review.** Appellate review may be sought as in other civil cases: PROVIDED, HOWEVER, That review must be sought within fifteen days after the date of entry of the judgment of the superior court. The supreme court or the court of appeals, on such appeal, may change, confirm, correct or modify the values of the property in question as shown upon the roll. A certified copy of any judgment of the supreme court or the court of appeals shall be filed with the county auditor having custody of such roll, who shall thereupon change, modify, or correct such roll in accordance with such decision if required. [1988 c 202 § 81; 1971 c 81 § 166; 1951 c 45 § 15.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**85.18.150 Levy is for continuous benefits only.** The dollar rate levy returns collected from time to time under this chapter are solely assessments for benefits received continuously by the protected properties, calculated in the manner specified in this chapter as a just and equitable way for all

protected property to share the expense of such required protection. [1973 1st ex.s. c 195 § 118; 1951 c 45 § 16.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.18.160 Annual estimate of costs—Levy as part of general taxes.** The board of commissioners of any diking district proceeding under this chapter shall, on or before the first day of November of each year, make an estimate of the costs reasonably anticipated to be required for the effective functioning of such district during the ensuing year and until further revenue therefor can be made available, and cause its chairman or secretary to certify the same on or before said date to the county auditor, and the amount so certified shall be levied by the regular taxing agencies against the base benefits to the lands and buildings within such district as shown by the then current complete roll of such properties and the determined benefits thereto as therefore certified to and filed with such county auditor by the commissioners of such district. When thus levied, the amount of assessment produced thereby shall be added by the general taxing authorities to the general taxes against said lands and collected therewith as a part thereof. If unpaid, any delinquencies in such assessments shall bear interest at the same rate and in the same manner as general taxes and they shall be included in and be made a part of any general tax foreclosure proceedings, according to the provisions of law with relation to such foreclosures. As assessment collections are made, the county treasurer shall credit the same to the funds of such district. [1951 c 45 § 17.]

**85.18.170 Emergency expenditures—Warrants.** In the case of an emergency or disaster not in contemplation at the time of making the annual estimate of costs, declared to be such by resolution of such board, the diking commissioners may incur additional obligations and issue valid warrants therefor in excess of such estimate, in the manner provided by law for issuance of warrants by diking districts and the servicing thereof, and all such warrants so issued shall be valid and legal obligations of such district and its taxable lands and improvements as shown upon the then current roll of said district filed with the county auditor. [1951 c 45 § 18.]

**85.18.180 Levy is exclusive method for raising revenue—Exception.** Any diking district operating under this chapter shall not use the processes provided for raising revenue under any other law: PROVIDED, That any such other method of raising revenue provided by law may be used concurrently for the sole purpose of extinguishing indebtedness incurred before the district adopts the procedure of this chapter, and no funds raised hereunder shall be used to pay such prior indebtedness. [1951 c 45 § 19.]

**85.18.900 Severability—1951 c 45.** Should any section or provision of this act be declared unconstitutional or ineffectual, such action shall not affect or nullify any other provision or section thereof. [1951 c 45 § 20.]

## Chapter 85.20 RCW

### REORGANIZATION OF DISTRICTS INTO IMPROVEMENT DISTRICTS—1917 ACT

#### Sections

85.20.010	Reorganization authorized.
85.20.020	Petition to reorganize—Contents.
85.20.030	Elections—Notice—Publication—Costs.
85.20.050	Reorganized district—Board—Indebtedness not affected.
85.20.070	Refunding bonds.
85.20.120	Sale and issuance of refunding bonds.
85.20.140	Powers of board.
85.20.150	Extensions to compensate for inadequate benefits—Payment.

**85.20.010 Reorganization authorized.** Any drainage district or diking district organized under the provisions of chapter 115 or chapter 117 of the Laws of 1895, and the acts amendatory thereof, may be reorganized as a drainage improvement district or a diking improvement district, upon proceedings had in accordance with the provisions of this chapter. [1917 c 131 § 1; RRS § 4347. FORMER PART OF SECTION: 1933 c 182 § 1, now codified as RCW 85.22.010.]

**Reviser's note:** Chapter 115, Laws of 1895 referred to herein is the basic diking district act codified as chapter 85.06 RCW, Part I, and chapter 117, Laws of 1895 is the basic drainage district act codified as chapter 85.05 RCW.

**85.20.020 Petition to reorganize—Contents.** For the purpose of securing such reorganization, a petition shall be presented to the clerk of the board of county commissioners of the county in which such district is located, at a regular or special meeting of the board. The petition shall be signed by the board of commissioners of the district and shall state the number of the district seeking to reorganize, and shall pray that such district be reorganized as a drainage or a diking improvement district. [1917 c 131 § 2; RRS § 4348. FORMER PART OF SECTION: 1933 c 182 § 2 now codified as RCW 85.22.020.]

**85.20.030 Elections—Notice—Publication—Costs.** Whenever a petition is presented as provided in RCW 85.20.020, the county legislative authority shall order an election to be held to determine if the district shall be reorganized. The county legislative authority shall specify the election date which may or may not be at the normal special district general election. Notice of the election shall be posted and published, and the election shall be conducted, as for any special district election. The notice shall state the number of the district so petitioning to reorganize, the place where and the time when the election is to be held. The auditor shall certify the results of the election to the county legislative authority. If the proposition to reorganize the district is approved by a simple majority vote of the voters voting on the proposition, the district shall be reorganized as either a diking improvement district or drainage improvement district upon the county legislative authority ordering the reorganization. The district shall be liable to the county for its costs incurred for the election. [1985 c 396 § 48; 1917 c 131 § 3; RRS § 4349. FORMER PART OF SECTION: 1933 c 182 § 3 now codified as RCW 85.22.030.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.20.050 Reorganized district—Board—Indebtedness not affected.** The board of commissioners of the drainage or diking district shall constitute the board of supervisors of the reorganized district. From the entry of an order under RCW 85.20.030 reorganizing the district, such reorganized district, and its board of supervisors, shall have all the rights and powers of and be subject to all laws applicable to a diking or drainage improvement district, and such district so reorganized shall be dissolved without any further proceedings therefor. Notwithstanding such dissolution and reorganization, none of the outstanding bonds, warrants or other indebtedness of the district, shall be affected thereby; and all lands liable to be assessed to pay any of such bonds, warrants or other indebtedness shall remain liable to the same extent as if such reorganization had not been made, and any and all assessments theretofore levied or made against any such lands shall be and remain unimpaired and shall be collected in the same manner as if no such reorganization had been had. The legislative authority of the county in which such reorganized district is situated shall have all the powers possessed at the time of the reorganization by the board of commissioners of such district to levy, assess, and cause to be collected any and all assessments or charges against any of the lands within such district that may be necessary or required to provide funds for the payment of all the bonds, warrants and other indebtedness thereof. [1985 c 396 § 49; 1917 c 131 § 5; RRS § 4351. FORMER PART OF SECTION: 1933 c 182 § 5, part, now codified in RCW 85.22.050. Formerly RCW 85.20.050, part and 85.20.060, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.20.070 Refunding bonds.** Whenever in any district reorganized under the provisions of this chapter any bonds issued prior to such reorganization shall become payable and the county legislative authority determines that it is in the interest of the property owners of the district to have refunding bonds issued, the county legislative authority may authorize the district to issue refunding bonds in accordance with chapter 85.38 RCW. [1986 c 278 § 35; 1917 c 131 § 6; RRS § 4352. FORMER PART OF SECTION: 1933 c 182 § 6, now codified as RCW 85.22.060.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.20.120 Sale and issuance of refunding bonds.** Upon the expiration of thirty days from the first publication of the notice given by the treasurer as provided herein, the county legislative authority of the county in which all or the major part of the district is located may issue and sell refunding bonds of the district subject to chapter 85.38 RCW. [1986 c 278 § 36; 1917 c 131 § 11; RRS § 4357. FORMER PART OF SECTION: 1933 c 182 § 11 now codified as RCW 85.22.110.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.20.140 Powers of board.** The board of county commissioners shall have all the powers possessed by the board of commissioners of any district reorganized under the provisions of this chapter prior to such reorganization, to levy assessments for the payment of the interest on any other bonds of the district not then payable and refunded under the

provisions of this chapter, and to levy assessments to provide a sinking fund for the liquidation of such bonds at their maturity. Such assessments shall be called and collected in the manner provided by the law under which they were assessed, and such bonds shall be paid as provided by the law under which they were issued. Proper funds shall be established in the county treasury for the proceeds of the payments of such assessments, and such funds shall be applied to the payment of the bonds for the payment of which they were levied. [1917 c 131 § 13; RRS § 4359. FORMER PART OF SECTION: 1933 c 182 § 13 now codified as RCW 85.22.130.]

**85.20.150 Extensions to compensate for inadequate benefits—Payment.** Whenever in any district reorganized under the provisions of this chapter, extensions or additions are made to the system of improvements of the district to provide drainage or protection from overflow for lands previously found benefited and assessed for the construction of the original system of improvement which are not receiving benefits therefrom in proportion to the benefits found and the assessments levied against such lands, the costs of such extensions or additions shall be included as a cost of maintenance of the improvements of the district and shall be levied and collected in the manner provided for the levy and collection of such costs. [1917 c 131 § 14; RRS § 4360. FORMER PART OF SECTION: 1933 c 182 § 14 now codified as RCW 85.22.140.]

**Chapter 85.22 RCW**

**REORGANIZATION OF DISTRICTS INTO IMPROVEMENT DISTRICTS—1933 ACT**

Sections

- 85.22.010 Reorganization authorized.
- 85.22.020 Petition to reorganize—Contents.
- 85.22.030 Elections—Notice—Publication—Costs.
- 85.22.050 Reorganized district—Commissioners retained, powers—Effect of reorganization.
- 85.22.060 Refunding bonds.
- 85.22.130 Powers of board.
- 85.22.140 Extensions to compensate for inadequate benefits—Payment.

**85.22.010 Reorganization authorized.** Any diking district; drainage district; irrigation improvement district; intercounty diking and drainage district; diking, drainage, and/or sewerage improvement district; consolidated diking district, drainage district, diking improvement district, and/or drainage improvement district; or flood control district may reorganize as a drainage and irrigation improvement district or as a diking, drainage and irrigation improvement district in the manner provided in this chapter. [1993 c 464 § 1; 1933 c 182 § 1; RRS § 4477-1. Formerly RCW 85.20.010, part.]

**85.22.020 Petition to reorganize—Contents.** For the purpose of securing such reorganization, a petition shall be presented to the clerk of the board of county commissioners of the county in which such district is located, at a regular or special meeting of the board. The petition shall be signed by the board of commissioners of the district and shall state the number of the district seeking to reorganize, and shall pray that such district be reorganized as a drainage and irrigation improvement district or diking, drainage and irrigation

improvement district. [1933 c 182 § 2; RRS § 4477-2. Formerly RCW 85.20.020, part.]

#### **85.22.030 Elections—Notice—Publication—Costs.**

Whenever a petition is presented as provided in RCW 85.22.020, the county legislative authority shall order an election to be held to determine if the district shall be reorganized. The county legislative authority shall specify the election date which may or may not be the same as the regular special district general election. Notice of the election shall be posted and published, and the election shall be conducted, as for any special district election. The notice shall state the number of the district so petitioning to reorganize, the place where and the time when the election is to be held. The auditor shall certify the results of the election to the county legislative authority. If the proposition to reorganize the district is approved by a simple majority vote of the voters voting on the proposition, the district shall be reorganized as either a diking improvement district or drainage improvement district upon the county legislative authority ordering the reorganization. The district shall be liable to the county for its costs incurred for the election. [1985 c 396 § 50; 1933 c 182 § 3; RRS § 4477-3. Formerly RCW 85.20.030, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

#### **85.22.050 Reorganized district—Commissioners retained, powers—Effect of reorganization.**

The commissioners of the old district shall become the supervisors of the reorganized district and shall have all the rights and powers and be subject to all laws applicable to a diking or drainage improvement district. The supervisors shall also have the power of using such drainage ditches and equipment in the district for irrigation purposes at proper times and may adapt such ditches to such purposes by making the necessary improvements therein. The supervisors shall also have the right to purchase and install machinery, pumps and other equipment for the carrying on of such irrigation within the district. Notwithstanding such dissolution and reorganization, none of the outstanding bonds, warrants or other indebtedness of the district, shall be affected thereby; and all lands liable to be assessed to pay any of such bonds, warrants or other indebtedness shall remain liable to the same extent as if such reorganization had not been made, and any and all assessments theretofore levied or made against any such lands shall be and remain unimpaired and shall be collected in the same manner as if no such reorganization had been had. The legislative authority of the county in which such reorganized district is situated shall have all the powers possessed at the time of the reorganization by the board of commissioners of such district to levy, assess, and cause to be collected any and all assessments or charges against any of the lands within such district that may be necessary or required to provide funds for the payment of all the bonds, warrants and other indebtedness thereof. [1985 c 396 § 51; 1933 c 182 § 5; RRS § 4477-5. Formerly RCW 85.20.050, part and 85.20.060, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.22.060 Refunding bonds.** Whenever in any district reorganized under the provisions of this chapter any bonds

issued prior to such reorganization shall become payable and the county legislative authority determines that it is in the interest of the property owners of the district to have refunding bonds issued, the county legislative authority may authorize the district to issue refunding bonds in accordance with chapter 85.38 RCW. [1986 c 278 § 37; 1933 c 182 § 6; RRS § 4477-6. Formerly RCW 85.20.070, part.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.22.130 Powers of board.** The board of county commissioners shall have all the powers possessed by the board of commissioners of any district reorganized under the provisions of this chapter prior to such reorganization, to levy assessments for the payment of the interest on any other bonds of the district not then payable and refunded under the provisions of this chapter, and to levy assessments to provide a sinking fund for the liquidation of such bonds at their maturity. Such assessments shall be called and collected in the manner provided by the law under which they were assessed, and such bonds shall be paid as provided by the law under which they were issued. Proper funds shall be established in the county treasury for the proceeds of the payments of such assessments, and such funds shall be applied to the payment of the bonds for the payment of which they were levied. [1933 c 182 § 13; RRS § 4477-13. Formerly RCW 85.20.140, part.]

**85.22.140 Extensions to compensate for inadequate benefits—Payment.** Whenever in any district reorganized under the provisions of this chapter, extensions or additions are made to the system of improvements of the district to provide drainage or protection from overflow for lands previously found benefited and assessed for the construction of the original system of improvement which are not receiving benefits therefrom in proportion to the benefits found and the assessments levied against such lands, the costs of such extensions or additions shall be included as a cost of maintenance of the improvements of the district and shall be levied and collected in the manner provided for the levy and collection of such costs. [1933 c 182 § 14; RRS § 4477-14. Formerly RCW 85.20.150, part.]

### **Chapter 85.24 RCW**

#### **DIKING AND DRAINAGE DISTRICTS IN TWO OR MORE COUNTIES**

##### Sections

85.24.010	Districts authorized—Powers—Designation.
85.24.015	Certain powers and rights governed by chapter 85.38 RCW.
85.24.025	Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation.
85.24.065	Special assessments—Budgets—Alternative methods.
85.24.070	Board of commissioners—Oath, bond—Plan of improvement—Levy of assessment, procedure.
85.24.071	Board of commissioners—Power to conduct business, make contracts, etc.
85.24.073	Board of commissioners—Construction and maintenance powers.
85.24.075	Board of commissioners—Duties of board officers—Quorum.
85.24.077	Board of commissioners—Power to adjourn proceedings.
85.24.079	Board of commissioners—Rules and regulations.
85.24.080	Board of commissioners—Compensation and expenses—Secretary's salary—Affidavit of amounts.
85.24.130	Objections to assessment—Procedure.
85.24.140	Judicial review.

- 85.24.150 Lien of assessments—Notice and collection.
- 85.24.160 Payment of assessment without interest.
- 85.24.170 District treasurer—Collection, remittance and disbursement of assessments.
- 85.24.180 Sale of property for delinquency—Procedure—Purchaser’s interest.
- 85.24.190 Disposal by commissioners of lands not redeemed from sale—Use of proceeds.
- 85.24.200 Reassessments.
- 85.24.220 Segregation of assessments.
- 85.24.235 Special assessment bonds.
- 85.24.240 Counties to contribute for benefits to roads, bridges, or health of people.
- 85.24.250 Municipality may contribute.
- 85.24.260 Acquisition of property—Eminent domain.
- 85.24.261 Eminent domain—Procedure.
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- 85.24.265 Eminent domain—Against public lands.
- 85.24.270 Cities may be included in district.
- 85.24.275 Assessment of state lands.
- 85.24.280 Improvement of streams—Scope of powers.
- 85.24.285 Improvement of streams—Stream beds are property of district—Disposition.
- 85.24.290 Service of notices on agent of owner.
- 85.24.310 Adjustment of indebtedness with the state.
- 85.24.900 Validation of existing districts—1923 c 140.

Special district creation and operation: Chapter 85.38 RCW.

**85.24.010 Districts authorized—Powers—Designation.** Whenever a portion of two or more counties require diking, drainage, or the erection of flood dams or drift barriers to prevent inundations, such portion of two or more counties may be organized into a district; and the board of commissioners, hereinafter provided for, shall have and possess the powers herein conferred, or that may hereafter be conferred by law upon such districts and board of commissioners, and all such powers not in conflict with those herein granted, which now exist under the provisions of the laws of the state relating to the establishment, construction and maintenance of dikes and drains; and such districts shall be known and designated as "Diking and Drainage District No. . . . in . . . . . and . . . . . counties (here insert name of counties), of the state of Washington"; and shall have the right to sue and be sued by, in the name of its board of commissioners herein provided for, and shall have perpetual succession, and shall adopt and use a seal. [1923 c 140 § 1; 1909 c 225 § 1; RRS § 4361.]

**85.24.015 Certain powers and rights governed by chapter 85.38 RCW.** Intercounty diking and drainage districts shall possess the authority and shall be created, district voting rights shall be determined, and district elections shall be held as provided in chapter 85.38 RCW. [1985 c 396 § 34.]

Severability—1985 c 396: See RCW 85.38.900.

**85.24.025 Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation.** Intercounty diking and drainage improvement districts may annex territory, consolidate with other special districts, and have their operations suspended and be reactivated, in accordance with chapter 85.38 RCW. [1986 c 278 § 14.]

Severability—1986 c 278: See note following RCW 36.01.010.

**85.24.065 Special assessments—Budgets—Alternative methods.** RCW 85.38.140 through 85.38.170 constitute a mutually exclusive alternative method by which inter-

county diking and drainage districts in existence as of July 28, 1985, may measure and impose special assessments and adopt budgets. RCW 85.38.150 through 85.38.170 constitute the exclusive method by which intercounty diking and drainage districts created after July 28, 1985, may measure and impose special assessments and adopt budgets. [1985 c 396 § 27.]

Severability—1985 c 396: See RCW 85.38.900.

**85.24.070 Board of commissioners—Oath, bond—Plan of improvement—Levy of assessment, procedure.** A three-member board of commissioners shall be the governing body of an intercounty diking and drainage district. The initial commissioners shall be appointed, and the elected commissioners elected, as provided in chapter 85.38 RCW.

The members of such board, before entering upon their duties, shall take and subscribe on oath substantially as follows:

State of Washington	}	ss.
County of . . . . .		

I, the undersigned, a member of the board of commissioners of the diking and drainage district No. . . . ., in . . . . . and . . . . . counties, do solemnly swear (or affirm) that I will faithfully discharge my duties as a member of the commission.

Upon the taking of such oath and the entering into a bond, as provided in RCW 85.38.080, the county legislative authority shall enter an order upon its records that the three persons named have qualified as the board of commissioners for diking and drainage district No. . . . ., in . . . . . and . . . . . counties, and that those persons and their successors do and shall constitute a board of commissioners for the diking and drainage district. The order when made shall be conclusive of the regularity of the election and qualification of the board of diking and drainage commissioners for the particular district, and the persons named therein shall constitute the board of diking and drainage commissioners.

The board of diking and drainage commissioners shall thereupon immediately organize and elect one of their number as chairman and may either appoint a voter of the district or another diking and drainage commissioner to act as secretary. The board shall then proceed to make and cause to be made specifications and details of a system which may be adopted by the board for the improvements to be made, together with an estimate of the total cost thereof; and shall, upon the adoption of the plan of improvement of the district, proceed to acquire the necessary property and property rights for the construction, establishment and maintenance of the system either by purchase or by power of eminent domain as hereinafter provided. Upon such acquisition being had, the board shall then proceed with the construction of the diking and drainage system and in doing so shall have the power to do the work directly or in its discretion to have all or any part of the work done by contract. In case the board shall decide upon doing the same by contract, it shall advertise for bids for the construction work, or such part thereof as they may determine to have done by contract, and shall have the authority to

let a contract to the lowest responsible bidder after advertising for bids.

Any contractor doing work hereunder shall be required to furnish a bond as provided by the laws of the state of Washington relating to contractors of public work.

The board shall have the right, power and authority to issue vouchers or warrants in payment or evidence of payment of any and all expenses incurred under this chapter, and shall have the power to issue the same to any contractor as the work progresses, the same to be based upon the partial estimates furnished from time to time by engineers of the district. All warrants issued hereunder shall draw interest at a rate determined by the board.

Upon the completion of the construction of the system, and ascertainment of the total cost thereof including all compensation and damages and costs and expenses incident to the acquiring of the necessary property and property right, the board shall then proceed to levy an assessment upon the taxable real property within the district which the board may find to be specially benefited by the proposed improvements; and shall make and levy such assessment upon each piece, lot, parcel and separate tract of real estate in proportion to the particular and special benefits thereto. Upon determining the amount of the assessment against each particular tract of real estate as aforesaid, the commissioners shall make or cause to be made an assessment roll, in which shall appear the names of the owners of the property assessed, so far as known, and a general description of each lot, block, parcel or tract of land within the district, and the amount assessed against the same, as separate, special or particular benefits. The board shall thereupon make an order setting and fixing a day for hearing any objections to the assessment roll by any one affected thereby, which day shall be at least twenty days after the mailing of notices thereof, postage prepaid, as herein provided. The board shall send or cause to be sent by mail to each owner of the premises assessed, whose name and place of residence is known, a notice, substantially in the following form:

To . . . . .: Your property (here describe the property) is assessed \$ . . . . . A hearing on the assessment roll will be had before the undersigned at the office of the board at . . . . . on the . . . . day of . . . . . at which time you are notified to be and appear and to make any and all objections which you may have as to the amount of the assessment against your property, or as to whether it should be assessed at all; and to make any and all objections which you may have to the assessment against your lands, or any part or portion thereof.

The failure to send or cause to be sent such notice shall not be fatal to the proceedings herein described. The secretary of the board on the mailing of the notices shall certify generally that he has mailed such notices to the known address of all owners, and such certificate shall be prima facie evidence of the mailing of all such notices at the date mentioned in the certificate.

The board shall cause at least ten days' notice of the hearing to be given by posting notice in at least ten public places within the boundaries of the district, and by publishing the same at least five successive times in a daily newspaper published in each of the counties affected; and for at least two successive weeks in one or more weekly newspapers within the boundaries of the district, in each county if there are such

newspapers published therein, and if there is no such newspaper published, then in one or more weekly newspapers, having a circulation in the district, for two successive weeks. The notice shall be signed by the chairman or secretary of the board of commissioners, and shall state the date and place of hearing of objections to the assessment roll and levy, and of all other objections; and that all interested parties will be heard as to any objection to the assessment roll and the levies as therein made. [1985 c 396 § 53; 1981 c 156 § 26; 1923 c 140 § 4; 1909 c 225 § 5; RRS § 4365. FORMER PART OF SECTION: 1909 c 225 §§ 9, 11, 21, 28, 32 now codified as RCW 85.24.071, 85.24.073, 85.24.075, 85.24.077, and 85.24.079. Formerly RCW 85.24.070, 85.24.090, 85.24.100, 85.24.110, and 85.24.120.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.24.071 Board of commissioners—Power to conduct business, make contracts, etc.** The commissioners herein provided for and their successors in office, shall from the time of their election and qualifications aforesaid, have the power, and it shall be their duty, to manage and conduct the business affairs of the district, making and executing all necessary contracts, appoint such agents and employees as may be required, and prescribe their duties, and perform any and all acts which may be necessary, proper or requisite to carry into effect their duties as commissioners, and all such other acts as may be provided in this chapter or in any other act. [1909 c 225 § 9; RRS § 4369. Formerly RCW 85.24.070, part.]

**85.24.073 Board of commissioners—Construction and maintenance powers.** Said board of commissioners herein provided for shall have the exclusive charge of the construction and maintenance of all dikes and drainage systems which may be constructed within the said district, and shall be the executive officers thereof, with full power to bind said district by their acts in the performance of their duties as provided by law. [1909 c 225 § 11; RRS § 4371. Formerly RCW 85.24.070, part.]

**85.24.075 Board of commissioners—Duties of board officers—Quorum.** The chairman of the board shall preside at all meetings and shall have the right to vote upon all questions the same as other members, and shall perform such duties in addition to those in this chapter prescribed as may be fixed by the board. The secretary of the board shall perform the duties in this chapter prescribed, and such other duties as may be fixed by the board. A majority of the board shall constitute a quorum for the transaction of business, but it shall require a majority of the entire board to authorize any action by the board. [1909 c 225 § 21; RRS § 4381. Formerly RCW 85.24.070, part.]

**85.24.077 Board of commissioners—Power to adjourn proceedings.** The board of commissioners shall have power to adjourn any and all proceedings before them from time to time. [1909 c 225 § 28; RRS § 4388. Formerly RCW 85.24.070, part.]

**85.24.079 Board of commissioners—Rules and regulations.** The board shall have power and authority to make rules and regulations for the purpose of carrying into effect any of the provisions of this chapter. [1909 c 225 § 32; RRS § 4392. Formerly RCW 85.24.070, part.]

**85.24.080 Board of commissioners—Compensation and expenses—Secretary's salary—Affidavit of amounts.** The members of the board may receive as compensation up to seventy dollars for attendance at official meetings of the district and for each day or major part thereof for all necessary services actually performed in connection with their duties as commissioners: PROVIDED, That such compensation shall not exceed six thousand seven hundred twenty dollars in one calendar year: PROVIDED FURTHER, That the board may fix a different salary for the secretary thereof in lieu of the per diem. Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW. The salary and expenses shall be paid by the treasurer of the fund, upon orders made by the board. Each member of the board must before being paid for expenses, take vouchers therefore from the person or persons to whom the particular amount was paid, and must also make affidavit that the amounts were necessarily incurred and expended in the performance of his or her duties.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. [1998 c 121 § 11; 1991 c 349 § 23; 1985 c 396 § 54; 1909 c 225 § 33; RRS § 4393.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.24.130 Objections to assessment—Procedure.** Any person interested in any real estate affected by said assessment may, within the time fixed, appear and file objections. As to all parcels, lots or blocks as to which no objections are filed, within the time as aforesaid, the assessment thereon shall be confirmed and shall be final. On the hearing, each person may offer proof, and proof may also be offered on behalf of the assessment, and the board shall affirm, modify, change and determine the assessment, in such sum as to the board appears just and right. The commissioners may increase the assessment during such hearing upon any particular tract by mailing notice to the owner at his last known address, to be and appear within a time not less than ten days after the date of the notice, to show cause why his assessment should not be increased. When the assessment is finally equalized and fixed by the board, the secretary thereof shall certify the same to the county treasurer of each county in which the lands are situated, for collection; or if appeal has been taken from any part thereof, then so much thereof as has not been appealed from shall be certified. In case any owner of property appeals to the superior court in relation to the

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assessment or other matter when the amount of the assessment is determined by the court finally, either upon determination of the superior court, or review by the supreme court or the court of appeals, then the assessment as finally fixed and determined by the court shall be certified by the clerk of the proper court to the county treasurer of the county in which the lands are situated and shall be spread upon and become a part of the assessment roll hereinbefore referred to. [1988 c 202 § 82; 1971 c 81 § 167; 1909 c 225 § 6; RRS § 4366.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**85.24.140 Judicial review.** Any person who feels aggrieved by the final assessment made against any lot, block or parcel of land owned by him, may appeal therefrom to the superior court of the county in which the land is situated. Such appeal shall be taken within the time and substantially in the manner prescribed by the laws of this state for appeals from justices' courts. All notice of appeal shall be filed with the said board, and shall be served upon the prosecuting attorney of the county in which the action is brought. The secretary of the board shall, at appellant's expense, certify to the superior court so much of the record as appellant may request, and the cause shall be tried in the superior court de novo.

Any person aggrieved by any final order or judgment made by the superior court concerning any assessment authorized by this chapter, may seek appellate review of the order or judgment as in other civil cases. [1988 c 202 § 83; 1971 c 81 § 168; 1909 c 225 § 7; RRS § 4367.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**85.24.150 Lien of assessments—Notice and collection.** The final assessment shall be a lien paramount to all other liens except liens for taxes and other special assessments upon the property assessed, from the time the assessment roll shall have been finally approved by the board, and placed in the hands of the county treasurers as collectors. After the roll shall have been delivered to the county treasurers for collection, each treasurer shall proceed to collect the amounts due in the manner that other taxes are collected as to all lands situated within the county of which he is treasurer. The treasurer shall give at least ten days' notice in one or more newspapers of general circulation in the counties in which the lands are situated for two successive weeks, that the roll has been certified to him for collection, and that unless payment be made within thirty days from the date of the notice, that the sum charged against each lot or parcel of land shall be paid in not more than ten equal annual payments, with interest upon the whole sum so charged, at a rate not to exceed seven percent per annum. The interest shall be paid annually. The county treasurer shall proceed to collect the amount due each year upon the publication of notice as hereinafter provided. In such publication notice it shall not be necessary to give a description of each tract, piece or parcel of land, or of the names of the owners thereof.

The treasurer shall also mail a copy of the notice to the owner of the property assessed, when the post office address of the owner is known to the treasurer; but the failure to mail the notice shall not be necessary to the validity of the collec-

tion of the tax. [1985 c 469 § 83; 1909 c 225 § 8; RRS § 4368.]

**85.24.160 Payment of assessment without interest.**

The owner of any lot or parcel of land charged with any assessment, as hereinbefore provided, may redeem the same from all liability by paying the entire assessment charged against such lot or parcel of land, or part thereof, without interest, within thirty days after notice to him of such assessment, as herein provided. [1986 c 278 § 38; 1983 c 167 § 199; 1909 c 225 § 17; RRS § 4377.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**85.24.170 District treasurer—Collection, remittance and disbursement of assessments.** The treasurer of each county shall collect the taxes levied and assessed hereunder upon all that portion of the property situated within the county for which the treasurer is acting. The treasurer of the county in which the smaller or minor portion of the taxes are to be collected shall forward the amount collected by him quarterly each year on the first Monday in January, April, July and October, to the treasurer of the county in which the larger or major portion of the taxes are to be collected. The treasurer of the county in which the larger portion of the taxes have been levied and assessed shall be the disbursing officer of such diking and drainage district, and shall pay out the funds of such district upon orders drawn by the chairman and secretary of the board acting under authority of the board, and shall be the treasurer of the fund. [1909 c 225 § 22; RRS § 4382.]

**85.24.180 Sale of property for delinquency—Procedure—Purchaser's interest.** If any of the installment of taxes are not paid as herein provided, the county treasurer shall sell all lots or parcels of land on which taxes have been levied and assessed, whether in the name of the designated owner or the name of an unknown owner, to satisfy all delinquent and unpaid assessments, interest, penalties and costs. The treasurer must commence the sale of property upon which taxes are delinquent within sixty days after the same become delinquent, and continue such sale from day to day thereafter until all the lots and parcels of land upon which taxes have not been paid are sold. Such sales shall take place at the front door of the court house. The proper treasurer shall give notice of such sales by publishing a notice thereof once a week for two successive weeks in two or more newspapers published within the district, or if no such newspaper is published, within the district, then within any two or more newspapers having a general circulation in such district; such notice shall contain a list of all lots and parcels of land upon which such assessments are delinquent, with the amount of interest, penalty and cost at the date of sale, including costs of advertising had upon each of such lots, pieces or parcels of land, together with the names of the owners thereof, if known to the treasurer, or the word "unknown" if unknown to the treasurer, and shall specify the time and place of sale, and that the several lots or parcels of land therein described, or so much as may be necessary, will be sold to satisfy the assess-

ment, interest, penalty and cost due upon each. All such sales shall be made between the hours of ten o'clock a.m. and three o'clock p.m. Such sales shall be made in the manner now prescribed by the general laws of this state for the sale of property for delinquent taxes, and certificates and deeds shall be made to the purchasers and redemptions made as is now prescribed by the general laws of this state in the manner and upon the terms therein specified: PROVIDED, That no tax deeds shall be made until after the expiration of one year after the issuance of the certificate, and during such year any person interested may redeem. A certificate of purchase shall be issued to the district for all lots and parcels of land not sold. Certificates issued to the district shall be delivered to the board of commissioners of the district. The board of commissioners of the district may sell and transfer any such certificate to any person who is willing to pay to the district the amount for which the lot or parcel of land therein described was stricken off to the district, with the interest subsequently accrued thereon. Within ten days after the completion of sale of all lots, pieces and parcels of land authorized to be sold as aforesaid, the treasurer must make a return to the board of commissioners with a statement of the doings thereon, showing all lots and parcels of land sold by him, to whom sold and the sum paid therefor. The purchaser at improvement sales acquires a lien on the lot, piece or parcel of land sold for the amount paid by him at such sales for all delinquent taxes and assessments, and all costs and charges thereon, whether levied previously or subsequently to such sale, subsequently paid by him on the lot or parcel of land, and shall be entitled to interest thereon at the rate of ten percent per annum from the date of such payment. [1909 c 225 § 23; RRS § 4383. Formerly RCW 85.24.180 and 85.24.190, part.]

**85.24.190 Disposal by commissioners of lands not redeemed from sale—Use of proceeds.** The board of commissioners of the district shall have the power to sell, lease and dispose of any and all lands which may be acquired by it by virtue of deeds issued to it by the treasurer for lands not redeemed from sale, and the funds derived from any disposition of such land shall become the fund of the district to be used for the benefit of the district under the direction of its board of commissioners. [1909 c 225 § 24; RRS § 4384. FORMER PART OF SECTION: 1909 c 225 § 23, part, now codified as RCW 85.24.180.]

**85.24.200 Reassessments.** If because of a substantial reduction of the amount of the assessment upon any lands, the result would be to leave the amount of the assessment upon other lands insufficient, or if for any cause the assessment should be held invalid or become inoperative, then the board shall have power to make a reassessment of all lands to the same extent as the original assessment. [1909 c 225 § 30; RRS § 4390.]

**85.24.220 Segregation of assessments.** When a piece, lot, or tract of land has been assessed in one body, if the same is subsequently subdivided by the owner, or there should be purchasers of different portions of such tract, then the owner or purchaser may pay the taxes upon such piece or tract of

land, paying the proportion which is proper upon such separate piece or tract. [1909 c 225 § 25; RRS § 4385.]

**85.24.235 Special assessment bonds.** Special assessment bonds and notes shall be issued and sold in accordance with chapter 85.38 RCW. [1986 c 278 § 26.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.24.240 Counties to contribute for benefits to roads, bridges, or health of people.** Whenever any highways, roads, or bridges are maintained by either county in which a diking and drainage district may be established, as herein provided, and it shall appear that the construction and maintenance of such diking and drainage system will be beneficial to such highways, roads, and bridges, or which will be beneficial to such highways, roads and bridges as may thereafter be constructed or maintained by the county, in which any part of the system of dikes and drains is situated, then the board of county commissioners of such county may, and it shall be the duty of such board to appropriate to such diking and drainage district an amount of money sufficient to pay the proportionate share of such county in accordance with the benefits received or to be received; and whenever it may appear to the board of county commissioners of any county that any improvements made or to be made in any diking or drainage district under the provisions of this chapter, shall on account of the health of the people of the county be beneficial in respect thereto, the board of county commissioners may make an appropriation of money to such diking and drainage district in such an amount to such board as may seem proper. [1909 c 225 § 18; RRS § 4378.]

*Basis of supplemental assessments:* RCW 85.07.050.

*Benefits to public roads, how paid:* RCW 85.07.040.

**85.24.250 Municipality may contribute.** Whenever it appears to the council of any incorporated city or town not included or not wholly included within the limits of any diking or drainage district established hereunder, which incorporated city or town may be within a county in which a portion of such district is located that the construction and maintenance of such diking and drainage system will be beneficial to the health and general welfare of the inhabitants of the incorporated city or town, then the city or town council may appropriate money out of the general funds of the city or town to such diking and drainage system, or the council may for such purpose impose assessments upon all the property in the city or town that benefits from facilities and activities of the diking or drainage district, and give the assessments to the diking or drainage district. [1991 c 349 § 7; 1973 1st ex.s. c 195 § 119; 1909 c 225 § 19; RRS § 4379.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

*Limitation of levies:* RCW 84.52.050.

**85.24.260 Acquisition of property—Eminent domain.** The districts organized under the provisions of this chapter, and the commissioners appointed and qualified as such shall have the right of eminent domain with the power by and through the board of commissioners to condemn and cause to be condemned and appropriated private property for

the use of said district in the construction and maintenance of the system of dikes, drains, flood dams and drift barriers, and for any other purpose proper, necessary and convenient for the purpose of carrying into effect the powers vested in said district and the commissioners thereof; and that the property of private corporations shall be subject to the same rights of eminent domain as private individuals. Said board of commissioners shall also have the power to acquire by purchase, in the name of the district, any and all real property necessary to make the improvements herein provided for. [1909 c 225 § 10; RRS § 4370. FORMER PART OF SECTION: 1909 c 225 §§ 12, 20, 27, now codified as RCW 85.24.261, 85.24.263, and 85.24.265.]

**85.24.261 Eminent domain—Procedure.** In the exercise of the right of eminent domain, all proceedings shall be prosecuted by the board of commissioners for and on behalf of the district, or in the name of the district itself, and such proceedings shall be conducted in the superior court of the county in which the lands sought to be condemned are situated, and shall be in the manner and in accordance with the procedure now provided by law regulating the mode of procedure to appropriate lands, real estate, or property by corporations for corporate purposes. [1909 c 225 § 12; RRS § 4372. Formerly RCW 85.24.260, part.]

**85.24.263 Eminent domain—Rights-of-way.** In the construction and maintenance of the improvements herein provided for, the said district may acquire by purchase or otherwise, and by the exercise of the right of eminent domain, any right-of-way through, over and across any property situated without said district which may be necessary or proper to the completion of the system of improvements. [1909 c 225 § 20; RRS § 4380. Formerly RCW 85.24.260, part.]

**85.24.265 Eminent domain—Against public lands.** Any district created hereunder is hereby granted the right to exercise the power of eminent domain against any lands or other property belonging to the state of Washington or any municipality thereof, and such power of eminent domain shall be exercised under and by the same procedure as is now, or may hereafter be, provided by the laws of this state for the exercise of the right of eminent domain by ordinary railroad corporations. [1909 c 225 § 27; RRS § 4387. Formerly RCW 85.24.260, part.]

*Corporations, eminent domain:* Chapter 8.20 RCW.

*Railroads, corporate powers:* Chapter 81.36 RCW.

**85.24.270 Cities may be included in district.** Within the limits of said diking or drainage district may be included any incorporated city or town, or any part thereof. [1909 c 225 § 14; RRS § 4374. FORMER PART OF SECTION: 1909 c 225 § 15, now codified as RCW 85.24.275.]

**85.24.275 Assessment of state lands.** Any of the state, school, or granted land within the district, shall also be assessed the same as other lands are assessed in proportion to the benefit, but any such lands shall not be sold for delinquencies, but the amount of the assessment shall be paid by the state at the time, in the manner, under the circumstances, and

in accordance with the provisions of the act relating to the payment by the state of assessments made on state, school and granted lands for the construction and maintenance of dikes and drains benefiting such lands, approved March 5, 1907; Laws of 1907, pp. 125-126. [1909 c 225 § 15; RRS § 4375. Formerly RCW 85.24.270, part.]

**Reviser's note:** The 1907 act referred to herein appears to be superseded by chapter 164, Laws of 1919 codified as chapter 79.44 RCW. See *Paine v. State*, 156 Wash. 31, 40. See also reviser's notes following RCW 85.05.110 and 85.06.110.

**85.24.280 Improvement of streams—Scope of powers.** Any district so established as aforesaid through its board of commissioners shall have the right, power and authority to straighten, deepen and improve any and all rivers, watercourses, or streams, whether navigable or otherwise, flowing through or located within the boundaries of said diking or drainage district, whenever necessary or proper in carrying out the objects of the system. The district by and through its board of commissioners shall also have the power to construct all needed auxiliary ditches, canals, flumes, locks, flood barriers, and all necessary artificial appliances in the construction of the system, and which shall be necessary and advisable to protect the land in any such district from overflow or to assist, or which may become necessary in the preservation or maintenance of such system. [1909 c 225 § 13; RRS § 4373. FORMER PART OF SECTION: 1909 c 225 § 26, now codified as RCW 85.24.285.]

**85.24.285 Improvement of streams—Stream beds are property of district—Disposition.** The board shall have power and authority to straighten, widen, deepen and improve any and all rivers, watercourses or streams, whether navigable or otherwise, flowing through or located within the boundaries of such district; and the beds of any streams or rivers which may be changed, shall become the property of the district, and the board shall have the power to sell and dispose of the same, or exchange the same or any portion thereof for other lands. [1909 c 225 § 26; RRS § 4386. Formerly RCW 85.24.280, part.]

**85.24.290 Service of notices on agent of owner.** When any notice is required to be given to the owner under any of the provisions of this chapter, such notice shall be given to the agent instead of the owner, in case the owner prior to the giving of the notice required by the board or proper officer has filed with the board or proper officer the name of the agent with his post office address. [1909 c 225 § 29; RRS § 4389.]

**85.24.310 Adjustment of indebtedness with the state.** See chapter 87.64 RCW.

**85.24.900 Validation of existing districts—1923 c 140.** The organization, establishment and creation of all diking and drainage districts in this state situated in two or more counties heretofore had or made, or attempted to be had or made, pursuant to the provisions of chapter 4, Title XXVII of Remington's Compiled Statutes, relating to the creation and establishment of such diking and drainage districts, and all acts, steps or proceedings had or attempted to be had by any

such district, are hereby for all purposes declared legal and valid, and such districts situated in two or more counties are hereby declared duly organized, established and created, and all contracts, obligations or debts heretofore made or incurred by or in favor of such diking and drainage district situated in two or more counties so attempted to be organized, established and created, and all official bonds or other obligations executed in connection with or in pursuance of such organization, are hereby declared legal and valid, and of full force and effect. [1923 c 140 § 6; RRS § 4376-1.]

## Chapter 85.28 RCW

### PRIVATE DITCHES AND DRAINS

#### Sections

85.28.010	Private parties authorized to establish ditches and drains.
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85.28.150	Dike, dam, or causeway at Bachelor Slough.

**85.28.010 Private parties authorized to establish ditches and drains.** The owner or owners of any land which requires drainage and which is so situated that it is necessary to the proper drainage of the same to construct ditches or drains across the lands of others, may obtain the location and establishment of such ditch or drain across such lands, in the manner provided in this chapter. [1899 c 125 § 1; RRS § 4394. Prior: 1883 p 77 § 1; 1875 p 92 § 2; 1863 p 485 § 1; 1858 p 31 § 1.]

**85.28.020 Petition to appropriate—Contents.** The person or persons desiring the location and establishment of such ditch or drain may file in the superior court of the county in which the lands sought to be appropriated are situated, a petition showing the name of the petitioner or petitioners; a description of the lands to be benefited, and of those over which the ditch would pass, and setting forth the name of every owner, incumbrancer, or other person or party interested in the lands over which said ditch would pass, or any part thereof, so far as the same can be ascertained from the public records of the county. Such petition shall also show the object for which the lands are sought to be appropriated, the necessity for the appropriation, and the length, width and depth of the ditch on the lands of each separate owner, with a description of said ditch, as nearly as practicable; and shall also set out the estimated damage to the lands of each owner to be crossed by such ditch. [1899 c 125 § 2; RRS § 4395. Prior: 1883 p 77 § 2, part.]

**85.28.030 Cost bond by petitioner.** The petitioner, or someone in his behalf, shall enter into a bond in the penal sum of one hundred dollars, with two or more sureties, to be

approved by the clerk of said court, payable to the state of Washington, conditioned that the petitioner or petitioners will pay all costs and expenses incurred in the proceeding; which said bond shall be filed with the petition. [1899 c 125 § 3; RRS § 4396. Prior: 1883 p 77 § 2, part.]

**85.28.040 Viewers to be appointed—Duties.** Upon the filing of said petition the court shall appoint three viewers, two of whom shall be resident freeholders of said county, and not interested in the result of the proceeding, and the other the \*county surveyor of the county in which the lands are situated (unless said \*county surveyor shall be a party in interest, in which case some other competent surveyor shall be appointed in his place who shall receive the same compensation as is allowed by law to \*county surveyors) who shall, upon a day to be fixed by the court, in the order appointing them, view the lands of the petitioner and the lands which said proposed ditch or drain is to cross, for the purpose of determining: First, whether there is a necessity for the establishment of a ditch; and, second, the most practicable route for said ditch to run, if the same be necessary. The clerk of said court shall furnish to said viewers a certified copy of the order appointing them, which shall warrant them entering upon the lands described in the petition for the purpose of viewing the same. [1899 c 125 § 4; RRS § 4397. Prior: 1883 p 78 § 4; Code 1881 § 2504; 1877 p 314 § 2; 1875 p 93 § 3; 1863 p 485 § 1; 1858 p 31 § 1.]

**\*Reviser’s note:** This section refers to the "county surveyor." 1907 c 160 § 1 designated the county surveyor as county engineer; 1925 ex.s. c 167 § 1 abolished the elective office of engineer, except in Class A and first class counties, and the powers and duties were transferred to the county commissioners with power to employ an engineer; 1937 c 187 § 4 provided duties to vest in county commissioners who were directed to employ a county road engineer. See RCW 36.75.050 and chapter 36.80 RCW.

**85.28.050 Report of viewers and plat to be filed.** When said viewers shall have made said examination they shall, within ten days after the day appointed by the court for such examination, report to the court, in writing, (filing the same with the clerk of said court) their decision as to the necessity for said ditch and if they deem such ditch necessary, then the \*county surveyor shall file with such report an accurate description and plat of the proposed ditch, showing the course thereof as recommended by the viewers. The viewers shall also estimate the amount of damage which each separate owner would suffer by reason of the construction thereof. [1899 c 125 § 5; RRS § 4398. Prior: 1883 p 79 § 8; Code 1881 § 2507; 1877 p 314 § 2; 1875 p 94 § 6.]

**\*Reviser’s note:** "county surveyor," see note following RCW 85.28.040.

**85.28.060 Summons to landowners—Contents and form.** Upon the filing of the report of the viewers aforesaid, a summons shall be issued in the same manner as summons are issued in civil actions, and served upon each person owning or interested in any lands over which the proposed ditch or drain will pass. Said summons must inform the person to whom it is directed of the appointment and report of the viewers; a description of the land over which said ditch will pass of which such person is the owner, or in which he has an interest; the width and depth of said proposed ditch, and the distance which it traverses said land, also an accurate descrip-

tion of the course thereof. It must also show the amount of damages to said land as estimated by said viewers; and that unless the person so summoned appears and files objections to the report of the viewers, within twenty days after the service of said summons upon him, exclusive of the day of service, the same will be approved by the court, which summons may be in the following form:

In the Superior Court of the State of Washington, for . . . . . County.

In the matter of the application of . . . . . for a private ditch.

The state of Washington to . . . . .

Whereas, on the . . . . day of . . . . . 19. . . filed his petition in the above entitled court praying that a private ditch or drain be established across the following described lands, to wit: . . . . .

. . . . . for the purpose of draining certain lands belonging to said . . . . ., and whereas, on the . . . . day of . . . . ., 19. . ., Messrs. . . . . and . . . . . with . . . . . \*county surveyor of . . . . . county, were appointed to view said premises in the manner provided by law, and said viewers having, on the . . . . day of . . . . ., 19. . ., filed their report in this court, finding in favor of said ditch and locating the same upon the following course: . . . . . for a distance of . . . . . upon said land, and of a width of . . . . feet and a depth of . . . . feet; and they further find that said land will be damaged by the establishing and construction of said ditch in the sum of \$. . . .: Now therefore, you are hereby summoned to appear within twenty days after the service of this summons, exclusive of the day of service, and file your objections to said petition and the report of said viewers, with this court; and in case of your failure so to do, said report will be approved and said petition granted.

Plaintiff’s Attorney.

P.O. Address . . . . .

[1899 c 125 § 6; RRS § 4399. Formerly RCW 85.28.060 and 85.28.070.]

**\*Reviser’s note:** "county surveyor," see note following RCW 85.28.040.

**85.28.080 Service by publication.** In case any person interested in any of the lands to be crossed by such ditch, as aforesaid, does not reside in the county, or cannot be found therein, or conceals himself so that personal service cannot be had upon him, upon proof thereof being made satisfactorily to appear to said court, said summons may be served by publication, in the same manner and with like effect as is done in civil actions: PROVIDED, That no other or different form of summons shall be required for publication than is required for personal service. [1899 c 125 § 7; RRS § 4400.]

**85.28.090 Trial—Findings or verdict—Decree—Time for payment of award.** Upon the expiration of the time within which exceptions may be filed to the report of the viewers aforesaid, the court shall set a day upon which the petition and the report of the viewers shall be heard and considered by the court. In case exceptions have been filed by

any party or parties, which exceptions must have been served upon the petitioner or petitioners prior to the hearing, the court shall hear evidence in regard thereto, and without a jury, pass upon the questions of the necessity for said ditch and the location thereof. If the court finds that such ditch is necessary, and the route selected is the best and most practicable, and that the compensation allowed by the viewers is just and reasonable, then the court shall file his findings to this effect and cause an order to be entered approving the petition and report of the viewers. If, within twenty days from the filing of the findings of facts aforesaid, the petitioner or petitioners shall pay into court all the costs and sums awarded to the owner or owners of the land over which said ditch shall pass, a decree shall be entered establishing the same: PROVIDED, If any party shall except to the amount of damages found by the viewers, then the amount of such damages shall be tried by jury, unless a jury trial be waived by the parties, in which case trial thereof may be had by the court. Such trial shall be at a regular term of said court, at which a jury shall be present, and shall be conducted and verdict rendered in the same manner as in civil actions: PROVIDED FURTHER, That it shall not be incumbent on the petitioner to pay into court the amount of the award or awards of said jury, until within twenty days after said verdict shall have been rendered and entered. [1899 c 125 § 8; RRS § 4401.]

**85.28.100 Appeal.** No appeal shall be taken from the finding of the court as to the necessity of such ditch or as to the route thereof until after final judgment or decree is entered: PROVIDED, That exceptions shall be taken and allowed to such orders at the time that they are made, and appeal from such orders and from the award of damages shall be taken at the same time. All the provisions of the law in regard to appeals in civil actions shall apply to the proceedings provided for in this chapter. [1899 c 125 § 9; RRS § 4402.]

**85.28.110 Compensation of viewers—Costs.** The viewers appointed under the provisions of this chapter shall receive the sum of two dollars per day for their services, and the \*county surveyor shall receive such compensation as is allowed by law for like services, the same to be taxed as costs and paid by the petitioner. All other costs shall be the same as in civil actions in the superior court. [1899 c 125 § 10; RRS § 4403.]

\*Reviser's note: "county surveyor," see note following RCW 85.28.040.

**85.28.120 New viewers may be appointed if report not adopted.** In case the court should not for any reason adopt the report of the viewers, or the same should be deemed insufficient for any reason, the court may appoint other viewers whose duties shall be the same as the duties of the viewers first appointed. [1899 c 125 § 11; RRS § 4404.]

**85.28.130 Drainage of tide or marsh lands—Division of cost between contiguous tracts.** Persons owning or desiring to improve contiguous tracts of tide marsh or swampy lands exposed to the overflow of the tide and capable of being made dry, may separate their respective tracts by a dike or

ditch, which shall make and designate their common boundary. In all such cases said dike or ditch shall be constructed at the equal cost and expense of the respective parties, and either party failing to pay his contributive share of such expense shall be liable to the party constructing the dike or ditch for such contributive share, or so much thereof as may remain due and unpaid, to be recovered in a civil action in a court of competent jurisdiction and the party constructing such dike shall also be entitled to a lien upon the tract of the party failing to pay his contributive share for the construction of said dike, or so much thereof as shall be due, which lien shall be secured and enforced as liens of materialmen and mechanics are now by law enforced. [Code 1881 § 2517; No RRS. Prior: 1877 p 258 § 1.]

**85.28.140 Dike or ditch as common boundary—Division of costs.** Any person or persons who may hereafter take a tract of tide land or marsh and shall desire to adopt as his boundary line any dike or ditch heretofore constructed upon and entirely within the boundary line of a neighboring contiguous tract he may join on to said tract and adopt said dike as his boundary by paying to the owner of the tract upon which said dike is constructed one-half of the cost and expense of the construction thereof, and any person so adopting the dike or ditch of another without contributing his half share of the cost or expense thereof shall be liable for his said half share, which may be recovered in a civil action in any court of competent jurisdiction, or the owner of the dike or ditch so used may secure a lien upon the tract of land bounded by said dike for the amount due for the use of said dike in accordance with the provisions of the law securing a lien to materialmen and mechanics: PROVIDED ALWAYS, That when such dike has become the common boundary [of two adjacent tracts, it shall be and remain the common boundary] and the persons owning the said tracts shall be mutually liable for the expense of keeping it in repair, share and share alike. [Code 1881 § 2518; No RRS. Prior: 1877 p 258 § 2.]

Reviser's note: Bracketed matter did not appear in the enrolled bill of 1881 but was bracketed in by the Code of 1881 to conform with the preceding session law of 1877 from which it was derived.

**85.28.150 Dike, dam, or causeway at Bachelor Slough.** It shall be lawful for any adjacent or abutting owner or owners, to construct a dike, dam, or causeway over or in the waters of the state of Washington described as: That certain body of water lying between Bachelor Island and the mainland, appearing on the state survey map made by Edw. C. Dohm, state field engineer, as Columbia Slough and designated on the map as compiled by the U.S. Coast and Geodetic Survey of September, 1937, Number "U.S.C.&G.S. 6154" as Bachelor Island Slough from its point of confluence with Lake River South to the Columbia River, in sections 13, 23, 24, 26 and 35, township 4 north, range 1 west of the Willamette Meridian, in Clark county, Washington: PROVIDED, That the location and plans thereto are submitted to and approved by the chief of engineers of the United States and the secretary of war of the United States, before construction is commenced subject to the terms of section 9 of the River & Harbor Act, approved March 3, 1899 (30 Stat. 1151; 33 U.S.C. 401) and: PROVIDED FURTHER, That all such dikes, dams, causeways, or other structures, shall be con-

structed at the expense of the owners. [1947 c 276 § 1; No RRS.]

**Chapter 85.32 RCW**

**DRAINAGE DISTRICT REVENUE ACT OF 1961**

Sections

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 85.32.020 Definitions.  
 85.32.030 Powers of board in general.  
 85.32.040 Initial determination—Roll—Resolution, contents.  
 85.32.050 Contents of roll—Assessed, equalized value prima facie correct—Separate levies for prior indebtedness—Adjustment of roll.  
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 85.32.090 Certification and filing of roll—Additional, supplemental roll supplements original.  
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 85.32.110 Roll is base for benefits against which levy made.  
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 85.32.150 Owners of extraterritorial lands on roll are electors and may be commissioners—Corporations.  
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 85.32.210 Levies are for continuous benefits.  
 85.32.220 Annual estimate of costs.  
 85.32.900 Powers and duties of chapter are supplemental.  
 85.32.910 Severability—1961 c 131.

**85.32.010 Declaration of necessity and purpose.** The maintenance of drainage districts is essential to the economy of the state. The influx of population and changes in land use since many such districts were formed, has made obsolete and unjust the method used under existing law to provide funds for the operation of such districts and for the maintenance and expansion of its drainage systems. Also, in many instances, properties lying outside of the territorial limits of such districts, have been and are being developed in such a manner that waters therefrom, through artificial rather than natural processes, are accumulated and discharged for outlet upon lands within such districts, and the facilities of such district are used without charge to furnish service and benefit to such lands. To furnish remedy for such situations where they are found to exist the state declares that it has an interest therein and this chapter is passed. [1961 c 131 § 2.]

**85.32.020 Definitions.** As used in this chapter:  
 "District" means a regularly formed and established drainage district under the provisions of this title.  
 "Board" means the board of commissioners of a regularly formed and established drainage district under the provisions of this title. [1961 c 131 § 3.]

**85.32.030 Powers of board in general.** The board may: (1) Make initial determination that the district's facilities furnish benefit to improvements upon land as well as land alone within the district in protecting against and furnishing run-off for surface and/or flood waters; (2) make initial deter-

mination that lands and improvements thereon outside of the territorial limits of the district are receiving a service from the facilities of the district, and are benefited thereby in that waters from such lands through ditches, drains, or other artificial methods, other than by natural flow or seepage, are so cast as to have outlet through the district's facilities; (3) determine that properties so found to be served should pay a just proportion of the operational and maintenance costs of the district; (4) in connection with so finding, cause a roll of property thus served and benefited by the district's facilities to be prepared and filed with it, and give notice of a hearing thereon as provided in this chapter; (5) hold public hearings to determine the ultimate facts and approve an ultimate roll of properties served and benefited by the facilities of the district and valuations thereof to serve as a basis against which annual dollar rate levy may be assessed for continuous benefits furnished such properties; make revision thereof as the facts warrant from time to time; provide for the levying of such dollar rate levy; and make return of such roll finally adopted by certifying and filing a copy thereof with the auditor, assessor and treasurer of the county wherein the properties involved are located. [1973 1st ex.s. c 195 § 120; 1961 c 131 § 4.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.32.040 Initial determination—Roll—Resolution, contents.** In the initial instance, when the board of any district, desires to use the method and procedure provided in this chapter, and in order that uniformity may be had, it may cause a roll of all properties within the district claimed to be benefited by its drainage system, and in addition or as a part thereof, a roll of all properties outside of the territorial limits of said district claimed to be served and benefited by the drainage systems of said district, to be prepared and filed with it. Thereupon, the board shall by resolution declare:

- (1) That it has made initial determination that the district's facilities are furnishing and will furnish service and benefit to the properties, including improvements thereon, described in such roll;
- (2) That such roll has been filed with it and will remain so filed and open to inspection by any party interested therein at all reasonable times;
- (3) That a public hearing will be held by the board at a time and place stated to give consideration to the facts and make ultimate determination of the same and to said roll;
- (4) That when said roll is finally adopted, annual dollar rate levies will be made by the district against said properties based upon the valuation thereof as shown on said roll when ultimately adopted to raise money based on benefit and service for the continuous operation and maintenance of said district;
- (5) That at the time of hearing, it will hear all objections filed and will review, adopt, modify, or revise said roll consistent with existing facts to the end that property receiving service and benefit from the facilities of the district shall pay justly and equitably therefor in proportion to benefit received and;
- (6) That upon said hearing or adjournments thereof, the board will determine the ultimate facts concerning service and benefit received by all properties ultimately contained in

said roll and as to such properties it will adopt the roll in final form and proceed as in this chapter provided. [1973 1st ex.s. c 195 § 121; 1961 c 131 § 5.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.32.050 Contents of roll—Assessed, equalized value prima facie correct—Separate levies for prior indebtedness—Adjustment of roll.** The roll of properties referred to in this chapter shall contain (1) a description of all properties and improvements thereon, with the name of the owner or the reputed owner thereof and his address as shown on the tax rolls of the assessor or treasurer of the county wherein the property is located, and (2) the determined value of such land and improvements thereon as last assessed and equalized by the taxing agencies of such county. Such assessed and equalized values shall be deemed prima facie as a just, fair and correct base of value for consideration by the board in its determination ultimately of the just and correct base of value in each instance against which annual dollar rates shall be levied by the district for the operation of the district and the expansion and maintenance of its facilities.

If property outside of the territorial limits of the district are upon the roll as adopted ultimately, and the district has prior indebtedness existing, the board shall set up separate dollar rate levies for the retirement thereof until it is extinguished, which levies shall be applied solely against the properties within the territorial limits of the district. Adjustments of the roll shall be made before final adoption in such a manner that the money raised through annual dollar rate levies for maintenance, expansion and operational costs of the district in no instance shall exceed the value of the service rendered or to be rendered and the benefit received and to be received by the property involved. [1973 1st ex.s. c 195 § 122; 1961 c 131 § 6.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.32.060 Notice of hearing—Contents.** When the board causes a property roll to be filed with it and a hearing to be held thereon as provided in this chapter, it shall give notice of the hearing in the following manner:

The notice shall be published at least three times in consecutive issues in a weekly newspaper, or once a week for three consecutive weeks in a daily newspaper having general circulation in the area involved. The last publication shall be more than fifteen days prior to date of hearing. The board also shall cause a copy of the notice to be mailed in regular course of the federal mail at least thirty days prior to the date of the hearing to the owner or reputed owner of the property at his address, all as shown on the tax rolls or records of the county taxing agencies of the county wherein the property is situated, such notice being deemed adequate and sufficient. The sworn affidavit of the one doing such mailing shall be deemed conclusive of the fact that the notice was mailed.

The notice shall state the following:

(1) That the board has tentatively determined that the property of the owner or reputed owner named is receiving and will receive service and benefit from the facilities of the district;

(2) That the board has caused a tentative roll of the properties with any improvements thereon which are receiving and will receive service and benefit to be filed with it; and that the roll shows a base of valuation thereon for the properties against which annual dollar rates will be levied and collected in the same manner as general taxes to pay the fair value of the benefit and service received and to be received by the property through use of the facilities of the district, and to pay the annual cost of operation, development and maintenance of the district and its facilities;

(3) That on a date, time and place stated, the board will give consideration to the facts and the roll, will hear all objections filed, will review the roll and alter, modify, or change the same consistent with facts established and with equity and fair dealing concerning the properties involved to the end that just levies will be made for service and benefits received and to be received against each property for the purposes mentioned; and at the hearing or continuance thereof, it will adopt the roll in final form and certify and file a copy thereof with the assessor and treasurer of the county wherein the property is located; and will cause annual millage to be levied against such established valuations for the purposes stated;

(4) That all persons desiring to object to the proceedings, to the proposed base valuations, or to any other thing or matter in connection with the proceedings, must file written objections with the board stating clearly the basis of the objection before the time of the hearing, or all objections will be deemed waived. [1985 c 469 § 84; 1973 1st ex.s. c 195 § 123; 1961 c 131 § 7.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.32.070 Written objections—Filing—Grounds—Waiver.** Any person, owner or reputed owner having any interest in any property against which the board seeks to make a service and benefit charge under this chapter, may object thereto. All such objections must be in writing and filed with the board before the hearing is commenced upon the roll containing such properties and must state clearly the grounds of such objection. Objections not made within this time and in this manner shall be deemed conclusively to have been waived. [1961 c 131 § 8.]

**85.32.080 Additional roll due to omitted property or changed conditions.** The board shall from time to time examine the properties within and without said district, and if it finds tentatively that property, including improvements thereon, has been omitted from the existing roll, or conditions have changed so that there are new properties or additional properties receiving benefit and service from the facilities of the district without charge, it shall cause from time to time an additional roll of such property to be filed with it and shall proceed in the same manner as provided in this chapter where the board causes property roll to be filed with it. [1961 c 131 § 9.]

**85.32.090 Certification and filing of roll—Additional, supplemental roll supplements original.** When any roll or additional or supplemental roll is adopted by the board, a copy thereof shall be certified to and filed with the

auditor, the assessor and the treasurer of the county wherein the property contained on said roll is situated. Where the roll is a supplemental or additional roll, it shall supplement the original roll. [1961 c 131 § 10.]

**85.32.100 Reexamination of properties—Supplemental roll—Certification and filing.** The board may at any time reexamine the properties on any roll, and upon request of an owner shall do so, and if it is found that the condition of such property or properties has changed so that justly such property should be eliminated from any rolls on file, or the base against which dollar rate is levied should be lowered, it shall so determine and make a supplemental roll with reference to such property or properties. When adopted by it, the board shall certify and file a copy thereof with the auditor, assessor and treasurer of the county wherein the property is situated, and such officer shall alter and change the existing rolls accordingly. [1973 1st ex.s. c 195 § 124; 1961 c 131 § 11.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.32.110 Roll is base for benefits against which levy made.** The roll certified to the county officers as in this chapter provided, and any modification thereof as provided, shall serve as the base of benefits as to land, buildings and improvements furnished service and benefit by the systems of the district against which valuations dollar rates shall be levied and collected in the same manner as general taxes from time to time for the continuing functioning of the district and its systems. The dollar rate shall be levied in the manner required by law for dollar rate levies by drainage districts. [1973 1st ex.s. c 195 § 125; 1961 c 131 § 12.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.32.120 Levy for outstanding indebtedness.** If any property outside of the territorial limits of the district is placed upon a roll as finally adopted, and at the time such property becomes subject to charge for service and benefit from the district's system, there is an existing outstanding indebtedness owing by the district, the board shall make a separate estimate of the revenue required to be raised to pay or apply upon such indebtedness until it is extinguished, and it shall proceed and certify the same as hereinabove provided, and no dollar rate for raising revenue to extinguish such indebtedness shall be included in the levies made against any properties lying outside of the territorial limits of said district.

When thus levied, the amount of assessment produced thereby shall be added by the general taxing authorities to the general taxes against said lands and collected therewith as a part thereof. If unpaid, any delinquencies in such assessments shall bear interest at the same rate and in the same manner as general taxes and they shall be included in and be made a part of any general tax foreclosure proceedings according to the provisions of law with relation to such foreclosures. As assessment collections are made, the county treasurer shall credit same to the funds of such district. [1973 1st ex.s. c 195 § 126; 1961 c 131 § 13.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

(2006 Ed.)

**85.32.130 Emergency warrants in excess of estimates.** In the case of an emergency or disaster not in contemplation at the time of making the annual estimate of costs and declared to be such by resolution of the board, the board may incur additional obligations and issue valid warrants therefor in excess of such estimate in the manner provided by law for issuance of warrants by drainage districts and the servicing thereof, and all such warrants so issued shall be valid as shown upon the then current roll of said district filed with the county auditor. [1961 c 131 § 14.]

**85.32.140 Chapter exclusive method—Concurrent use of other method to extinguish prior indebtedness—Special assessment bonds.** Any district choosing to operate under this chapter shall not use the processes provided for raising revenue under any other law: PROVIDED, That if for any reason it is deemed more just and advisable by the board, any such other method or process for raising revenue as provided by law may be used concurrently against properties solely within the territorial limits of the district for the sole purpose of extinguishing indebtedness incurred before the district adopts the procedure of this chapter, in which event no funds raised under this chapter shall be used to pay such prior indebtedness. However, when a drainage district issues special assessment bonds or notes after June 1, 1986, the process of raising revenue related to the bonds or notes shall be as specified in chapter 85.38 RCW. [1986 c 278 § 39; 1961 c 131 § 15.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.32.150 Owners of extraterritorial lands on roll are electors and may be commissioners—Corporations.** Whenever lands, or lands with improvements thereon, lying outside of the existing territorial limits of such district are ultimately placed upon the assessment roll of such district in the manner provided by this chapter so that such lands are subject to maintenance benefits as provided, the owner of such land shall be deemed to be an elector within such district, and shall have the same right to participate in all district affairs and to vote upon all matters submitted to the electors of said district, including that of electing or becoming commissioners for the district, all in the manner provided for voting and elections under existing law pertaining to drainage districts. If such owner is a corporation, one of its duly constituted officers shall be deemed to have the right as an elector to vote on behalf of such corporation. [1961 c 131 § 16.]

**85.32.160 Roll proceedings are conclusive—Injunction upon limited grounds.** Whenever any roll shall have been adopted by the board, the regularity, validity and correctness of the proceedings relating thereto shall be conclusive upon all parties and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll as provided in RCW 85.18.050 and appealing from the action of the board in confirming such roll in the manner and within the time in this chapter provided. No proceeding of any kind, except proceedings had through the process of appeal as in this chapter provided, shall be commenced or prosecuted or may be maintained for the purpose of defeating or contesting any assess-

ment or charge made through levies under this chapter, or the sale of any property to pay such charges: PROVIDED, That a suit in injunction may be brought to prevent collection of charges or assessments or sale of property thereunder upon the following grounds and no other: (1) That the property charged or about to be sold does not appear upon the district roll filed with the county auditor, or (2) the charge or assessment has been paid. [1961 c 131 § 17.]

**85.32.170 Judicial review—Petition to superior court.** The decision of the board upon any objection made within the time and in the manner prescribed in this chapter may be reviewed by the superior court of the county wherein the property in question is located. Any person aggrieved must file his petition for writ of review with the clerk of the superior court wherein the property is located within ten days after the roll affecting such aggrieved party was adopted by resolution, and he shall serve a copy thereof upon the board. The petition shall describe the property in question, set forth the written objections which were made to the decision, give the date of filing of such objections, and shall be signed by such party or someone in his behalf. The court shall forthwith grant such petition if correct as to form and filed in accordance with this section. [1961 c 131 § 18.]

**85.32.180 Judicial review—Filing of transcript, objections, resolution—Filing fees—No bond required—Notice of hearing and trial.** Within ten days after the filing of such petition for review, the board, unless the court shall grant additional time, shall file with the clerk of such court its certified transcript containing such portion of the roll as is subject to review, any written objections thereto filed with the board by the petitioner before such roll was adopted, and a copy of the resolution adopting the roll. The filing fee shall be a cost recoverable by petitioner against the district.

The clerk of the court shall charge the same filing fees for petitions for review as in other civil actions. The appellant need not file any bond to cause review to be had by the superior court. The court shall, on motion of either party to the cause, with notice to the other party, set the same for hearing and trial without jury at the earliest time available. [1961 c 131 § 19.]

**85.32.190 Judicial review—Scope of trial.** At the trial the court shall determine whether the board has acted within its discretion and has correctly construed and applied the law. If it finds that it has, the findings and decision of the board shall be affirmed; otherwise it shall be reversed or modified. The judgment of the court may change, confirm, correct, or modify the values of the property in question as shown upon the roll, and a certified copy thereof shall be filed with the county auditor, who shall change, modify or correct as and if required. [1961 c 131 § 20.]

**85.32.200 Appellate review.** Appellate review may be sought as in other civil cases: PROVIDED, That such review must be sought within fifteen days after the date of entry of the judgment of the superior court. The supreme court or the court of appeals on such review may change, confirm, correct or modify the values of the property in question as shown

upon the roll. A certified copy of any judgment of the supreme court or the court of appeals shall be filed with the county auditor having custody of such roll, who shall thereupon change, modify, or correct such roll in accordance with such decision, if required. [1988 c 202 § 84; 1971 c 81 § 169; 1961 c 131 § 21.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**85.32.210 Levies are for continuous benefits.** The dollar rate levy returns collected from time to time under this chapter are solely assessments for benefits received continuously by the benefited properties, calculated in the manner specified in this chapter as a just and equitable way for all benefited property to share the expense of such required service. [1973 1st ex.s. c 195 § 127; 1961 c 131 § 22.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**85.32.220 Annual estimate of costs.** The board of any drainage district proceeding under this chapter shall, on or before the first day of November of each year, make an estimate of the costs reasonably anticipated to be required. [1961 c 131 § 23.]

**85.32.900 Powers and duties of chapter are supplemental.** The rights, powers and duties granted and imposed by this chapter are supplemental and in addition to any existing rights, powers and duties of drainage districts established under this title. [1961 c 131 § 24.]

**85.32.910 Severability—1961 c 131.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1961 c 131 § 25.]

## Chapter 85.36 RCW

### POWERS OF SPECIAL DISTRICTS

(Formerly: Consolidation of districts)

#### Sections

85.36.005	Certain powers and rights governed by chapter 85.38 RCW.
85.36.025	Special assessments—Budgets—Alternative methods.
85.36.040	Special assessment bonds.
85.36.050	Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation.

*Special district creation and operation: Chapter 85.38 RCW.*

**85.36.005 Certain powers and rights governed by chapter 85.38 RCW.** Consolidated diking districts, drainage districts, diking improvement districts, and drainage improvement districts shall possess the authority and shall be created, district voting rights shall be determined, and district elections shall be held as provided in chapter 85.38 RCW. [1985 c 396 § 35.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.36.025 Special assessments—Budgets—Alternative methods.** RCW 85.38.140 through 85.38.170 constitute a mutually exclusive alternative method by which consolidated diking districts, drainage districts, diking improvement

districts, and/or drainage improvement districts in existence as of July 28, 1985, may measure and impose special assessments and adopt budgets. RCW 85.38.150 through 85.38.170 constitute the exclusive method by which consolidated diking districts, drainage districts, diking improvement districts, and/or drainage improvement districts created after July 28, 1985, may measure and impose special assessments and adopt budgets. [1985 c 396 § 28.]

**Severability—1985 c 396:** See RCW 85.38.900.

**85.36.040 Special assessment bonds.** Special assessment bonds and notes shall be issued and sold in accordance with chapter 85.38 RCW. [1986 c 278 § 27.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.36.050 Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation.** Consolidated diking districts, drainage districts, diking improvement districts, and/or drainage improvement districts may annex territory, consolidate with other special districts, and have their operations suspended and be reactivated, in accordance with chapter 85.38 RCW. [1986 c 278 § 15.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

## Chapter 85.38 RCW

### SPECIAL DISTRICT CREATION AND OPERATION

#### Sections

85.38.001	Actions subject to review by boundary review board.
85.38.005	Purpose.
85.38.010	Definitions.
85.38.020	Establishment of special districts—Petition or resolution—Contents.
85.38.030	Investigation of proposed boundaries and districts—Report.
85.38.040	Proposed special districts—Public hearing—Notice.
85.38.050	Public hearing—Elections.
85.38.060	Elections—Notice—Costs.
85.38.070	Governing board—Terms of office—Election—Appointment—Vacancies—Qualifications.
85.38.075	Governing body—Compensation and expenses.
85.38.080	Governing body—Bond.
85.38.090	Governing body—Reduction in size.
85.38.100	General elections.
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85.38.115	Elections—When not required.
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85.38.230	Special assessment bonds authorized.
85.38.240	Special assessment bonds—Issuance—Terms.
85.38.250	Special assessment bonds—Guaranty fund.
85.38.260	Special assessment bonds—Refunding.
85.38.270	Special assessment bonds issued prior to July 1, 1986.
85.38.280	Cooperative watershed management.
85.38.900	Severability—1985 c 396.

**85.38.001 Actions subject to review by boundary review board.** The establishment of a drainage district, drainage improvement district, or drainage or diking improvement district may be subject to potential review by a boundary review board under chapter 36.93 RCW. Annexations, consolidations, or transfers of territory by a drainage district, drainage improvement district, or drainage or diking improvement district may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 64.]

**85.38.005 Purpose.** The purpose of this chapter is to provide uniform and simplified procedures for the creation, elections, and operations of various special districts that provide diking, drainage, and flood control facilities and services. The legislature finds that it is in the public interest to clarify and standardize the laws relating to these special districts. [1985 c 396 § 1.]

**85.38.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Governing body" means the board of commissioners, board of supervisors, or board of directors of a special district.

(2) "Owner of land" means the record owner of at least a majority ownership interest in a separate and legally created lot or parcel of land, as determined by the records of the county auditor, except that if the lot or parcel has been sold under a real estate contract, the vendee or grantee shall be deemed to be the owner of such land for purposes of authorizing voting rights. It is assumed, unless shown otherwise, that the name appearing as the owner of property on the property tax rolls is the current owner.

(3) "Qualified voter of a special district" means a person who is either: (a) A natural person who is a voter under general state election laws, registered to vote in the state of Washington for a period of not less than thirty days before the election, and the owner of land located in the special district for a period of not less than thirty days before the election; (b) a corporation or partnership that has owned land located in the special district for a period of not less than sixty days before the election; or (c) the state, its agencies or political subdivisions that own land in the special district or lands proposed to be annexed into the special district except that the state, its agencies and political subdivisions shall not be eligible to vote to elect a member of the governing board of a special district.

(4) "Special district" means: (a) A diking district; (b) a drainage district; (c) a diking, drainage, and/or sewerage improvement district; (d) an intercounty diking and drainage district; (e) a consolidated diking district, drainage district, diking improvement district, and/or drainage improvement district; or (f) a flood control district.

(5) "Special district general election" means the election of a special district regularly held on the first Tuesday after the first Monday in February in each even-numbered year at which a member of the special district governing body is regularly elected. [1991 c 349 § 1; 1986 c 278 § 41; 1985 c 396 § 2.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.38.020 Establishment of special districts—Petition or resolution—Contents.** The establishment of a special district may be initiated by either petition of the owners of property located within the proposed special district, or by resolution of the county legislative authority or authorities within which the proposed special district is located.

A petition calling for the creation of a special district, which is signed by at least ten owners of land located within the proposed district, shall be filed with the county legislative authority within which a proposed special district, or the largest portion of a special district, is located. If the proposed special district is proposed to be located within more than one county, the county legislative authority receiving the petitions shall notify the other county legislative authorities of the proposal. The petition shall set forth in general terms: (1) The objects sought by the creation of the special district; (2) the projects proposed to be completed by the special district that will accomplish these objects; (3) the boundaries of the proposed special district, which may be stated in terms of sections, townships, and ranges; and (4) any other matters deemed material by the petitioners. The jurisdiction of the county legislative authority to proceed with consideration of the creation of the proposed special district shall not be affected by the form of the petition or allegations on the petition. The petition shall be accompanied by proof of land ownership that is sufficient in the opinion of the county legislative authority to evidence the ownership of land by the petitioners within the proposed special district. A petition calling for the creation of a special district shall be accompanied by a bond of five thousand dollars to defray the costs incurred by the county, or counties, in considering the creation of the special district.

A resolution proposing the creation of a special district shall contain the same items as are required and permitted to be contained in a petition to create a special district. [1985 c 396 § 3.]

**85.38.030 Investigation of proposed boundaries and districts—Report.** Upon the filing of a valid petition or upon the adoption of the resolution, the county legislative authority shall direct the county engineer to investigate the proposed boundaries of the special district and the feasibility of the projects located in the county as proposed in the petition or resolution. The engineer shall report to the county legislative authority within ninety days of such direction on the proposed boundaries of the special district within the county and feasibility of that portion of the proposed project. If the proposed special district is located in more than one county, the county legislative authority of each county shall direct its county engineer to investigate and report on the proposal within its boundaries. [1985 c 396 § 4.]

**85.38.040 Proposed special districts—Public hearing—Notice.** The county legislative authority shall schedule a public hearing on the proposed special district if the county engineer's report indicates that the proposed projects are feasible. If the engineers of each of the counties within which a proposed special district is located indicate that the proposed projects are feasible, the county legislative authorities shall schedule a joint public hearing on the proposed special district. The county legislative authority may, on its own initiative, schedule a public hearing on the proposed special district if the county engineer's report indicates that the proposed projects are not feasible. The county legislative authorities of counties within which a proposed special district is located may, on their own initiative, schedule a joint public hearing on the proposed special district if one or more of the county engineers' reports indicate that the proposed projects are not feasible.

Notice of the public hearing shall be published in a newspaper of general circulation within the proposed special district, which notice shall be purchased in the manner of a general advertisement, not to be included with legal advertisements or with classified advertisements. This notice shall be published at least twice, not more than twenty nor less than three days before public hearing. Additional notice shall be made as required in RCW 79.44.040.

The notice must contain the following: (1) The date, time, and place of the public hearing; (2) a statement that a particular special district is proposed to be created; (3) a general description of the proposed projects to be completed by the special district; (4) a general description of the proposed special district boundaries; and (5) a statement that all affected persons may appear and present their comments in favor of or against the creation of the proposed special district. [1991 c 349 § 8; 1985 c 396 § 5.]

**85.38.050 Public hearing—Elections.** The county legislative authority or authorities shall conduct the public hearing at the date, time, and place indicated in the notice. Public hearings may be continued to other dates, times, and places specified by the county legislative authority or authorities before the adjournment of the public hearing. Each county legislative authority may alter those portions of boundaries of the proposed special district that are located within the county, but if territory is added that was not described in the original proposed boundaries, an additional hearing on the proposal shall be held with notice being published as provided in RCW 85.38.040.

After receiving the public testimony, the county legislative authority may cause an election to be held to authorize the creation of a special district if it finds:

- (1) That creation of the special district will be conducive to the public health, convenience and welfare;
- (2) That the creation of the special district will be of special benefit to a majority of the lands included within the special district; and
- (3) That the proposed improvements are feasible and economical, and that the benefits of these improvements exceed costs for the improvements.

If the proposed special district is located within two or more counties, the county legislative authorities may cause an election to be held to authorize the creation of the special

district upon making the findings set forth in subsections (1) through (3) of this section.

The county legislative authority or authorities may also choose not to allow such an election to be held by either failing to act or finding that one or more of these factors are not met. [1991 c 349 § 9; 1985 c 396 § 6.]

**85.38.060 Elections—Notice—Costs.** The county legislative authority or authorities shall cause an election on the question of creating the special district to be held if findings as provided in RCW 85.38.050 are made. The county legislative authority or authorities shall designate a time and date for such election, which shall be one of the special election dates provided for in \*RCW 29.13.020, together with the site or sites at which votes may be cast. The persons allowed to vote on the creation of a special district shall be those persons who, if the special district were created, would be qualified voters of the special district as described in RCW 85.38.010. The county auditor or auditors of the counties within which the proposed special district is located shall conduct the election and prepare a list of presumed eligible voters.

Notices for the election shall be published as provided in RCW 85.38.040. The special district shall be created if the proposition to create the special district is approved by a simple majority vote of the voters voting on the proposition and the special district may assume operations whenever the initial members of the governing body are appointed as provided in RCW 85.38.070.

Any special district created after July 28, 1985, may only have special assessments measured and imposed, and budgets adopted, as provided in RCW 85.38.140 through 85.38.170.

If the special district is created, the county or counties may charge the special district for the costs incurred by the county engineer or engineers pursuant to RCW 85.38.030 and the costs of the auditor or auditors related to the election to authorize the creation of the special district pursuant to this section. Such county actions shall be deemed to be special benefits of the property located within the special district that are paid through the imposition of special assessments. [1991 c 349 § 10; 1985 c 396 § 7.]

**\*Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**85.38.070 Governing board—Terms of office—Election—Appointment—Vacancies—Qualifications.** (1) Except as provided in RCW 85.38.090, each special district shall be governed by a three-member governing body. The term of office for each member of a special district governing body shall be six years and until his or her successor is elected and qualified. One member of the governing body shall be elected at the time of special district general elections in each even-numbered year for a term of six years beginning as soon as the election returns have been certified for assumption of office by elected officials of cities.

(2) The terms of office of members of the governing bodies of special districts, who are holding office on July 28, 1985, shall be altered to provide staggered six-year terms as provided in this subsection. The member who on July 28, 1985, has the longest term remaining shall have his or her term altered so that the position will be filled at the February

1992, special district general election; the member with the second longest term remaining shall have his or her term altered so that the position will be filled at the December, 1989, special district general election; and the member with the third longest term of office shall have his or her term altered so that the position will be filled at the December, 1987, special district general election.

(3) The initial members of the governing body of a newly created special district shall be appointed by the legislative authority of the county within which the special district, or the largest portion of the special district, is located. These initial governing body members shall serve until their successors are elected and qualified at the next special district general election held at least ninety days after the special district is established. At that election the first elected members of the governing body shall be elected. No primary elections may be held. Any voter of a special district may become a candidate for such a position by filing written notice of this intention with the county auditor at least thirty, but not more than sixty, days before a special district general election. The county auditor in consultation with the special district shall establish the filing period. The names of all candidates for such positions shall be listed alphabetically. At this first election, the candidate receiving the greatest number of votes shall have a six-year term, the candidate receiving the second greatest number of votes shall have a four-year term, and the candidate receiving the third greatest number of votes shall have a two-year term of office. The initially elected members of a governing body shall take office immediately when qualified as defined in \*RCW 29.01.135. Thereafter the candidate receiving the greatest number of votes shall be elected for a six-year term of office. Members of a governing body shall hold their office until their successors are elected and qualified, and assume office as soon as the election returns have been certified.

(4) The requirements for the filing period and method for filing declarations of candidacy for the governing body of the district and the arrangement of candidate names on the ballot for all special district elections conducted after the initial election in the district shall be the same as the requirements for the initial election in the district. No primary elections may be held for the governing body of a special district.

(5) Whenever a vacancy occurs in the governing body of a special district, the legislative authority of the county within which the special district, or the largest portion of the special district, is located, shall appoint a district voter to serve until a person is elected, at the next special district general election occurring sixty or more days after the vacancy has occurred, to serve the remainder of the unexpired term. The person so elected shall take office immediately when qualified as defined in \*RCW 29.01.135.

If an election for the position which became vacant would otherwise have been held at this special district election, only one election shall be held and the person elected to fill the succeeding term for that position shall take office immediately when qualified as defined in \*RCW 29.01.135 and shall serve both the remainder of the unexpired term and the succeeding term. A vacancy occurs upon the death, resignation, or incapacity of a governing body member or whenever the governing body member ceases being a qualified voter of the special district.

(6) An elected or appointed member of a special district governing body, or a candidate for a special district governing body, must be a qualified voter of the special district: PROVIDED, That the state, its agencies and political subdivisions, or their designees under RCW 85.38.010(3) shall not be eligible for election or appointment. [1991 c 349 § 11; 1987 c 298 § 2; 1986 c 278 § 42; 1985 c 396 § 8.]

\*Reviser's note: RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.38.075 Governing body—Compensation and expenses.** The members of the governing body may each receive up to seventy dollars for attendance at official meetings of the governing body and for each day or major part thereof for all necessary services actually performed in connection with their duties as a member. The governing body shall fix the compensation to be paid to the members, secretary, and all other agents and employees of the district. Compensation for the members shall not exceed six thousand seven hundred twenty dollars in one calendar year. A member is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the member's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW.

Any member may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the member's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. [1998 c 121 § 12.]

**85.38.080 Governing body—Bond.** Each member of a governing body of a special district, whether elected or appointed, shall enter into a bond, payable to the special district. The bond shall be in the sum of not less than one thousand dollars nor more than five thousand dollars, as determined by the county legislative authority of the county within which the special district, or the largest portion of the special district, is located. The bond shall be conditioned on the faithful performance of his or her duties as a member of the governing body of the special district and shall be filed with the county clerk of the county within which the special district, or the largest portion of the special district, is located. [1987 c 298 § 3; 1985 c 396 § 9.]

**85.38.090 Governing body—Reduction in size.** (1) Whenever the governing body of a special district has more than three members, the governing body shall be reduced to three members as of January 1, 1986, by eliminating the positions of those district governing body members with the shortest remaining terms of office. The remaining three governing body members shall have staggered terms with the one having the shortest remaining term having his or her position filled at the 1987 special district general election, the one with the next shortest remaining term having his or her position

filled at the 1989 special district general election, and the one with the longest remaining term having his or her position filled at the 1992 special district general election. If any of these remaining three governing body members have identical remaining terms of office, the newly calculated remaining terms of these persons shall be determined by lot with the county auditor who assists the special district in its elections managing such lot procedure. The newly established terms shall be recorded by the county auditor.

(2) However, whenever five or more special districts have consolidated under chapter 85.36 RCW and the consolidated district has five members in its governing body on July 28, 1985, the consolidated district may adopt a resolution retaining a five-member governing body. At any time thereafter, such a district may adopt a resolution and reduce the size of the governing body to three members with the reduction occurring as provided in subsection (1) of this section, but the years of the effective dates shall be extended so that the reduction occurs at the next January 1st occurring after the date of the adoption of the resolution. Whenever a special district is so governed by a five-member governing body, two members shall be elected at each of two consecutive special district general elections, and one member shall be elected at the following special district general election, each to serve a six-year staggered term. [1991 c 349 § 12; 1985 c 396 § 10.]

**85.38.100 General elections.** General elections shall be held in each special district on the first Tuesday after the first Monday in February in each even-numbered year. The auditor of the county within which a special district, or the largest portion of a special district, is located may provide for special elections whenever necessary. [1991 c 349 § 5; 1985 c 396 § 11.]

**85.38.105 Voting rights.** (1) The owner of land located in a special district who is a qualified voter of the special district shall receive two votes at any election.

(2) If multiple undivided interests, other than community property interests, exist in a lot or parcel and no person owns a majority undivided interest, the owners of undivided interests at least equal to a majority interest may designate in writing:

(a) Which owner is eligible to vote and may cast two votes; or

(b) Which two owners are eligible to vote and may cast one vote each.

(3) If land is owned as community property, each spouse is entitled to one vote if both spouses otherwise qualify to vote, unless one spouse designates in writing that the other spouse may cast both votes.

(4) A corporation, partnership, or governmental entity shall designate:

(a) A natural person to cast its two votes; or

(b) Two natural persons to each cast one of its votes.

(5) Except as provided in RCW 85.08.025 and 86.09.377, no owner of land may cast more than two votes or have more than two votes cast for him or her in a special district election. [1991 c 349 § 2.]

**85.38.110 Presumed eligible voters' list—Notice of requirements of voting authority—Copy of voter's list to county auditor.** A list of presumed eligible voters shall be prepared and maintained by each special district. The list shall include the assessor's tax number for each lot or parcel in the district, the name or the names of the owners of such lots and parcels and their mailing address, the extent of the ownership interest of such persons, and if such persons are natural persons, whether they are known to be registered voters in the state of Washington. Whenever such a list is prepared, the district shall attempt to notify each owner of the requirements necessary to establish voting authority to vote. Whenever lots or parcels in the district are sold, the district shall attempt to notify the purchasers of the requirements necessary to establish voting authority. Each special district shall provide a copy of this list, and any revised list, to the auditor of the county within which all or the largest portion of the special district is located. The special district must compile the list of eligible voters and provide it to the county auditor by the first day of November preceding the special district general election. In the event the special district does not provide the county auditor with the list of qualified voters by this date, the county auditor shall compile the list and charge the special district for the costs required for its preparation. The county auditor shall not be held responsible for any errors in the list. [1991 c 349 § 13; 1985 c 396 § 12.]

**85.38.115 Elections—When not required.** No election shall be held to elect a member of a special district governing body, or to fill the remainder of an unexpired term which arose from a vacancy on the governing body, if no one or only one person files for the position.

If only one person files for the position, he or she shall be considered to have been elected to the position at the election that otherwise would have taken place for such position.

If no one files for the position and the upcoming election is one at which someone would have been elected to fill the expired term, the position shall be treated as vacant at the expiration of the term.

If no one files for the position and the upcoming election is one at which someone would have been elected to fill the remaining term of office, the person appointed to fill the vacancy shall be considered to have been elected to the position at the election and shall serve for the remainder of the unexpired term. [1991 c 349 § 6.]

**85.38.120 Elections—Auditor's assistance—Notice—Auditor's costs.** The auditor of the county within which a special district, or the largest portion of a special district, is located shall assist such special district with its elections as provided in this section.

(1) The county auditor shall publish notice of an election to create a special district and notice of all special district elections not conducted by mail in a newspaper of general circulation in the special district at least once not more than ten nor less than three days before the election. The notices shall describe the election, give its date and times to be held, and indicate the election site or sites in the special district where ballots may be cast.

(2) If a special district has at least five hundred qualified voters, then the county auditor shall publish in a newspaper

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of general circulation in the special district a notice of the filing period and place for filing a declaration of candidacy to become a member of the governing body. This notice shall be published at least seven days prior to the closing of the filing period. If the special district has less than five hundred qualified voters, then the special district shall mail or deliver this notice to each qualified voter of the special district at least seven days prior to the closing of the filing period.

(3) All costs of the county auditor incurred related to such elections shall be reimbursed by the special district. [1991 c 349 § 14; 1985 c 396 § 13.]

**85.38.125 Elections—Auditor to conduct—Election by mail.** (1) If a special district has less than five hundred qualified voters, then the special district must contract with the county auditor to conduct the special district elections. The county auditor has the discretion as to whether to conduct the election by mail.

(2) If a special district has at least five hundred qualified voters, the special district may contract with the county auditor to staff the voting site during the election or contract with the county auditor to conduct the election by mail. A special district with at least five hundred qualified voters may also choose to conduct its own elections. A special district that conducts its own elections must enter into an agreement with the county auditor that specifies the responsibilities of both parties.

(3) If the county auditor conducts a special district election by mail, then the provisions of \*chapter 29.36 RCW which govern elections by mail, except for the requirements of \*\*RCW 29.36.120, shall apply. [1991 c 349 § 15.]

**Reviser's note:** \*(1) Chapter 29.36 RCW was recodified as chapter 29A.40 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

\*\*\*(2) RCW 29.36.120 was recodified as RCW 29.38.010 pursuant to 2001 c 241 § 25. RCW 29.38.010 was subsequently recodified as RCW 29A.48.010 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**85.38.130 Election officials—Duties—Voting hours—Challenged ballots—Absentee ballots.** For special district elections that are not conducted by mail, the governing body of each special district shall appoint three voters of the special district, who may be members of the governing body, to act as election officials, unless the special district contracts with the county auditor to staff the election site. The election officials shall distribute a ballot or ballots to each voter of the special district who arrives at the voting place during the hours for the election on the day of the election and requests a ballot. Ballots shall also be provided to those persons arriving at the polling place during the hours for the election on the day of the election who present documents or evidence sufficient to establish their eligibility to vote. A person arriving at the polling place at such times who demands a ballot, but who fails to present documents or evidence which in the opinion of the election officials is sufficient to establish eligibility to vote, shall be given a ballot clearly marked as "challenged" and shall be allowed to vote. Each challenged ballot shall be numbered consecutively and a list of such persons and their ballot numbers shall be made.

The governing body of each special district shall designate those hours from 7 a.m. to 8 p.m. during which the election shall be held: PROVIDED, That at least six consecutive

hours must be designated. When the election is over, the election officials shall secure the ballots and transport the ballots to the county auditor's office by noon of the day following the election. The auditor may, at his or her discretion, station a deputy auditor or auditors at the election site who shall observe the election and transport the ballots to the auditor's office. The auditor shall count the ballots and certify the count of votes for and against each measure and for each candidate appearing on the ballot. A separate count shall be made of any challenged ballots. A challenged ballot shall be counted as a normal ballot if documents or evidence are supplied to the auditor before 4:00 p.m. on the day after the election that, in the opinion of the auditor, are sufficient to establish the person's eligibility to vote.

Additionally, voting by absentee ballot shall be allowed in every special district. A request for an absentee ballot may be made by an eligible voter by mail or in person to the county auditor who supervises the special district elections. An absentee ballot shall be provided to each voter of a special district requesting such a ballot under this section. A person requesting such a ballot may present information establishing his or her eligibility to vote in such a special district. The auditor shall provide an absentee ballot to each person requesting an absentee ballot who is either included on the list of presumed eligible voters or who submits information which, in the auditor's opinion, establishes his or her eligibility to vote. The names of these persons so determined to be eligible to vote shall be added to the list of presumed eligible voters for the appropriate special district. The request for an absentee ballot must be made no more than forty-five days before the election. To be valid, absentee ballots must be postmarked on or before the day of the election and mailed to the county auditor. [1991 c 349 § 16; 1985 c 396 § 14.]

**85.38.140 Special district financing—Alternative method.** The process by which budgets are adopted, special assessments are measured and imposed, rates and charges are fixed, and assessment zones are established, as provided in RCW 85.38.140 through 85.38.170, shall constitute an alternative optional method of financing special districts. A special district in existence prior to July 28, 1985, may conform with RCW 85.38.140 through 85.38.170 when its governing body adopts a resolution indicating its intention to conform with such laws. Whenever such a resolution is adopted, or a new special district is created on or after July 28, 1985, RCW 85.38.140 through 85.38.170 shall be the exclusive method by which the special district measures and imposes special assessments and adopts its budget. The governing body of a special district that was created before July 28, 1985, and which operates under RCW 85.38.140 through 85.38.170, may adopt a resolution removing the special district from operating under RCW 85.38.140 through 85.38.170, and operate under alternative procedures available to the special district. A county may charge a special district for costs the county incurs in establishing a system or systems of assessment for the special district pursuant to RCW 85.38.140 through 85.38.170. [1993 c 464 § 3; 1985 c 396 § 15.]

**85.38.145 Rates and charges.** Regardless of whether any special assessments have been or may be imposed on a

particular parcel of real property pursuant to this chapter, in order to implement the authority granted under RCW 85.38.180(3), a special district may fix rates and charges payable by owners or occupiers of real estate within the special district. When fixing rates and charges, the district may consider the degree to which activities on a parcel of real property, including on-site septic systems, contribute to the problems that the special district is authorized to address under RCW 85.38.180(3). [1993 c 464 § 4.]

**85.38.150 Special assessments—Valuation—Assessment zones—Criteria for assessments.** (1) Special district special assessments shall be imposed only on real property within the district that uses or will use the special district's facilities or receives or will receive special benefits from the special district's operations and facilities. Both privately owned and publicly owned real property, including real property owned by the state, is subject to these special assessments. Mobile homes located on real property within a special district shall be considered an improvement to the real property for purposes of imposing special assessments.

(2) Special assessments imposed upon real property, other than improvements, shall be a function of the dollar value of benefit or use per acre and the assessment zone in which the real property is located. Special assessments imposed upon an improvement shall be a function of the dollar value of benefit or use assigned to the type or class of improvements and the assessment zone in which the improvement is located.

(3) Assessment zones shall be established in which each zone reflects a different relative ratio of benefit or use that the real property within such a zone receives, or will receive, from the special district's operations and facilities. That real property receiving the greatest benefits, or which uses the special district's facilities to the greatest extent, shall be placed into class No. 1 and assigned a value of one hundred percent; that real property receiving the next greatest benefits, or which uses the special district's facilities to the next greatest extent, shall be placed into class No. 2 and assigned a lower percentage value; and so on, extending to the class of least benefits or use. That real property receiving no benefits or use shall be designated "nonbenefit." If all real property in the special district is found to have the same relative ratio of benefit or use, a single assessment zone may be established.

(4) Any one or more of the following criteria shall be used in measuring the manifest degrees or ratios of benefit or use: (a) Proximity to the special district's facilities; (b) height above or below dikes and levees; (c) easier accessibility; (d) facility of drainage; (e) minimization of flood or inundation damage; (f) actual flood protection; (g) use of the special district's facilities; and (h) any other criteria established by the county under RCW 85.38.160 that measure manifest degrees of benefit or use from the special district's facilities and operations.

(5) Special assessments may be imposed to pay for the construction, repair, and maintenance of special district facilities and for special district operations. Administrative and operational costs of the special district shall be proportionally included in these special assessments. [1985 c 396 § 16.]

**85.38.160 Systems of assessment—Hearing—Notice—Adoption of ordinance—Appeals—Review—Emergency assessment.** (1) The county within which each special district is located shall establish a system or systems of assessment for the special district as provided in this section. A differing system of assessment shall be established for different classes of facilities that a special district provides or will provide, including a separate system of assessment for diking and drainage facilities if both classes of facilities are provided. Whenever a special district is located in more than one county, the county within which the largest portion of the special district is located shall establish the system or systems of assessment for the entire special district. A system of assessment shall include assessment zones, the acreage included in each assessment zone, a dollar value of benefit or use per acre, and various classes or types of improvements together with a dollar value of benefit or use for an improvement included in each of the classes or types of improvements. The county shall establish which improvements shall be subject to special assessments and shall establish one or more types or classes of such improvements.

(2) The engineer of the county shall prepare a preliminary system or systems of assessment for each special district. Each system of assessment that is prepared for a special district shall be designed to generate a total of one thousand dollars in revenue for the special district.

The preliminary system or systems of assessment shall be filed with the county legislative authority. A public hearing on the preliminary system or systems of assessment shall be held by the county legislative authority. Notice of the public hearing shall be published in a newspaper, in general circulation in the special district, for two consecutive weeks with the final notice being published not less than fourteen, nor more than twenty-one days, before the public hearing. Notice shall also be mailed to each owner or reputed owner, as shown on the assessor's tax rolls, of each lot or parcel subject to such assessments. The mailed notice shall indicate the amount of assessment on the lot or parcel that, together with all other assessments in the system of assessment, would raise one thousand dollars. The mailed notice shall indicate that this assessment amount is not being imposed, but is a hypothetical assessment that, if combined with all other hypothetical assessments in the system of assessment, would generate one thousand dollars, and that this hypothetical assessment is proposed to be used to establish a system or systems of assessment for the special district. Where a special district currently is imposing special assessments and a property owner's property is subject to these special assessments, the mailed notice to this property owner also shall use the hypothetical special assessment in conjunction with the total special assessments imposed by the special district in that year to provide a comparison special assessment value to the property owner. This notice shall indicate that the comparison special assessment value is not being imposed, and should be considered for comparative purposes only. Where a special district is not currently imposing special assessments, the mailed notice may include, if deemed appropriate by the county engineer and if such figures are available, an estimated special assessment value for the property owner's property using this hypothetical special assessment in conjunction with special district-wide level of special assess-

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ments that possibly would be imposed in the following year. Where a county is imposing rates and charges for storm water or surface water control facilities pursuant to chapters 36.89 or 36.94 RCW, the county shall credit such rates and charges with assessments imposed under this section by a special district to fund drainage facilities and the maintenance of drainage facilities.

(3) The county legislative authority shall hold a public hearing on the preliminary system or systems of assessment on the day specified in the notices. Persons objecting to the preliminary system or systems of assessment may present their objections at this public hearing, which may be continued if necessary. The county legislative authority shall adopt an ordinance finalizing the system or systems of assessment after making any changes that in its discretion are necessary. The county legislative authority shall have broad discretion in establishing systems of assessment. The decision of the county legislative authority shall be final, except for appeals. Any person objecting to the system or systems of assessment must appeal such decision to the superior court of the county within which all, or the largest portion, of the special district is located within twenty days of the adoption of the ordinance.

(4) The system or systems of assessment of each special district shall be reviewed by the county engineer and finalized by the county legislative authority at least once every four years. A system or systems of assessment shall be finalized on or before the first of September in the year that it is finalized. The legislative authority of a county that is responsible for establishing a system or systems of assessment for more than one special district may, at its option, stagger the initial finalization of such systems of assessment for different special districts over a period of up to four years. Assessments shall be collected in special districts pursuant to the district's previous system of assessment until the system or systems of assessment under this chapter is finalized under this section.

(5) New improvements shall be noted by the special district as they are made and shall be subject to special assessments in the year after the improvement is made.

(6) The county legislative authority, upon request by a special district, may authorize the special district to impose and collect emergency assessments pursuant to the special district's system or systems of assessment whenever the emergent protection of life or property is necessary. [1985 c 396 § 17.]

**85.38.165 Applicable assessed value.** (1) Every special district must use the assessed value applicable to forest land, farm and agricultural land, or open space land, under chapter 84.33 or 84.34 RCW, when the land has been designated as such and the assessed value is used as a component in determining the district assessment.

(2) If a district uses a fractional amount of assessed value as a component in determining the district assessment, then a fractional amount of the value applicable to forest land, farm and agricultural land, or open space land, under chapter 84.33 or 84.34 RCW, shall be used. [2005 c 181 § 1.]

**85.38.170 Budgets—Special assessments—Notice—Delinquent special assessments—Collection fee.** Budgets for each special district shall be adopted, and special assessments imposed, annually for the succeeding calendar year. On or before December 1st of each year, the governing body of the special district shall adopt a resolution approving a budget for the succeeding year and special assessments sufficient to finance the budget. A copy of the resolution and the budget shall be forwarded immediately to the county legislative authority of the county or counties within which the special district is located and to the treasurer of the county or counties in which the special district is located. Special assessments necessary to generate funds for this budget shall be imposed pursuant to the system or systems of assessment established by the county. Special assessments shall be collected by the county treasurer or treasurers within which the special district is located. Notice of the special assessments due may be included on the notice of property taxes due, may be included on a separate notice that is mailed with the notice of property taxes due, or may be sent separately from the notice of property taxes due. Special assessments shall be due at the same time property taxes are due and shall constitute liens on the land or improvements upon which they are imposed. Delinquent special assessments shall be foreclosed in the same manner, and subject to the same time schedules, interest, and penalties as delinquent property taxes. County treasurers may impose a fee for collecting special assessments not to exceed one percent of the dollar value of special assessments collected. [1985 c 396 § 18.]

**85.38.180 Special districts—Powers.** A special district may:

(1) Engage in flood control activities, and investigate, plan, construct, acquire, repair, maintain, and operate improvements, works, projects, and facilities necessary to prevent inundation or flooding from rivers, streams, tidal waters or other waters. Such facilities include dikes, levees, dams, banks, revetments, channels, canals, drainage ditches, tide gates, flood gates, and other works, appliances, machinery, and equipment.

(2) Engage in drainage control, storm water control, and surface water control activities, and investigate, plan, construct, acquire, repair, maintain, and operate improvements, works, projects, and facilities necessary to control and treat storm water, surface water, and flood water. Such facilities include drains, flood gates, drainage ditches, tide gates, ditches, canals, nonsanitary sewers, pumps, and other works, appliances, machinery, and equipment.

(3) Engage in lake or river restoration, aquatic plant control, and water quality enhancement activities.

(4) Take actions necessary to protect life and property from inundation or flow of flood waters, storm waters, or surface waters.

(5) Acquire, purchase, condemn by power of eminent domain pursuant to chapters 8.08 and 8.25 RCW, or lease, in its own name, necessary property, property rights, facilities, and equipment.

(6) Sell or exchange surplus property, property rights, facilities, and equipment.

(7) Accept funds and property by loan, grant, gift, or otherwise from the United States, the state of Washington, or any other public or private source.

(8) Hire staff, employees, or services, or use voluntary labor.

(9) Sue and be sued.

(10) Cooperate with or join the United States, the state of Washington, or any other public or private entity or person for district purposes.

(11) Enter into contracts.

(12) Exercise any of the usual powers of a corporation for public purposes. [2003 c 392 § 1; 1991 c 349 § 17; 1985 c 396 § 19.]

**85.38.190 Construction of improvements—When public bidding not required—Use of district employees or volunteers.** Any proposed improvement or part thereof, not exceeding five thousand dollars in cost, may be constructed by district employees: PROVIDED, That this shall not restrict a special district from using volunteer labor and equipment on improvements, and providing reimbursement for actual expenses. [1987 c 298 § 4; 1986 c 278 § 50.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.38.200 Annexation of contiguous territory—Procedures.** (1) Territory that is contiguously located to a special district may be annexed by the special district as provided in this section under the petition and election, resolution and election, or direct petition method of annexation.

(2) An annexation under the election method may be initiated by the filing of a petition requesting the action that is signed by at least ten owners of property in the area proposed to be annexed or the adoption of a resolution requesting such action by the governing body of the special district. The petitions shall be filed with the governing body of the special district that is requested to annex the territory. An election to authorize an annexation initiated under the petition and election method may be held only if the governing body approves the annexation. An annexation under either election method shall be authorized if the voters of the area proposed to be annexed approve a ballot proposition favoring the annexation by a simple majority vote. The annexation shall be effective when results of an election so favoring the annexation are certified by the county auditor or auditors. The election, notice of the election, and eligibility to vote at the election shall be as provided for the creation of a special district.

(3) An annexation under the direct petition method of annexation may be accomplished if the owners of a majority of the acreage proposed to be annexed sign a petition requesting the annexation, and the governing body of the special district approves the annexation. The petition shall be filed with the governing body of the special district. The annexation shall be effective when the governing body approves the annexation.

(4) Whenever a special district annexes territory under this section, the exclusive method by which the special district measures and imposes special assessments upon real property within the entire enlarged area shall be as set forth in RCW 85.38.150 through 85.38.170. [1986 c 278 § 8.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.38.210 Consolidation of contiguous districts—Procedures.** Two or more special districts that are contiguously located with each other, or which occupy all or part of the same territory, may consolidate as provided in this section. The consolidation shall result in the creation of a flood control district.

A consolidation may be initiated by: (1) The filing of a petition requesting the action that is signed by eligible voters of each special district who constitute at least ten percent of the eligible voters of the special district, or who own at least a majority of the acreage in the special district; or (2) the adoption of a resolution requesting such action by the governing body of each special district. The petitions shall be filed with, and the resolutions shall be submitted to, the county legislative authority of the county within which all or the largest portion of the special districts is located. The auditor of the county, or auditors of the counties, within which these districts are located shall authenticate the signatures on the petitions and certify the results. An election to authorize the consolidation shall be held not more than one hundred eighty days after the date of the filing of the resolutions, or the determination that sufficient valid signatures are included on the petition from the voters of each of the special districts.

The consolidation shall be authorized if voters in each of the special districts approve a ballot proposition favoring the consolidation by a simple majority vote. Members of the governing body of the consolidated special district shall be selected as provided in RCW 85.38.070 for a newly created special district and the consolidation shall be effective when these initial members of the governing body are so appointed.

All moneys, rights, property, assets and liabilities of the consolidating special districts shall vest in and become the obligation of the new consolidated special district, except that any indebtedness of a consolidating special district shall remain an indebtedness of the original consolidating special district and lands within the original consolidating special district. The governing body of the new consolidated special district shall impose special assessments on lands in the original consolidating special district to redeem this indebtedness. However, the new consolidated special district may issue funding or refunding bonds or notes and fund or refund such indebtedness. The new consolidated special district may continue imposing special assessments pursuant to the various systems of assessment used by the original consolidating special districts, or may establish a new system or systems of assessment in all or part of the new consolidated special district to finance its operations. [1986 c 278 § 9.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.38.213 Withdrawal of area within city or town.** A special district may withdraw area from its boundaries that is located within the boundaries of a city or town, or area that includes area both within and adjacent to the boundaries of any city or town, under this section.

(1) The withdrawal of area is authorized upon the following conditions being met: (a) Adoption of a resolution by the special district requesting withdrawal of the area from the district; (b) adoption of a resolution by the city or town council approving the withdrawal of the special district from the area; (c) assumption by the city or town of full responsibility for the maintenance, improvements, and collection of pay-

ment for the operation of the system previously operated by the special district in the area; (d) transfer by the special district of all rights-of-way or easements in the area to the city or town by quit claim or deed; and (e) adoption of an interlocal agreement between the special district and the city or town that reimburses the special district for lost assessment revenue from the withdrawn area, that transfers any facilities or improvements owned by the special district to the city or town as agreed between the parties, and that requires the city or town to maintain existing water run-off and water quality levels in the area.

(2) Property in the territory withdrawn from the boundaries of a special district under this section shall remain liable for any special assessments of the special district from which it was withdrawn, if the special assessments are associated with bonds or notes used to finance facilities serving the property, to the same extent as if the withdrawal of property had not occurred. [1993 c 464 § 2.]

**85.38.215 Transfer of territory from one special district to another.** Territory that is located in one special district may be transferred from that special district to another special district as provided in this section, if a portion of this territory is coterminous with a portion of the boundaries of the special district to which it is transferred. Such a transfer shall be accomplished using the procedures in RCW 85.38.200 for annexing territory, except that the governing body of both special districts must approve the transfer and make findings that the transfer is in the public interest and that the special district to which the territory is transferred is better able to provide the activities and facilities serving the territory than the special district from which the territory is transferred.

Property in the territory so transferred shall remain liable for any special assessments of the special district from which it was transferred, if the special assessments are associated with bonds or notes used to finance facilities serving the property, to the same extent as if the transfer had not occurred.

A transfer of territory also may include the transfer of property, facilities, and improvements owned by one special district to the other special district, with or without consideration being paid. [1987 c 298 § 1.]

**85.38.217 Drainage and drainage improvement districts—Removal of area by first class city—Notice.** Any portion of a drainage district or drainage improvement district located within the boundaries of a first class city operating a storm drain utility pursuant to RCW 35.67.030 may be removed from the drainage district or drainage improvement district by ordinance of the city. The removal of an area shall not result in the impairment of any contract nor remove the liability or obligation to finance district improvements that serve the area so removed as of the effective date of the ordinance. Residents of the district to be removed shall be given substantial notice of the impending action and the opportunity to respond to the action. [1991 c 28 § 3.]

**85.38.220 Suspension of operations—Procedure—Reactivation.** Any special district may have its operations

suspended as provided in this section. The process of suspending a special district's operations may be initiated by: (1) The adoption of a resolution proposing such action by the governing body of the special district; (2) the filing of a petition proposing such action with the county legislative authority of the county in which all or the largest portion of the special district is located, which petition is signed by voters of the special district who own at least ten percent of the acreage in the special district or is signed by ten or more voters of the special district; or (3) the adoption of a resolution proposing such action by the county legislative authority of the county in which all or the largest portion of the special district is located.

A public hearing on the proposed action shall be held by the county legislative authority at which it shall inquire into whether such action is in the public interest. Notice of the public hearing shall be published in a newspaper of general circulation in the special district, posted in at least four locations in the special district to attract the attention of the public, and mailed to the members of the governing body of the special district, if there are any. After the public hearing, the county legislative authority may adopt a resolution suspending the operations of the special district if it finds such suspension to be in the public interest, and shall provide a copy of the resolution to the county treasurer. When a special district is located in more than one county, the legislative authority of each of such counties must so act before the operations of the special district are suspended.

After holding a public hearing on the proposed reactivation of a special district that has had its operations suspended, the legislative authority or authorities of the county or counties in which the special district is located may reactivate the special district by adopting a resolution finding such action to be in the public interest. Notice of the public hearing shall be posted and published as provided for the public hearing on a proposed suspension of a special district's operations. The governing body of a reactivated special district shall be appointed as in a newly created special district.

No special district that owns drainage or flood control improvements may be suspended unless the legislative authority of a county accepts responsibility for operation and maintenance of the improvements during the suspension period. [2001 c 299 § 20; 1986 c 278 § 10.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.38.225 Alternative dissolution procedure—Drainage and drainage improvement districts—Conditions.** As an alternative to this chapter a drainage district or drainage improvement district located within the boundaries of a county storm drainage and surface water management utility, and which is not currently imposing assessments, may be dissolved by ordinance of the county legislative authority. If the alternative dissolution procedure in this section is used the following shall apply:

(1) The county storm drainage and surface water management utility shall assume responsibility for payment or settlement of outstanding debts of the dissolved drainage district or drainage improvement district, and shall notify the county treasurer at such time of the assumption of responsibility.

(2) All assets, including money, funds, improvements, or property, real or personal, shall become assets of the county in which the dissolved drainage district or drainage improvement district was located.

(3) Notwithstanding RCW 85.38.220, the county storm drainage and surface water management utility may determine how to best manage, operate, maintain, improve, exchange, sell, or otherwise dispose of all property, real and personal, of the dissolved drainage district or drainage improvement district, and may determine to modify, cease the operation of, and/or remove any or all facilities or improvements to real property of the dissolved drainage district or drainage improvement district. [2001 c 299 § 21; 1991 c 28 § 2.]

**85.38.230 Special assessment bonds authorized.** A special district may issue special assessment bonds or notes to finance costs related to providing, improving, expanding, or enlarging improvements and facilities if the county legislative authority within which all or the major part of the special district is located authorizes the issuance of such bonds or notes. The decision of a county legislative authority authorizing or failing to authorize a proposed issue of special assessment bonds or notes constitutes a discretionary function, and shall not give rise to a cause of action against the county, county legislative authority, or any member of the county legislative authority. [1986 c 278 § 18.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.38.240 Special assessment bonds—Issuance—Terms.** (1) Special assessment bonds and notes issued by special districts shall be issued and sold in accordance with chapter 39.46 RCW, except as otherwise provided in this chapter. The maximum term of any special assessment bond issued by a special district shall be twenty years. The maximum term of any special assessment note issued by a special district shall be five years.

(2) The governing body of a special district issuing special assessment bonds or notes shall create a special fund or funds, or use an existing special fund or funds, from which, along with any special assessment bond guaranty fund the special district has created, the principal of and interest on the bonds or notes exclusively are payable.

(3) The governing body of a special district may provide such covenants as it may deem necessary to secure the payment of the principal of and interest on special assessment bonds or notes, and premiums on special assessment bonds or notes, if any. Such covenants may include, but are not limited to, depositing certain special assessments into a special fund or funds, and establishing, maintaining, and collecting special assessments which are to be placed into the special fund or funds. The special assessments covenanted to be placed into such a special fund or funds after June 11, 1986, only may include all or part of the new system of special assessments imposed for such purposes, pursuant to RCW 85.38.150 and 85.38.160. Special assessment bonds or notes issued after July 26, 1987, may not be payable from special assessments imposed under authorities other than those provided in chapter 85.38 RCW.

(4) A special assessment bond or note issued by a special district shall not constitute an indebtedness of the state, either general or special, nor of the county, either general or special, within which all or any part of the special district is located. A special assessment bond or note shall not constitute a general indebtedness of the special district issuing the bond or note, but is a special obligation of the special district and the interest on and principal of the bond or note shall be payable only from special assessments covenanted to be placed into the special fund or funds, and any special assessment bond guaranty fund the special district has created.

The owner of a special assessment bond or note, or the owner of an interest coupon, shall not have any claim for the payment thereof against the special district arising from the special assessment bond or note, or interest coupon, except for payment from the special fund or funds, the special assessments covenanted to be placed into the special fund or funds, and any special assessment bond guaranty fund the special district has created. The owner of a special assessment bond or note, or the owner of an interest coupon, issued by a special district shall not have any claim against the state, or any county within which all or part of the special district is located, arising from the special assessment bond, note, or interest coupon. The special district issuing the special assessment bond or note shall not be liable to the owner of any special assessment bond or note, or owner of any interest coupon, for any loss occurring in the lawful operation of its special assessment bond guaranty fund.

The substance of the limitations included in this subsection shall be plainly printed, written, engraved, or reproduced on: (a) Each special assessment bond or note that is a physical instrument; (b) the official notice of sale; and (c) each official statement associated with the bonds or notes. [1987 c 298 § 5; 1986 c 278 § 19.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.38.250 Special assessment bonds—Guaranty fund.** The governing body of a special district issuing special assessment bonds or notes may create and pay money into a special assessment bond guaranty fund to guaranty special assessment bonds and notes issued by the special district. A portion of the special assessments collected by a special district may be placed into its special assessment bond guaranty fund. [1986 c 278 § 20.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.38.260 Special assessment bonds—Refunding.** A special district may issue funding or refunding special assessment bonds or notes to refund outstanding bonds or notes. Such funding or refunding bonds or notes shall be subject to the provisions of law governing other special assessment bonds or notes. [1986 c 278 § 21.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.38.270 Special assessment bonds issued prior to July 1, 1986.** Special assessment bonds or notes issued by a special district prior to July 1, 1986, shall continue to be retired and be subject to the laws under which they were issued. [1986 c 278 § 22.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**85.38.280 Cooperative watershed management.** In addition to the authority provided throughout this title, diking, drainage, sewerage improvement, and similar districts organized pursuant to this title may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 17.]

**Finding—Intent—2003 c 327:** See note following RCW 39.34.190.

**85.38.900 Severability—1985 c 396.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 396 § 88.]



# Title 86

## FLOOD CONTROL

### Chapters

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### Chapter 86.05 RCW

#### FLOOD CONTROL DISTRICTS—1935 ACT

##### Sections

- 86.05.920 Repeal of RCW 86.05.010 through 86.05.910—Saving—Option to conform to chapter 86.09 RCW—Validation.

**86.05.920 Repeal of RCW 86.05.010 through 86.05.910—Saving—Option to conform to chapter 86.09 RCW—Validation.** Sections 1 through 79, chapter 160, Laws of 1935, section 1, chapter 82, Laws of 1949, section 1, chapter 20, Laws of 1953 and RCW 86.05.010 through 86.05.910 are each repealed: PROVIDED, That districts heretofore established pursuant to said laws may continue to be operated and maintained as provided therein (except that the tort liability immunity provided for in section 32, chapter 160, Laws of 1935 and RCW 86.05.320 shall no longer apply); or may take such action as may be required to conform to the provisions of chapter 72, Laws of 1937 and chapter 86.09 RCW regulating the maintenance and operation of flood control districts to the same extent and to the same effect as if originally organized under said act: PROVIDED FURTHER, That the organization of such districts and the validation of indebtedness heretofore incurred and the limitations upon indebtedness incurred after the effective date of this 1970 amendatory act shall be governed as follows:

(1) Each and all of the flood control districts heretofore organized and established under sections 1 through 79, chapter 160, Laws of 1935, section 1, chapter 82, Laws of 1949, section 1, chapter 20, Laws of 1953 and RCW 86.05.010 through 86.05.910 are hereby validated and declared to be duly existing flood control districts having their respective boundaries as set forth in their organization proceedings as shown by the files in the offices of the auditors of each of the counties affected;

(2) All debts, contracts, and obligations heretofore made by or in favor of, and all bonds or other obligations heretofore executed in connection with or in pursuance of attempted organization, and all other things and proceedings heretofore done or taken by any flood control district heretofore established, operated and maintained under sections 1 through 79, chapter 160, Laws of 1935, section 1, chapter 82, Laws of 1949, section 1, chapter 20, Laws of 1953 and RCW 86.05.010 through 86.05.910 are hereby declared legal and

valid and of full force and effect until such are fully satisfied and/or discharged.

(3) The limitation upon indebtedness prescribed in repealed section RCW 86.05.380 to an amount not exceeding one and one-half percent of the taxable property in such district without the assent of three-fifths of the voters therein and three percent of such property with such assent shall henceforth be to an amount not exceeding three-fourths of one percent of the value of the taxable property in such district without the assent of three-fifths of the voters therein and one and one-half percent of such property with such assent. The limitation upon indebtedness referred to in repealed section RCW 86.05.720 of one and one-half percent of the taxable property in such district shall henceforth be three-fourths of one percent of the value of the taxable property in such district. The term "value of the taxable property" as used in this paragraph shall have the meaning set forth in RCW 39.36.015. [1970 ex.s. c 42 § 40; 1967 c 164 § 8; 1965 c 26 § 16.]

**Severability—1970 ex.s. c 42:** See note following RCW 39.36.015.

**Effective date—1970 ex.s. c 42:** The effective date of the 1970 amendment to this section is November 1, 1970, see note following RCW 39.36.015.

**Purpose—Severability—1967 c 164:** See notes following RCW 4.96.010.

*Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.*

## Chapter 86.09 RCW

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*Deferral of special assessments: Chapter 84.38 RCW.*

*Special district creation and operation: Chapter 85.38 RCW.*

**86.09.001 Districts authorized—Purpose.** Flood control districts may be created and maintained in this state, as herein provided, for the protection of life and property, the preservation of the public health and the conservation and development of the natural resources of the state of Washington. [1937 c 72 § 1; RRS § 9663E-1. Formerly RCW 86.08.005, part.]

**86.09.004 Districts to provide control of water—Territory includable—Powers of district wholly within city**

(2006 Ed.)

**or town.** Such flood control districts shall be organized to provide for the ultimate necessary control of the entire part, or all, of the stream system of any stream or tributary, or for the protection against tidal or any bodies of water, within this state and may include all or part of the territory of any county and may combine the territory in two or more such counties, in which any of the lands benefited from the organization and maintenance of a flood control district are situated.

A district established wholly within the boundaries of any city or town may also provide for the collection, control, and safe and suitable conveyance over and across the district, of intermittent surface and drainage water, originating within or without its boundaries, to suitable and adequate outlets. [1965 c 26 § 1; 1937 c 72 § 2; RRS § 9663E-2. Formerly RCW 86.08.005, part.]

**86.09.010 Authorized purposes.** Such flood control districts may be organized or maintained for any, or all, the following general purposes:

(1) The investigation, planning, construction, improvement, replacement, repair or acquisition of dams, dikes, levees, ditches, channels, canals, banks, revetments and other works, appliances, machinery and equipment and property and rights connected therewith or incidental thereto, convenient and necessary to control floods and lessen their danger and damages.

(2) The cooperation with any agency or agencies of the United States and/or of the state of Washington in investigating and controlling floods and in lessening flood dangers and damages. [1937 c 72 § 4; RRS § 9663E-4. Formerly RCW 86.08.005, part.]

**86.09.013 State school or other public lands includable.** State granted school or other public lands of the state of Washington may be included within such flood control districts. [1937 c 72 § 5; RRS § 9663E-5. Formerly RCW 86.08.010, part.]

**86.09.016 Interest in public lands considered as private property—State or public title not affected.** All leases, contracts or other form of holding any interest in any state or public land shall be treated as the private property of the lessee or owner of the contractual or possessory interest therein: PROVIDED, That nothing in this chapter or in any proceeding authorized thereunder shall be construed to affect the title of the state or other public ownership. [1937 c 72 § 6; RRS § 9663E-6. Formerly RCW 86.08.010, part.]

**86.09.019 Federal lands includable.** Lands of the federal government may be included within such districts in the manner and subject to the conditions, now or hereafter specified in the statutes of the United States. [1937 c 72 § 7; RRS § 9663E-7. Formerly RCW 86.08.010, part.]

**86.09.020 Certain powers and rights governed by chapter 85.38 RCW.** Flood control districts shall possess the authority and shall be created, district voting rights shall be determined, and district elections shall be held as provided in chapter 85.38 RCW. [1985 c 396 § 36.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.148 District's corporate powers.** A flood control district created under this chapter shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all powers that may now or hereafter be conferred by law. [1967 c 164 § 9; 1937 c 72 § 50; RRS § 9663E-50. Formerly RCW 86.08.260, part.]

**Purpose—Severability—1967 c 164:** See notes following RCW 4.96.010.

*Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.*

**86.09.151 General powers of districts.** (1) Said flood control districts shall have full authority to carry out the objects of their creation and to that end are authorized to acquire, purchase, hold, lease, manage, improve, repair, occupy, and sell real and personal property or any interest therein, either inside or outside the boundaries of the district, to enter into and perform any and all necessary contracts, to appoint and employ the necessary officers, agents and employees, to sue and be sued, to exercise the right of eminent domain, to levy and enforce the collection of special assessments and in the manner herein provided against the lands within the district, for district revenues, and to do any and all lawful acts required and expedient to carry out the purpose of this chapter.

(2) In addition to the powers conferred in this chapter and those in chapter 85.38 RCW, flood control districts may engage in activities authorized under RCW 36.61.020 for lake management districts using procedures granted in this chapter and in chapter 85.38 RCW. [1986 c 278 § 52; 1937 c 72 § 51; RRS § 9663E-51. Formerly RCW 86.08.260, part.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**86.09.152 Exemption of farm and agricultural land from special benefit assessments.** See RCW 84.34.300 through 84.34.380 and 84.34.922.

**86.09.154 Sale, lease, use of water by district.** Duly created flood control districts, when maintaining and operating flood control works, shall have authority incidental thereto to lease, acquire, construct, operate and maintain appropriate instrumentalities for the use and sale or lease of water for any and all beneficial purposes and for the drainage, diking, or irrigation of lands upon the payment to the district of the reasonable cost of such service on a semiannual or monthly toll basis. [1937 c 72 § 52; RRS § 9663E-52. Formerly RCW 86.08.260, part.]

**86.09.157 Special assessment bonds authorized—Payment from income.** Said flood control districts shall also have authority to issue and sell special assessment bonds or notes of the district in accordance with chapter 85.38 RCW. [1986 c 278 § 40; 1937 c 72 § 53; RRS § 9663E-53. Formerly RCW 86.08.790, part.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**86.09.160 Power of district to act for United States.** Flood control districts created under the provisions of this chapter shall have authority to act as fiscal agent or other authority for the United States to make collections of money

for or on behalf of the United States or any federal agency thereof in connection with the operations of said district, whereupon said district and the county treasurer for said district shall be authorized to act and to assume the duties and liabilities incident to such action and the district board shall have full power to do any and all things required by any statute now or hereafter enacted in connection therewith and to do all things required by the rules and regulations now or that may hereafter be established by any department or agency of the state or federal government in regard thereto. [1937 c 72 § 54; RRS § 9663E-54. Formerly RCW 86.08.260, part.]

**86.09.163 Contracts with United States or state—Supervision of works.** The district board shall have authority to enter into any obligation or contract authorized by law with the United States or with the state of Washington for the supervision of the construction, for the construction, reconstruction, betterment, extension, purchase, operation or maintenance of the necessary works for the control of floods or for any other service furthering the objects for which said flood control district is created under the provisions of the law of the state of Washington or of the United States and all amendments or extensions thereof and the rules and regulations established thereunder. [1937 c 72 § 55; RRS § 9663E-55. Formerly RCW 86.08.260, part.]

**86.09.166 Contracts with United States or state—Control, management of works—Contribution of funds.** Flood control districts created under this chapter shall have authority to enter into contracts with, and/or contribute funds to, the United States or any agency thereof, or with, and/or contribute funds to, the state of Washington, under any act of congress or of the state of Washington now in force or hereafter enacted for the assumption of the control and management of the works for such period as may be designated in the contract, or other cooperative arrangement. [1937 c 72 § 56; RRS § 9663E-56. Formerly RCW 86.08.270, part.]

**86.09.169 Contracts with United States or state—Bonds as security—Annual assessment and levy.** In case a contract has been or shall be hereafter made between the district and the United States, or any agency thereof, or with the state of Washington, as herein provided, bonds of the district may be deposited with the United States, or any agency thereof, or with the state of Washington, as payment or as security for future payment at not less than ninety percent of the par value, the interest on said bonds to be provided for by assessment and levy as in the case of bonds of the district sold to private persons and regularly paid to the United States, or any agency thereof, or to the state of Washington, to be applied as provided in such contract and if bonds of the district are not so deposited it shall be the duty of the board of directors to include as part of any levy or assessment against the lands of the district, an amount sufficient to meet each year all payments accruing under the terms of any such contract. [1937 c 72 § 57; RRS § 9663E-57. Formerly RCW 86.08.270, part.]

**86.09.172 Contracts with United States or state—When submission to electors required.** No contract, how-

ever, requiring the levy of assessments for more than one year shall be entered into by the district as above provided unless a proposition of entering into such a contract shall have first been submitted to the electors of the district as herein provided for the calling, noticing, conducting and canvassing of special district elections, and by said electors approved. [1937 c 72 § 58; RRS § 9663E-58. Formerly RCW 86.08.270, part.]

**86.09.175 Installment contracts—Approval.** Contracts entered into by districts for construction or for services or materials, may provide that payments shall be made in such monthly proportion of the contract price, as the board shall determine thereon, as the work progresses, or as the services or materials are furnished, on monthly estimates of the value thereof, approved by the state director. Before the district shall enter into any contract, the plans, specifications and form of contract therefor shall be approved by the state director. [1937 c 72 § 59; RRS § 9663E-59. Formerly RCW 86.08.280, part.]

**86.09.178 Construction contracts—Public bids, procedure.** Contracts for construction, or for labor or materials entering into the construction of any improvement authorized by the district shall be awarded at public bidding except as herein otherwise provided. A notice calling for sealed proposals shall be published in such newspaper or newspapers of general circulation as the board shall designate for a period of not less than two weeks (three weekly issues) prior to the day of the opening of the bids. Such proposals shall be accompanied by a certified check for such amount as the board shall decide upon, to guarantee a compliance with the bid and shall be opened in public at the time and place designated in the notice. The contract shall be awarded to the lowest and best responsible bidder: PROVIDED, That the board shall have authority to reject any or all bids, in which event they shall readvertise for bids and, when no satisfactory bid is then received and with the written approval of the director, may proceed to construct the works by force account. [1965 c 26 § 2; 1937 c 72 § 60; RRS § 9663E-60. Formerly RCW 86.08.280, part.]

**86.09.181 Contractor's bond.** Any person, except the state of Washington and the United States, acting under the provisions of this chapter, to whom or to which a contract may have been awarded by the district for construction purposes, or for labor or materials entering therein when the total amount to be paid therefor exceeds one thousand dollars, shall enter into a bond to the state of Washington, with good and sufficient sureties, to be approved and filed with the state director, for one hundred percent of the contract price, conditioned for the faithful performance of said contract and with such further conditions as may be required by law. [1965 c 26 § 3; 1937 c 72 § 61; RRS § 9663E-61. Formerly RCW 86.08.290, part.]

*Contractor's bond: Chapter 39.08 RCW.*

**86.09.196 Construction in parts or units—Liability for assessment.** The district shall have authority upon the adoption of a comprehensive plan of flood control with the

approval of the state director to provide for the construction of the same partially and in parts or units and all the benefited lands in the district shall be liable for assessment to defray the costs of such partial construction or such parts or units until the entire plan has been completed and fully paid for. [1937 c 72 § 66; RRS § 9663E-66. Formerly RCW 86.08.310.]

**86.09.202 Eminent domain—Authorized.** The taking and damaging of property or rights therein or thereto by a flood control district to construct an improvement or to fully carry out the purposes of its organization are hereby declared to be for a public use, and any district organized under the provisions of this chapter, shall have and exercise the power of eminent domain to acquire any property or rights therein or thereto either inside or outside the operation of the district and outside the state of Washington, if necessary, for the use of the district. [1937 c 72 § 68; RRS § 9663E-68. Formerly RCW 86.08.260, part.]

**86.09.205 Eminent domain—Procedure.** Flood control districts exercising the power of eminent domain shall proceed in the name of the district in the manner provided by law for the appropriation of real property or of rights therein or thereto, by private corporations, except as otherwise expressly provided herein. [1937 c 72 § 69; RRS § 9663E-69. Formerly RCW 86.08.320, part.]

*Eminent domain by private corporations generally: Chapter 8.20 RCW.*

**86.09.208 Eminent domain—Consolidation of actions—Separate verdicts.** The district may at its option unite in a single action proceedings to condemn, for its use, property which is held by separate owners. Two or more condemnation suits instituted separately may also, in the discretion of the court, be consolidated upon motion of any interested party, into a single action. In such cases, the jury shall render separate verdicts for the different tracts of land. [1937 c 72 § 70; RRS § 9663E-70. Formerly RCW 86.08.320, part.]

**86.09.211 Eminent domain—Damages, how determined—Judgment when damages exceed benefits.** The jury, or court if the jury be waived, in such condemnation proceedings shall find and return a verdict for the amount of damages sustained: PROVIDED, That the court or jury, in determining the amount of damages, shall take into consideration the special benefits, if any, that will accrue to the property damaged by reason of the improvement for which the land is sought to be condemned, and shall make special findings in the verdict of the gross amount of damages to be sustained and the gross amount of special benefits that will accrue. If it shall appear by the verdict of findings, that the gross damages exceed said gross special benefits, judgment shall be entered against the district, and in favor of the owner or owners of the property damaged, in the amount of the excess of damages over said benefits, and for the costs of the proceedings, and upon payment of the judgment to the clerk of the court for the owner or owners, a decree of appropriation shall be entered, vesting the title to the property appropriated in the district. [1937 c 72 § 71; RRS § 9663E-71. Formerly RCW 86.08.330, part.]

**86.09.214 Eminent domain—Judgment, when benefits equal or exceed damages.** If it shall appear by the verdict that the gross special benefits equal or exceed the gross damages, judgment shall be entered against the district and in favor of the owner or owners for the costs only, and upon payment of the judgment for costs a decree of appropriation shall be entered vesting the title to the property in the district. [1937 c 72 § 72; RRS § 9663E-72. Formerly RCW 86.08.330, part.]

**86.09.217 Eminent domain—Right to levy on other land not affected.** If the damages found in any condemnation proceedings are to be paid for from funds of the flood control district, no finding of the jury or court as to benefits or damages shall in any manner abridge the right of the district to levy and collect assessments for district purposes against the uncondemned lands situated within the district. [1937 c 72 § 73; RRS § 9663E-73. Formerly RCW 86.08.340, part.]

**86.09.220 Eminent domain—Unpaid damages to be applied in satisfaction of levies—Deficiency assessments.** The damages thus allowed but not paid shall be applied pro tanto to the satisfaction of the levies made for such construction costs upon the lands on account of which the damages were awarded: PROVIDED, That nothing herein contained shall be construed to prevent the district from assessing the remaining lands of the owner or owners, so damaged, for deficiencies on account of the principal and interest on bonds and for other benefits not considered by the jury in the condemnation proceedings. [1937 c 72 § 74; RRS § 9663E-74. Formerly RCW 86.08.340, part.]

**86.09.223 Eminent domain—Title and estate acquired.** The title acquired by the district in condemnation proceedings shall be the fee simple title or such lesser estate as shall be designated in the decree of appropriation. [1937 c 72 § 75; RRS § 9663E-75. Formerly RCW 86.08.340, part.]

**86.09.226 Right of entry to make surveys and locate works.** The district board and its agents and employees shall have the right to enter upon any land, to make surveys and may locate the necessary flood control works and the line for canal or canals, dike or dikes and other instrumentalities and the necessary branches and parts for the same on any lands which may be deemed necessary for such location. [1937 c 72 § 76; RRS § 9663E-76. Formerly RCW 86.08.350.]

**86.09.229 Crossing road or public utility—Notice, plan, cost, etc.** Whenever in the progress of the construction of the system of district improvement, it shall become necessary to construct a portion of such system across any public or other road or public utility, the district board shall serve notice in writing upon the public officers, corporation or person having charge of or controlling or owning such road or public utility, as the case may be, of the present necessity of such crossing, giving the location, kind, dimensions and requirement thereof, for the purpose of the system of improvement, and stating a reasonable time, to be fixed by the board, within which plans for such crossing must be filed

for approval in case the public officer, corporation or person controlling or owning such road or public utility desire to design and construct such crossing. As soon as convenient, within the time fixed in the notice, the public officers, corporation or person shall, if they desire to construct such crossing, prepare and submit to the board for approval duplicate detailed plans and specifications for such crossing. Upon the return of such approved plans, the public officers, corporation or person controlling such road or public utility shall, within the time fixed by the board, construct such crossing in accordance with the approved plans. In case such public officers, corporation or person controlling or owning such road or public utility shall fail to file plans for such crossing within the time prescribed in the notice, the district board shall proceed with the construction of such crossing in such manner as will cause no unnecessary injury to or interference with such road or public utility. The cost of construction and maintenance of only such crossings or such portion of such cost as would not have been necessary but for the construction of the system of improvement shall be a proper charge against the district, and only the actual cost of such improvement constructed in accordance with the approved plans shall be charged against the district in the case of crossings constructed by others than the district. The amount of costs of construction allowed as a charge against the district shall be credited ratably on the assessments against the property on which the crossing is constructed if chargeable therewith, until the same is fully satisfied. [1965 c 26 § 5; 1937 c 72 § 77; RRS § 9663E-77. Formerly RCW 86.08.360.]

**86.09.232 Right-of-way on state land, exception.** The right-of-way is hereby given, dedicated and set apart to locate, construct and maintain district works over and through any of the lands which are now or may hereafter be the property of the state of Washington, except lands of said state actually dedicated to public use. [1937 c 72 § 78; RRS § 9663E-78. Formerly RCW 86.08.370, part.]

**86.09.235 Power to construct works inside or outside of district.** Flood control districts organized under the provisions of this chapter shall have authority to construct, operate and maintain any and all necessary flood control works inside and outside the boundaries of the district. [1937 c 72 § 79; RRS § 9663E-79. Formerly RCW 86.08.370, part.]

**86.09.259 Board of directors—Number—Officers.** A flood control district shall be managed by a board of directors consisting of three members. The initial directors shall be appointed, and the elected directors elected, as provided in chapter 85.38 RCW. The directors shall elect a chairman from their number and shall either elect one of their number, or appoint a voter of the district, as secretary to hold office at its pleasure and who shall keep a record of its proceedings. [1985 c 396 § 58; 1967 c 154 § 7; 1937 c 72 § 87; RRS § 9663E-87. Formerly RCW 86.08.390, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**Provisions cumulative:** "The provisions of this act are cumulative with and shall not amend, repeal or supersede any other powers heretofore or hereafter granted such districts." [1967 c 154 § 5.]

**86.09.265 Board of directors—Quorum—Majority vote required.** A majority of the directors shall constitute a quorum for the transaction of business, and in all matters requiring action by the board, there shall be a concurrence of at least a majority of the directors. [1937 c 72 § 89; RRS § 9663E-89. Formerly RCW 86.08.205, part.]

**86.09.268 Board of directors—Powers and duties.** The board shall have the power and it shall be its duty to adopt a seal of the district, to manage and conduct the business affairs of the district, to employ and appoint such agents, engineers, attorneys, officers and employees as may be necessary, and prescribe their duties, to establish reasonable bylaws, rules and regulations for the government and management of affairs of the district, and generally to perform any and all acts necessary to carry out the purpose of the district organization. [1937 c 72 § 90; RRS § 9663E-90. Formerly RCW 86.08.175, part.]

**86.09.271 Board of directors—Location of district office—Change of location.** The office of the directors and principal place of business of the district shall be located, if possible, at some place within the district to be designated by the board. If a place convenient and suitable for conducting district business and public hearings required by this chapter cannot be found within the district, the office may be located in the county within which the major portion of district lands is situated. The office and place of business cannot thereafter be changed, except with the previous written consent of the county legislative authority of the county within which the major portion of the district is situated, and without passing a resolution to that effect at a previous regular meeting of the board, entered in the minutes thereof and without posting a notice of the change in a conspicuous public place at or near the place of business which is to be changed at least ten days prior thereto and by the previous posting of a copy of the notice for the same length of time at or near the new location of the office. [1985 c 396 § 59; 1965 c 26 § 7; 1937 c 72 § 91; RRS § 9663E-91. Formerly RCW 86.08.200.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.274 Board of directors—Meetings—Change of date.** The directors shall hold a regular meeting at their office at least once a year, or more frequently, on the date or dates the board shall designate in their bylaws, and may adjourn any meeting from time to time as may be required for the proper transaction of business: PROVIDED, That the day of the regular meeting cannot be changed, except in the manner prescribed herein for changing the place of business of the district. [1985 c 396 § 60; 1937 c 72 § 92; RRS § 9663E-92. Formerly RCW 86.08.205, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.277 Board of directors—Special meetings—When notice required—Authorized business.** Special meetings of the board may be called at any time by order of a majority of the directors. Any member not joining in said order shall be given, by United States mail, at least a three days' notice of such meeting, unless the same is waived in writing, which notice shall also specify the business to be

transacted and the board at such special meeting shall have no authority to transact any business other than that specified in the notice, unless the transaction of any other business is agreed to in writing by all the members of the board. [1937 c 72 § 93; RRS § 9663E-93. Formerly RCW 86.08.205, part.]

**86.09.280 Board of directors—Meetings and records public—Printing of bylaws and rules.** All meetings of the directors must be public. All records of the board shall be open for the inspection of any elector of the district during business hours of the day in which any meeting of the board is held. The bylaws, rules and regulations of the board shall be printed in convenient form for distribution in the district. [1937 c 72 § 94; RRS § 9663E-94. Formerly RCW 86.08.205, part, and 86.08.210, part.]

*Meetings of public officials declared public: Chapter 42.32 RCW.*

**86.09.283 Board of directors—Compensation and expenses of members and employees.** The board of directors may each receive up to seventy dollars for attendance at official meetings of the board and for each day or major part thereof for all necessary services actually performed in connection with their duties as director. The board shall fix the compensation to be paid to the directors, secretary, and all other agents and employees of the district. Compensation for the directors shall not exceed six thousand seven hundred twenty dollars in one calendar year. A director is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the director's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW.

Any director may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the director's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. [1998 c 121 § 13; 1991 c 349 § 24; 1985 c 396 § 61; 1965 c 26 § 8; 1937 c 72 § 95; RRS § 9663E-95. Formerly RCW 86.08.175, part, and 86.08.195, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.286 Board of directors—Personal interest in contracts prohibited—Penalty—Officer may be employed.** No director or any other officer named in this chapter shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment: PROVIDED, That nothing in this section contained shall be construed to prevent any district officer from being employed by the district as foreman or as a day laborer: PROVIDED FURTHER, That this section shall have no application to any

person who is a state employee as defined in RCW 42.52.010. [1994 c 154 § 316; 1969 ex.s. c 234 § 35; 1937 c 72 § 96; RRS § 9663E-96. Formerly RCW 86.08.215.]

**Parts and captions not law—Effective date—Severability—1994 c 154:** See RCW 42.52.902, 42.52.904, and 42.52.905.

*Ethics in public service act: Chapter 42.52 RCW.*

**86.09.292 Board of directors—Chairman of county commissioners may act when quorum not present.** In case any member of the district board is absent at the time of any regular monthly meeting of said board, and a quorum of said board cannot be obtained by reason of the absence of said member, it shall be the duty of the chairman of the board of county commissioners of the county in which the office of the district board is located to act in place of said absent member, and the acts of the district board at said meeting shall be valid so far as a quorum is concerned and shall have the same effect as though said absent member were present and acting thereat. [1937 c 72 § 98; RRS § 9663E-98. Formerly RCW 86.08.205, part.]

**86.09.301 Board of directors—Oath.** Every district officer, upon taking office, shall take and subscribe an official oath for the faithful discharge of the duties of his office during the term of his incumbency. [1985 c 396 § 62; 1937 c 72 § 101; RRS § 9663E-101. Formerly RCW 86.08.195, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.304 Bond of officer or employee handling funds.** Every district officer or employee handling any district funds shall execute a surety bond payable to the district in the sum of double the estimated amount of funds handled monthly, conditioned that the principal will strictly account for all moneys or credit received by him for the use of the district. Each bond and the amount thereof shall be approved by the county legislative authority of the county within which the major portion of the district is situated, and thereafter filed with the secretary of the district. [1985 c 396 § 63; 1937 c 72 § 102; RRS § 9663E-102. Formerly RCW 86.08.220, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.307 Bonds—Cost charged to district.** All official bonds executed by district officers under the provisions of this chapter shall be secured at the cost of the district. [1937 c 72 § 103; RRS § 9663E-103. Formerly RCW 86.08.220, part.]

**86.09.310 Delivery of property to successor.** Every person, upon the expiration or sooner termination of his term of office as an officer of the district, shall immediately turn over and deliver, under oath, to his successor in office, all records, books, papers and other property under his control and belonging to such office. In case of the death of any officer, his legal representative shall turn over and deliver such records, books, papers and other property to the successor in office of such deceased person. [1937 c 72 § 104; RRS § 9663E-104.]

**86.09.313 Nearest county treasurer as ex officio district treasurer.** The county treasurer of any county in which lands within the flood control district are situated, whose office is nearest distant by public highway to the office of the district board and principal place of business of the district, shall be and is hereby constituted ex officio district treasurer, who shall collect all district assessments and shall keep all district funds required by law. [1937 c 72 § 105; RRS § 9663E-105. Formerly RCW 86.08.225, part.]

**86.09.319 Treasurer's liability.** Any county treasurer collecting or handling funds of the district shall be liable upon his official bond and to criminal prosecution for malfeasance, misfeasance or nonfeasance in office relative to any of his duties prescribed herein. [1937 c 72 § 107; RRS § 9663E-107. Formerly RCW 86.08.230.]

**86.09.322 County treasurers to collect and remit assessments.** It shall be the duty of the county treasurer of each county, in which lands included within the operation of the district are located, to collect and receipt for all assessments levied as herein provided, and forward monthly all sums so collected to the ex officio district treasurer who shall place the same to the credit of the proper fund of the district. [1937 c 72 § 108; RRS § 9663E-108. Formerly RCW 86.08.240.]

**86.09.325 Disbursement of funds by district treasurer.** The ex officio district treasurer shall pay out moneys collected or deposited with him in behalf of the district, or portions thereof, upon warrants issued by the county auditor against the proper funds of the districts, except the sums to be paid out of the bond fund for interest and principal payments on bonds. [1983 c 167 § 201; 1937 c 72 § 109; RRS § 9663E-109. Formerly RCW 86.08.250, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**86.09.328 Monthly report by district treasurer.** The said ex officio district treasurer shall report in writing on or before the fifteenth day of each month to the district board, the amount of money held by him, the amount in each fund, the amount of receipts for the month preceding in each fund, and the amount or amounts paid out of each fund, and said report shall be filed with the secretary of the board. [1937 c 72 § 110; RRS § 9663E-110. Formerly RCW 86.08.250, part.]

**86.09.377 Voting rights.** Each qualified voter of a flood control district who owns more than ten acres of land within the district shall be entitled to two additional votes for each ten acres or major fraction thereof located within the district, up to a maximum total of forty votes for any voter, or in the case of community property, a maximum total of twenty votes per member of the marital community. [1991 c 349 § 4; 1985 c 396 § 22.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.379 Elections—Informality not fatal.** No informality in conducting any election authorized by this chapter

shall invalidate the same, if the election shall have been otherwise fairly conducted. [1937 c 72 § 127; RRS § 9663E-127. Formerly RCW 86.08.165.]

**86.09.380 Special assessments—Budgets—Alternative methods.** RCW 85.38.140 through 85.38.170 constitute a mutually exclusive alternative method by which flood control districts in existence as of July 28, 1985, may measure and impose special assessments and adopt budgets. RCW 85.38.150 through 85.38.170 constitute the exclusive method by which flood control districts created after July 28, 1985, may measure and impose special assessments and adopt budgets. [1985 c 396 § 29.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.382 Assessments—Presumption that land benefited by class—Benefit ratio basis of assessment.** It shall be and hereby is presumed that lands within flood control districts organized under the provisions of this chapter, shall be benefited in relation to their respective classes to be determined as herein provided, and that the relative ratios of benefits for said lands arising from their locations in said respective classes shall be the basis upon which the same shall be assessed to raise district revenues for any and all purposes now or hereafter authorized by law. [1937 c 72 § 128; RRS § 9663E-128. Formerly RCW 86.08.450, part.]

**86.09.385 Assessments—Base map of lands within the district.** As a basis for the levy of all assessments authorized under this chapter, the county legislative authority of the county within which the major portion of the district is situated, soon after the creation of the district, shall cause to be prepared a base map of the lands within the district and deliver the same to the secretary of the district: PROVIDED, That said county legislative authority shall not be required to prepare said base map unless ample appropriation of funds for the purpose has been made. [1985 c 396 § 64; 1965 c 26 § 10; 1937 c 72 § 129; RRS § 9663E-129. Formerly RCW 86.08.420, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.388 Assessments—Appointment of appraisers—Determination of benefit ratios.** Upon receipt of the base map the board of directors of the district shall appoint a board of three appraisers subject to the written approval of the county legislative authority of the county within which the major portion of the district is situated, whose duty it shall be to determine the ratio of benefits which the several tracts of land shall receive with respect to each other from the organization and operation of the district and the construction and maintenance of the district works in accordance with the comprehensive plan therefor adopted by the directors of the district. [1985 c 396 § 65; 1965 c 26 § 11; 1937 c 72 § 130; RRS § 9663E-130. Formerly RCW 86.08.420, part, and 86.08.430, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.391 Assessments—Appraisers' board, chairman and secretary—Compensation and expenses.** The board of appraisers shall elect a member as chairman and the

secretary of the district or his deputy shall be ex officio secretary of the board of appraisers. The appraisers shall receive such compensation and expenses as the board of directors of the district, with the approval of the county legislative authority of the county within which the major portion of the district is situated, shall determine, and which may forthwith be paid by the issuance of district warrants. [1985 c 396 § 66; 1937 c 72 § 131; RRS § 9663E-131. Formerly RCW 86.08.420, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.394 Assessments—Classification of lands according to benefits—Factors considered.** For the purpose of determining said ratios of benefits, said board of appraisers shall segregate the acreage of the respective lands within the district into such number of classes as in the sole judgment of the members of the board of appraisers shall fairly represent the manifest degrees of benefits, including benefits from better sanitation, easier accessibility, facility of drainage, promotion of land development as well as from minimization of flood damages and from actual flood protection, accruing to the several lands from the organization and operation of the district and the construction and maintenance of the district works in accordance with the comprehensive plan therefor adopted by the directors of the district. [1937 c 72 § 132; RRS § 9663E-132. Formerly RCW 86.08.440, part.]

**86.09.397 Assessments—Classification of lands by appraisers—Classes described.** Said board of appraisers shall have full authority and it shall be its duty to segregate and classify the acreage of the lands and subdivisions of the same with respect to their respective relative benefits received and to be received from the organization and operation of the district and the construction and maintenance of the district works in accordance with the comprehensive plan therefor adopted by the directors of the district. Those lands receiving the greatest benefits shall be placed in class No. 1; those lands receiving the next greatest benefits shall be placed in class No. 2, and so on down to the class of the least benefits. Those lands receiving no benefits shall be designated "nonbenefited." [1937 c 72 § 133; RRS § 9663E-133. Formerly RCW 86.08.430, part.]

**86.09.400 Assessments—Percentage of benefits to lands as classed—Relative ratios.** Said board of appraisers shall have full authority and it shall be its duty to determine the percentage of benefits which the acreage of the lands in each class shall have with respect to the lands in class No. 1. Those lands falling in class No. 1 shall have the ratio or percentage of one hundred and those lands in the other respective classes shall be given such percentages of the lands in class No. 1 as said board of appraisers shall determine. [1937 c 72 § 134; RRS § 9663E-134. Formerly RCW 86.08.430, part.]

**86.09.403 Assessments—Surveys, investigations to determine classification and benefits.** In determining the classification of said lands and their relative percentages of benefits, as herein provided, said board of appraisers shall

consider the benefits of every kind accruing to said lands, as aforesaid, and shall make such investigation and surveys of the same as said board of appraisers shall deem necessary. The board of appraisers shall also examine and consider the data and records of the commission which fixed the boundaries of the district. [1937 c 72 § 135; RRS § 9663E-135. Formerly RCW 86.08.440, part.]

**86.09.406 Assessments—Permanency of ratios of benefits as fixed.** The ratio of percentage determined by said board of appraisers for each class of lands aforesaid shall constitute the ratio of benefits of each acre or fraction thereof in its respective class for all district assessment purposes until changed in the manner herein provided. [1937 c 72 § 136; RRS § 9663E-136. Formerly RCW 86.08.450, part.]

**86.09.409 Assessments—Alternative method of determining benefit ratios.** As an independent and alternative method to any other method herein authorized and subject to the prior written approval of the county legislative authority of the county within which the major portion of the district is situated, the ratio of benefits herein mentioned may be determined in their relation to the relative values of the respective benefited lands, including the improvements thereon, and the same shall be expressed on a relative percentage basis. [1985 c 396 § 67; 1937 c 72 § 137; RRS § 9663E-137. Formerly RCW 86.08.460, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.412 Assessments—Alternative method, percentage shall fix the class.** In case said alternative method of determining the ratio of benefits is adopted by any such district the percentage given a tract of land shall fix the class to which said tract belongs for assessment purposes. [1937 c 72 § 138; RRS § 9663E-138. Formerly RCW 86.08.460, part.]

**86.09.415 Assessments—Determining relative values—General tax rolls.** In determining the relative values of such lands, including improvements thereon, the assessed valuation of the same for general tax purposes last equalized shall be construed to be prima facie correct: PROVIDED, That nothing herein contained shall be construed to prevent the fixing of values where none are shown on the general tax roll or the revision of such values on the general tax roll in any instance where in the sole judgment of the revising officers for the district the value for general tax purposes is manifestly and grossly erroneous in its relation to value of like property in the district similarly situated: AND PROVIDED FURTHER, That in any instance where any tract of land is protected or partially protected from floods and is financially supporting the works affording such protection the revising officers for the district shall take the value of such existing flood protection into consideration and give such land equitable credit therefor. [1937 c 72 § 139; RRS § 9663E-139. Formerly RCW 86.08.460, part.]

**86.09.418 Assessments—Revision of benefit classification—Appointment of reappraisers—Effect of reexamination.** Upon completion of the control works of the district or of any unit thereof, the board of directors of the district

may, with the written consent of the county legislative authority of the county within which the major portion of the district is situated, and upon petition signed by landowners representing twenty-five percent of the acreage of the lands in the district shall, appoint three qualified persons who shall be approved in writing by the county legislative authority, to act as a board of appraisers and who shall reconsider and revise and/or reaffirm the classification and relative percentages, or any part or parts thereof, in the same manner and with the same legal effect as that provided herein for the determination of such matters in the first instance: PROVIDED, That such reexamination shall have no legal effect on any assessments regularly levied prior to the order of appraisal by the reexamining board of appraisers. [1985 c 396 § 68; 1937 c 72 § 140; RRS § 9663E-140. Formerly RCW 86.08.470, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.421 Assessments—Descriptions of lands as appraised and classified—Map and filing thereof.** When said board of appraisers shall have made said determination of the ratio of benefits, as aforesaid, all the lands within the district shall be classified and properly designated and shall be described in terms of government sections, and fractions thereof in designated townships and ranges, on the base map, and the board of appraisers shall file said map with the secretary of the district: PROVIDED, That platted lands may be described in terms of the recorded plat thereof. [1937 c 72 § 141; RRS § 9663E-141. Formerly RCW 86.08.470, part.]

**86.09.424 Assessments—Hearing on objections to assessment ratios—Time—Place.** The secretary of the district shall immediately fix a time for hearing objections to the assessment ratios determined by said board of appraisers as shown on said base map. The meeting shall be at the office of the district board and principal place of business of the district and shall be held not less than twenty-five, nor more than thirty-five, days from the date of the first publication of the notice of the hearing. [1937 c 72 § 142; RRS § 9663E-142. Formerly RCW 86.08.475, part.]

**86.09.427 Assessments—Notice of hearing, publication.** Notice of said hearing shall be given by the secretary of the district by causing a copy of the same to be published for three consecutive weekly issues in a newspaper of general circulation, to be selected by said secretary, published in each of the counties in which any part of the district is located. [1937 c 72 § 143; RRS § 9663E-143. Formerly RCW 86.08.475, part.]

**86.09.430 Assessments—Contents of notice of hearing.** Said notice of hearing on said determination of assessment ratios shall state that the base assessment map designating the classes in which the lands in the district have been placed for assessment purposes on the ratios authorized by law, has been prepared by the board of appraisers and is on file at the office of the district board and may be inspected at any time during office hours; that a hearing on said map will be held before the county legislative authority at the office of the district board on . . . . ., the . . . . day of . . . . ., . . . . ., at the hour of . . . . . o'clock (naming the time), where any

person may appear and present such objections, if any, he may have to said map, and shall be signed by the secretary of the district. [1986 c 278 § 43; 1937 c 72 § 144; RRS § 9663E-144. Formerly RCW 86.08.480.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**86.09.433 Assessments—Conduct of hearing—Order.** At the time set for said hearing the county legislative authority shall be present at the place designated in the notice and if it appears that due notice of the hearing has been given, shall proceed to hear such objections to the base map as shall be presented and shall hear all pertinent evidence that may be offered. The county legislative authority shall have authority to adjourn said hearings from time to time to study the record and evidence presented, to make such independent investigation as it shall deem necessary and to correct, modify or confirm the things set out on said base map or any part thereof and to determine all questions concerning the matter and shall finally make an order confirming said map with such substitutions, changes or corrections, if any, as may have been made thereon, which order shall be signed by the chairman of the county legislative authority and attached to said map. [1985 c 396 § 69; 1937 c 72 § 145; RRS § 9663E-145. Formerly RCW 86.08.485, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.439 Assessments—Conclusiveness of base assessment map.** Upon the signing of said order by said county legislative authority and the attachment of the same to said base assessment map, said base assessment map and all things set out on the face thereof shall be conclusive in all things upon all parties, unless appealed from to the superior court in the manner and within the time herein provided. [1986 c 278 § 44; 1937 c 72 § 147; RRS § 9663E-147. Formerly RCW 86.08.485, part.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**86.09.442 Assessments—Copies of base assessment map to be filed with county assessors.** When confirmed by order of said county legislative authority as aforesaid, or by order of said county legislative authority making any changes decreed by the court on appeal to the superior court, it shall be the duty of the secretary of the district to prepare a correct copy of so much of said base assessment map as includes the lands in the district situated in each county in which the lands in the district are situated, with the assessment classes and ratios properly designated thereon, and file the same with the respective county assessors of said counties for record therein. [1985 c 396 § 70; 1937 c 72 § 148; RRS § 9663E-148. Formerly RCW 86.08.500, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.445 Assessments—Levies to be made according to base assessment map.** Assessments made against the respective lands in the district to carry out any of the purposes of this chapter shall be levied in accordance with their respective classifications and in proportion to their respective ratios of benefits, set out on the base assessment map. [1937 c 72 § 149; RRS § 9663E-149. Formerly RCW 86.08.500, part.]

(2006 Ed.)

**86.09.448 Assessments—Appeal to courts.** Any person, firm or corporation feeling aggrieved at any determination by said county legislative authority of the classification or relative percentage of his or its lands, aforesaid, may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county in which the land affected is situated. The matter shall be heard and tried by the court and shall be informal and summary but full opportunity to be heard and present evidence shall be given before judgment is pronounced. [1985 c 396 § 71; 1937 c 72 § 150; RRS § 9663E-150. Formerly RCW 86.08.490, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.451 Assessments—Notice of appeal.** No such appeal shall be entertained by the court unless notice of the same containing a statement of the substance of the matter complained of and the manner in which the same injuriously affects the appellant's interests shall have been served personally or by registered mail, upon the county legislative authority of the county within which the major portion of the district is situated, and upon the secretary of the district, within twenty days following the date of the determination appealed from. [1985 c 396 § 72; 1937 c 72 § 151; RRS § 9663E-151. Formerly RCW 86.08.490, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.454 Assessments—Appeal—Stay bond, when required.** No bond shall be required unless a stay is desired, and an appeal shall not be a stay, unless within five days following the service of notice of appeal aforesaid, a bond shall be filed in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court. [1937 c 72 § 152; RRS § 9663E-152. Formerly RCW 86.08.490, part.]

**86.09.457 Assessments—Civil practice to apply—Costs, liability of district.** Costs shall be paid as in civil cases brought in the superior court, and the practices in civil cases shall apply: PROVIDED, That any costs awarded against said county legislative authority shall be in its official capacity only and shall be against and paid by the district. [1985 c 396 § 73; 1937 c 72 § 153; RRS § 9663E-153. Formerly RCW 86.08.495, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

*Civil practice generally: Title 4 RCW; Rules of court.*

*Costs, generally: Chapter 4.84 RCW.*

**86.09.460 Assessments—Appeal from superior to supreme court.** An appeal shall lie from the judgment of the superior court as in other civil cases. [1937 c 72 § 154; RRS § 9663E-154. Formerly RCW 86.08.495, part.]

**86.09.463 Assessments—County legislative authority's determination deemed prima facie correct on appeal.** In all said appeals from the determination of said county legislative authority, as herein provided, said determination and all parts thereof shall be deemed to be prima facie correct. [1985 c 396 § 74; 1937 c 72 § 155; RRS § 9663E-155. Formerly RCW 86.08.490, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.466 Assessments—District budget—Approval—Basis for assessment roll.** The secretary of the district on or before the first day of November in each year shall estimate the amount of money necessary to be raised for any and all district purposes during the ensuing year based upon a budget furnished him by the district board and submit the same to the county legislative authority of the county within which the major portion of the district is situated for its suggestions, approval and revision and upon the approval of the budget by said county legislative authority, either as originally submitted or as revised, the secretary shall prepare an assessment roll with appropriate headings in which must be listed all the lands in each assessment classification shown on the base assessment map. [1985 c 396 § 75; 1937 c 72 § 156; RRS § 9663E-156. Formerly RCW 86.08.510, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.469 Assessments—Assessment roll, contents—Headings.** On such assessment roll in separate columns, must be specified under the appropriate headings:

(1) The reputed owner of the property assessed. If the reputed owner is not known to the secretary, the reputed owner may be stated as "unknown";

(2) The description of the land of the reputed or unknown owner sufficiently definite to identify the land. Where the land is described in the records of the county assessor's office in terms of the assessor's plat tax number, such designation shall be sufficient description of such land on the district's assessment roll. In instances where the district has adopted the alternative method of determining the ratio of benefits as herein authorized the secretary shall annually revise and specify in an appropriate column on the roll the cash value of the respective tracts of lands, including improvements thereon, described on the roll;

(3) The estimated assessable acreage of such respective lands;

(4) The designated classification and their respective ratios of benefits shown on the base assessment map in which the land is situated, with the per acre final ratio or percentage upon which every acre or fraction thereof of the respective lands are to be charged with assessments;

(5) The total amount of the assessment in dollars and cents against each tract of land. [1937 c 72 § 157; RRS § 9663E-157. Formerly RCW 86.08.520, part.]

**86.09.472 Assessments—Margin for anticipated delinquencies.** For the purpose of apportioning the amount of money to be raised by assessment, to the several tracts of land in accordance with their respective classifications, the secretary shall add to the amount of money to be raised fifteen percent thereof for anticipated delinquencies. [1937 c 72 § 158; RRS § 9663E-158. Formerly RCW 86.08.510, part.]

**86.09.475 Assessments—How calculated.** In calculating the amount of assessments to be charged against the respective tracts of land included in the annual district assessment roll, the per acre charge against the lands in class No. 1 on the base map shall be taken as one hundred percent and the

per acre charge against the lands in other classes shall be reckoned on their respective final per acre percentages of the per acre assessment against the lands in said class No. 1. [1937 c 72 § 159; RRS § 9663E-159. Formerly RCW 86.08.530.]

**86.09.478 Assessments—Omitted property may be back-assessed.** Any property which may have escaped assessment for any year or years, shall in addition to the assessment for the then current year, be assessed for such year or years with the same effect and with the same penalties as are provided for such current year and any property delinquent in any year may be directly assessed during the current year for any expenses caused the district on account of such delinquency. [1937 c 72 § 160; RRS § 9663E-160. Formerly RCW 86.08.550.]

**86.09.481 Assessments—Lands in more than one county.** Where the district embraces lands lying in more than one county the assessment roll shall be so arranged that the lands lying in each county shall be segregated and grouped according to the county in which the same are situated. [1937 c 72 § 161; RRS § 9663E-161. Formerly RCW 86.08.520, part.]

**86.09.484 Equalization of assessments—Notice and time for meeting of board of equalization.** Upon completion of the assessment roll the secretary shall deliver the same to the district board and immediately give notice thereof and of the time the board of directors, acting as a board of equalization will meet to equalize assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than twenty nor more than thirty days from the first publication of the notice, and in the meantime the assessment roll must remain in the office of the secretary for the inspection of all persons interested. [1937 c 72 § 162; RRS § 9663E-162. Formerly RCW 86.08.540, part.]

**86.09.487 Equalization of assessments—Meeting of directors as board, length of time—Completion of roll.** Upon the day specified in the notice required by the preceding section for the meeting, the board of directors, which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from day to day as long as may be necessary, not to exceed ten days, exclusive of Sundays, to hear and determine such objections to the said assessment roll as may come before them; and the board may decide the same. The secretary of the board shall be present during its session, and note all changes made at said hearing, and on or before the fifteenth day of January thereafter shall have the assessment roll completed as finally equalized by the board. [1937 c 72 § 163; RRS § 9663E-163. Formerly RCW 86.08.540, part.]

**86.09.489 Levy where total assessment less than two dollars.** When the assessment roll is completed as finally equalized by the board of directors and the total assessment against any tract or contiguous tracts owned by one person or corporation is less than two dollars, the county treasurer shall

levy such a minimum amount of two dollars against such tract or contiguous tracts. [1965 c 26 § 13.]

**86.09.490 Assessment lien—Priority.** The assessment upon real property shall be a lien against the property assessed, from and after the first day of January in the year in which the assessment becomes due and payable, but as between grantor and grantee such lien shall not attach until the fifteenth day of February of such year, which lien shall be paramount and superior to any other lien theretofore or thereafter created, whether by mortgage or otherwise, except a lien for undelinquent flood control district assessments, diking or drainage, or diking or drainage improvement, district assessments and for unpaid and outstanding general ad valorem taxes, and such lien shall not be removed until the assessments are paid or the property sold for the payment thereof as provided by law. [1937 c 72 § 164; RRS § 9663E-164. Formerly RCW 86.08.560, part.]

**86.09.493 Payment of assessment—Date of delinquency—Notice to pay—Assessment book—Statements.** On or before the fifteenth day of January in each year the secretary must deliver the assessment roll or the respective segregations thereof to the county treasurer of each respective county in which the lands described are located, with a statement of the amounts and/or percentages of the collections on said roll which shall be apportioned to the respective district funds, and said assessments shall become due and payable at the time or times general taxes accrue payable.

One-half of all assessments on said roll shall become delinquent on the first day of June following the filing of the roll unless said one-half is paid on or before the thirty-first day of May of said year, and the remaining one-half shall become delinquent on the first day of December following, unless said one-half is paid on or before the thirtieth day of November. All delinquent assessments shall bear interest at the rate of ten percent per annum from the date of delinquency until paid.

Within twenty days after the filing of the assessment roll as aforesaid the respective county treasurers shall each publish a notice in a newspaper published in their respective counties in which any portion of the district may lie, that said assessments are due and payable at the office of the county treasurer of the county in which said land is located and will become delinquent unless paid as herein provided. Said notice shall state the dates of delinquency as fixed in this chapter and the rate of interest charged thereon and shall be published once a week for four successive weeks and shall be posted within said period of twenty days in some public place in said district in each county in which any portion of the district is situated.

Upon receiving the assessment roll, the county treasurer shall prepare therefrom an assessment book in which shall be written the description of the land as it appears in the assessment roll, the name of the owner or owners where known, and if assessed to the unknown owners, then the word "unknown", and the total assessment levied against each tract of land. Proper space shall be left in said book for the entry therein of all subsequent proceedings relating to the payment and collection of said assessments.

Upon payment of any assessment the county treasurer must enter the date of said payment in said assessment book opposite the description of the land and the name of the person paying, and give a receipt to such person specifying the amount of the assessment and the amount paid with the description of the property assessed.

It shall be the duty of the county treasurer of the county in which any land in the district is located to furnish upon request of the owner, or any person interested, a statement showing any and all assessments levied as shown by the assessment roll in his office upon land described in such request, and all statements of general taxes covering any land in the district shall be accompanied by a statement showing the condition of district assessments against such lands: PROVIDED, That the failure of the county treasurer to render any statement herein required of him shall not render invalid any assessments made by any district or proceedings had for the enforcement and collection of district assessments pursuant to this chapter. [1937 c 72 § 165; RRS § 9663E-165. Formerly RCW 86.08.540, part, 86.08.560, part, and 86.08.570.]

**86.09.496 Delinquency list—Posting and publication.** On or before the thirty-first day of December of each year, the county treasurer of the county in which the land is located shall cause to be posted the delinquency list which must contain the names of persons to whom the property is assessed and a description of the property delinquent and the amount of the assessment and costs due, opposite each name and description.

He must append to and post with the delinquency list a notice that unless the assessments delinquent, together with costs and accrued interest, are paid, the real property upon which such assessments are a lien will be sold at public auction. The said notice and delinquent list shall be posted at least twenty days prior to the time of sale. Concurrent as nearly as possible with the date of the posting aforesaid, the said county treasurer shall publish the location of the place where said notice is posted and in connection therewith a notice that unless delinquent assessments together with costs and accrued interest are paid, the real property upon which such assessments are a lien will be sold at public auction. Such notice must be published once a week for three successive weeks in a newspaper of general circulation published in the county within which the land is located; but said notice of publication need not comprise the delinquent list where the same is posted as herein provided. Both notices must designate the time and place of sale. The time of sale must not be less than twenty-one nor more than twenty-eight days from the date of posting and from the date of the first publication of the notice thereof, and the place must be at some point designated by the treasurer. [1937 c 72 § 166; RRS § 9663E-166. Formerly RCW 86.08.580.]

**86.09.499 Sale for delinquent assessments—Postponement.** The treasurer of the county in which the land is situated shall conduct the sale of all lands situated therein and must collect in addition to the assessment due as shown on the delinquent list the costs and expenses of sale and interest at the rate of ten percent per annum from the date or dates of

delinquency as hereinbefore provided. On the day fixed for the sale, or some subsequent day to which he may have postponed it, and between the hours of ten o'clock a.m. and three o'clock p.m., the county treasurer making the sale must commence the same, beginning at the head of the list, and continuing alphabetically, or in the numerical order of the parcels, lots or blocks, until completed. He may postpone the day of commencing the sale, or the sale from day to day, by giving oral notice thereof at the time of the postponement, but the sale must be completed within three weeks from the first day fixed. [1937 c 72 § 167; RRS § 9663E-167. Formerly RCW 86.08.590.]

**86.09.502 Sale for delinquent assessments—How conducted—Certificate of sale—District as purchaser—Fee.** The owner or person in possession of any real estate offered for sale for assessments due thereon may designate in writing to the county treasurer, by whom the sale is to be made, and prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or possessor does not, then the treasurer may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the assessment and costs due, including one dollar to the treasurer for duplicate of the certificate of sale, is the purchaser. The treasurer shall account to the district for said one dollar. If the purchaser does not pay the assessment and costs before ten o'clock a.m. the following day, the property must be resold on the next sale day for the assessments and costs. In case there is no purchaser in good faith for the same on the first day that the property is offered for sale, and if there is no purchaser in good faith when the property is offered thereafter for sale, the whole amount of the property assessed shall be struck off to the district as the purchaser, and the duplicate certificate shall be delivered to the secretary of the district, and filed by him in the office of the district. No charge shall be made for the duplicate certificate where the district is the purchaser, and in such case the treasurer shall make an entry, "Sold to the district", and he will be credited with the amount thereof in settlement. The district, as a purchaser at said sale, shall be entitled to the same rights as a private purchaser, and may assign or transfer the certificate of sale upon the payment of the amount which would be due if redemption were being made by the owner. If no redemption is made of land for which the district holds a certificate of purchase, the district will be entitled to receive the treasurer's deed therefor in the same manner as a private person would be entitled thereto.

After receiving the amount of assessments and costs, the county treasurer must make out in duplicate a certificate, dated on the day of sale, stating (when known) the names of the persons assessed, a description of the land sold, the amount paid therefor, that it was sold for assessments, giving the amount and the year of assessment, and specifying the time when the purchaser will be entitled to a deed. The certificate must be signed by the treasurer making the sale and one copy delivered to the purchaser, and the other filed in the office of the county treasurer of the county in which the land is situated: PROVIDED, That upon the sale of any lot, parcel or tract of land not larger than an acre, the fee for a duplicate certificate shall be twenty-five cents and in case of a sale to a

person or a district, of more than one parcel or tract of land, the several parcels or tracts may be included in one certificate. [1937 c 72 § 168; RRS § 9663E-168. Formerly RCW 86.08.600.]

**86.09.505 Sale for delinquent assessments—Entries in assessment book—Book open to inspection—Lien vested in purchaser.** The county treasurer, before delivering any certificate must file the same and enter in the assessment book opposite the description of the land sold, the date of sale, the purchaser's name and the amount paid therefor, and must regularly number the description on the margin of the assessment book and put a corresponding number on each certificate. Such book must be open to public inspection without fee during office hours, when not in actual use.

On filing the certificate of sale as provided in the preceding paragraph, the lien of the assessment vests in the purchaser and is only divested by the payment to the county treasurer making the sale of the purchase money and interest at the rate of ten percent per annum, from the day of sale until redemption for the use of the purchaser. [1937 c 72 § 169; RRS § 9663E-169. Formerly RCW 86.08.610.]

**86.09.508 Sale for delinquent assessments—Redemption, when and how made.** A redemption of the property sold may be made by the owner or any person on behalf and in the name of the owner or by any party in interest at any time before deed issues, by paying the amount of the purchase price and interest as in this chapter provided, and the amount of any assessments which such purchaser may have paid thereon after purchase by him and during the period of redemption in this section provided, together with like interest on such amount, and if the district is the purchaser, the redemptioner shall not be required to pay the amount of any district assessment levied subsequent to the assessment for which said land was sold, but all subsequent and unpaid assessments levied upon said land to the date of such redemption shall remain a lien and be payable and the land be subject to sale and redemption at the times applicable to such subsequent annual district assessment. Redemption must be made in legal tender, as provided for the collection of state and county taxes, and the county treasurer must credit the amount paid to the person named in the certificate and pay it on demand to such person or his assignees. No redemption shall be made except to the county treasurer of the county in which the land is situated. [1937 c 72 § 170; RRS § 9663E-170. Formerly RCW 86.08.620.]

**86.09.511 Sale for delinquent assessments—Entry of redemption—Deed on demand if not redeemed in two years—Fee.** Upon completion of redemption, the county treasurer to whom redemption has been made shall enter the word "redeemed", the date of redemption and by whom redeemed on the certificate and on the margin of the assessment book where the entry of the certificate is made. If the property is not redeemed within two years, after the fifteenth day of January of the year in which such property was sold, the county treasurer of the county in which the land sold is situated must thereafter, upon demand of the owner of the certificate of sale, make to the purchaser, or his assignees a

deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by law for its redemption. The treasurer shall receive from the purchaser, for the use of the district, one dollar for making such deed: PROVIDED, If redemption is not made of any lot, parcel or tract of land not larger than one acre, the fee for a deed shall be twenty-five cents and when any person or district holds a duplicate certificate covering more than one tract of land, the several parcels, or tracts of lands, mentioned in the certificate may be included in one deed. [1937 c 72 § 171; RRS § 9663E-171. Formerly RCW 86.08.630.]

**86.09.514 Sale for delinquent assessments—Effect and validity of deed.** The matter recited in the certificate of sale must be recited in the deed, and such deed duly acknowledged or proved is prima facie evidence that:

First. The property was assessed as required by law.

Second. The property was equalized as required by law.

Third. That the assessments were levied in accordance with law.

Fourth. The assessments were not paid.

Fifth. At a proper time and place the property was sold as prescribed by law and by the proper officers.

Sixth. The property was not redeemed.

Seventh. The person who executed the deed was the proper officer.

Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of the regularity of all the proceedings from the assessments by the secretary, inclusive, up to the execution of the deed. The deed conveys to the grantee the absolute title to the lands described therein, free from all incumbrances except the lien of outstanding general ad valorem taxes and of unmaturing special assessments. When title to the land is in the United States or this state, such deed shall be prima facie evidence of the right of possession. [1937 c 72 § 172; RRS § 9663E-172. Formerly RCW 86.08.640, part.]

**86.09.517 Sale for delinquent assessments—Mistake, misnomer does not affect sale.** When land is sold for assessments correctly imposed, as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, affects the sale or renders it void or avoidable. [1937 c 72 § 173; RRS § 9663E-173. Formerly RCW 86.08.640, part.]

**86.09.520 District lands exempt from general taxes—Leasing, application of proceeds.** All unsold lands owned by the district shall be exempt from general ad valorem taxes while title to same remains in the district. The district shall not be authorized to lease any of its lands for a term longer than one year, and the proceeds for such lease shall first be applied on account of outstanding ad valorem tax liens, if any. [1937 c 72 § 174; RRS § 9663E-174. Formerly RCW 86.08.650.]

**86.09.523 Liability of city, town or subdivision for benefits to roads, streets, or sewer systems.** Whenever any system of improvement constructed under the provisions of

this chapter results in benefit to the whole or any part of a public street or road, street or road bed or track thereof within the district, or will facilitate the construction or maintenance of any sewer system in any city or town within the district, the city, town or subdivision or any of them responsible for the maintenance of said public road, street or sewer, shall be liable for assessment for any or all district purposes. [1937 c 72 § 175; RRS § 9663E-175. Formerly RCW 86.08.660, part.]

**86.09.526 Liability of public and private lands for benefits.** All school, granted, and other state lands, and lands owned by the United States, when legally possible, and all county, city and other municipally owned property, not used for governmental purposes, and all privately owned lands within the corporate limits of any county, school district, city or other municipal corporation included within the operation of the district and benefited by the district improvement, shall be liable for assessment as provided herein for other property. [1937 c 72 § 176; RRS § 9663E-176. Formerly RCW 86.08.660, part.]

**86.09.529 Assessment payment by city, county, subdivision—Payment by state for highway benefit.** Assessments charged to any city, town, county, or subdivision thereof shall be paid from any fund of the city, town, county, or subdivision, as its governing body determines. Assessments charged on account of benefits to state highways shall be approved by the secretary of transportation and shall be paid from the state motor vehicle fund. [1984 c 7 § 379; 1937 c 72 § 177; RRS § 9663E-177. Formerly RCW 86.08.660, part.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**86.09.532 District funds—Created.** There are hereby created for district purposes the following special funds: (1) Expense fund, (2) surplus fund, (3) suspense fund, (4) general bond fund, (5) utility bond fund, (6) contract fund. [1937 c 72 § 178; RRS § 9663E-178. Formerly RCW 86.08.670.]

**86.09.535 District funds—Expense fund—Composition—Use.** All assessments collected for administrative, operative and maintenance purposes, all money collected and not otherwise provided for, and any transfers authorized by law from other funds made specifically to the fund, shall be placed by the county treasurer, ex officio treasurer of the district, in the expense fund, and it shall be the duty of the district board to make ample provision for the requirements of this fund by the levy of assessments or by the use of other revenues of the district. [1937 c 72 § 179; RRS § 9663E-179. Formerly RCW 86.08.675.]

**86.09.538 District funds—Surplus fund—Composition—Use.** The district shall have authority at its option of turning any district revenues not probably required during the current year to the surplus fund by adopting a resolution to that effect and filing a copy of the same with the county treasurer in charge of such fund. For this purpose unrequired moneys may be transferred from other funds, except from either of the two bond funds.

Assessments, not exceeding twenty percent of the total levy for a given year, may be levied for the purpose of supplying moneys for the surplus fund.

The surplus fund may be used for any district purpose authorized by law, by resolution of the board of directors specifying said purpose, and the duration of such use. [1937 c 72 § 180; RRS § 9663E-180. Formerly RCW 86.08.680.]

**86.09.541 District funds—Suspense fund—Composition—Use.** All district indebtedness, not otherwise provided for, which has not been or will not be paid on substantially a cash basis, shall be paid from the suspense fund and it shall be the duty of the district board to make ample provision for the requirements of this fund by the levy of assessments or by the use of other revenues of the district, authorized by law to be used for this purpose. [1937 c 72 § 181; RRS § 9663E-181. Formerly RCW 86.08.685.]

**86.09.544 District funds—General bond fund—Composition—Use.** Moneys in the general bond fund shall be used exclusively for the payment of outstanding general obligation bonds of the district with interest thereon according to their terms. It shall be the duty of the district board to make ample provision for the requirements of this fund by the levy of assessments and/or by the use of other district revenues, authorized by law to be used for this purpose. [1937 c 72 § 182; RRS § 9663E-182. Formerly RCW 86.08.695.]

**86.09.547 District funds—Utility bond fund—Composition—Use.** Revenues from the use, sale or lease of water and/or other service furnished by the district to the extent pledged to the payment of district utility bonds, as herein provided, shall be placed in the utility bond fund and used exclusively for the payment of such bonds with interest according to their terms. [1937 c 72 § 183; RRS § 9663E-183. Formerly RCW 86.08.700.]

**86.09.550 District funds—Contract fund—Composition—Use.** The proceeds from bond sales and revenues from other sources authorized by law to be used for district contract purposes shall be placed in the contract fund and shall be used for the purposes for which the bonds were issued or for which any other contract was entered into by the district. [1937 c 72 § 184; RRS § 9663E-184. Formerly RCW 86.08.690.]

**86.09.553 District funds—Custody and disbursement.** All district moneys shall be paid to the county treasurer having charge of the district funds and by that officer disbursed in the manner provided by law. [1937 c 72 § 185; RRS § 9663E-185. Formerly RCW 86.08.710, part.]

**86.09.556 Claims against district.** Any claim against the district shall be presented to the district board for allowance or rejection. Upon allowance, the claim shall be attached to a voucher verified by the claimant or his agent and approved by the chairman of the board and countersigned by the secretary and directed to the county auditor of the county in which the office of the district treasurer is located, for the issuance of a warrant against the proper fund of the district in

payment of said claim. [1937 c 72 § 186; RRS § 9663E-186. Formerly RCW 86.08.720, part.]

**86.09.559 Claims against district—For administrative expenses, cost, maintenance—Payroll.** Claims against the district for administrative expenses and for the costs of operation and maintenance of the system of improvement, shall be allowed by the district board and presented to the county auditor with proper vouchers attached for the issuance of warrants against the expense fund of the district. The payroll of the district shall be verified by the foreman in charge and may be presented in one claim for the individual claimants involved. The warrants for said claim shall be issued in the name of the individual claimants, but may be receipted for by said foreman. [1937 c 72 § 187; RRS § 9663E-187. Formerly RCW 86.08.720, part.]

**86.09.562 District funds paid by warrant—Exception.** Said county treasurer shall pay out the moneys received or deposited with him or any portion thereof upon warrants issued by the county auditor of the same county of which the district treasurer is an officer against the proper funds of the district except the sums to be paid out of the special funds for interest and principal payments on bonds or notes. [1986 c 278 § 45; 1983 c 167 § 202; 1937 c 72 § 188; RRS § 9663E-188. Formerly RCW 86.08.710, part.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**86.09.565 Warrants paid in order of issuance.** Warrants drawn on any district fund shall be paid from any moneys in said fund in the order of their issuance. [1937 c 72 § 189; RRS § 9663E-189. Formerly RCW 86.08.710, part.]

**86.09.592 Utility revenue bonds—Authorized.** In any instance where the district is using, selling or leasing water for beneficial purposes or furnishing other service under the provisions of this chapter and there is reasonable certainty of a permanent fixed income from this source, the district board, upon previous written approval of the county legislative authority of the county within which the major portion of the district is situated, shall have authority to pledge the revenues derived from a fixed proportion of the gross income thus obtained and to issue bonds of the district payable from the utility bond fund and to sell the same to raise money for district purposes. [1985 c 396 § 78; 1937 c 72 § 198; RRS § 9663E-198. Formerly RCW 86.08.790, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.595 Utility revenue bonds—Limited obligation—Payment from special fund.** Bonds payable from the utility bond fund shall not be an obligation of the district and they shall state on their face that they are payable solely from a special fund derived from a certain fixed proportion (naming it) of the gross income derived by the district from the sale or lease of water or from other service, as the case may be, and such fixed proportion of such gross income shall be irrevocably devoted to the payment of such bonds with interest until the same are fully paid. [1937 c 72 § 199; RRS §

9663E-199. Formerly RCW 86.08.790, part, and 86.08.800, part.]

**86.09.598 Utility revenue bonds—Form, terms, interest, etc.** (1) Said utility bonds shall be numbered consecutively, shall mature in series amortized in a definite schedule during a period not to exceed twenty years from the date of their issuance, shall be in such denominations and form and shall be payable, with annual or semiannual interest at such rate or rates and at such place as the county legislative authority of the county within which the major portion of the district is situated shall provide. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1985 c 396 § 79; 1983 c 167 § 207; 1970 ex.s. c 56 § 94; 1969 ex.s. c 232 § 45; 1937 c 72 § 200; RRS § 9663E-200. Formerly RCW 86.08.800, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**86.09.601 Utility revenue bonds—Election to authorize.** For the purpose of authorizing such utility bonds, an election shall be called, noticed, held and canvassed by the same officers, and in the same manner, as provided herein for the calling, noticing, holding and canvassing of an election to authorize general obligation bonds. [1937 c 72 § 201; RRS § 9663E-201. Formerly RCW 86.08.790, part.]

**86.09.616 Utility revenue bonds and coupons—Order of payment—When funds deficient.** Utility bonds and interest thereon shall be paid in the order of their respective due dates and the bonds and interest of a prior issue shall carry preference in payment over those of a subsequent issue: PROVIDED, That where there is not sufficient money in the utility bond fund to pay all matured demands against the same in accordance with the preference right above mentioned, the county treasurer shall pay the interest on the bonds having the preference right of payment in their numerical order beginning with the bond having the smallest number, to the extent of the available money in the utility bond fund. [1937 c 72 § 206; RRS § 9663E-206. Formerly RCW 86.08.800, part.]

**86.09.619 District directors to make provision for payment—Procedure on failure of directors.** It shall be the duty of the board of directors of the district to make adequate provision for the payment of all district bonds in accordance with their terms by levy and collection of assessments or otherwise and upon its failure so to do said levy and collection of assessments shall be made as follows:

(1) If the annual assessment roll has not been delivered to the county treasurer on or before the fifteenth day of January, he shall notify the secretary by registered mail that the roll must be delivered to him forthwith.

(2) If the roll is not delivered within ten days from the date of mailing the notice, or if the roll has not been equalized and the levy made, the treasurer shall immediately notify the county commissioners of the county in which the office of the directors is situated, and such commissioners shall cause an assessment roll for the district to be prepared and shall equalize it if necessary, and make the levy in the same manner and with like effect as if it had been made and equalized by the directors, and all expenses incident thereto shall be borne by the district.

(3) In case of neglect or refusal of the secretary to perform his duties, the district treasurer shall perform them, and shall be accountable therefor, on his official bond, as in other cases. [1965 c 26 § 12; 1937 c 72 § 207; RRS § 9663E-207. Formerly RCW 86.08.820, part.]

**86.09.621 Special assessment bonds.** Special assessment bonds and notes shall be issued and sold in accordance with chapter 85.38 RCW. [1986 c 278 § 28.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**86.09.622 Dissolution of districts—Procedure.** Flood control districts may be dissolved upon a favorable sixty percent vote of the electors voting at an election for that purpose called, noticed, conducted and canvassed in the manner provided in this chapter for special elections and no further district obligations shall thereafter be incurred: PROVIDED, That the election shall not abridge or cancel any of the outstanding obligations of the district, and the county legislative authority of the county within which the major portion of the district is situated shall each year at the time and in the manner provided in this chapter for the levy of district assessments, levy assessments against the lands in the district and the same shall be collected and enforced in the manner provided herein, until the outstanding obligations of the district are fully paid. [1985 c 396 § 83; 1937 c 72 § 208; RRS § 9663E-208. Formerly RCW 86.08.830, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

*Dissolution of districts: Chapter 53.48 RCW.*

**86.09.625 Dissolution of districts—When complete.** When the obligations have been fully paid, all moneys in any of the funds of the district and all collections of unpaid district assessments shall be transferred to the general fund of the county within which the major portion of the district is situated as partial reimbursement for moneys expended and services rendered by the county for and in behalf of the district, and thereupon the county legislative authority of that county shall file a statement of the full payment of the district's obligations for record in the county auditor's office in each county in which any lands in the district were situated and thereafter the dissolution of the district shall be complete and its corporate existence ended. [1985 c 396 § 84; 1937 c 72 § 209; RRS § 9663E-209. Formerly RCW 86.08.830, part.]

**Severability—1985 c 396:** See RCW 85.38.900.

*Reclamation revolving fund abolished, moneys transferred to reclamation revolving account: RCW 43.79.330 through 43.79.334.*

**86.09.627 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.** See chapter 57.90 RCW.

**86.09.700 Revision of district—Petition.** A board may amend the district comprehensive plan of flood control, alter, reduce or enlarge the district system of improvement, within or without the district, and change the district boundaries so as to include land likely to be benefited by said amendment, alteration, reduction or enlargement by filing a petition to that effect with the county legislative authority of the county within which the major portion of the district is situated. [1985 c 396 § 85; 1965 c 26 § 14.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.703 Revision of district—Establishment of revised district—Review of benefits—Liability of original district—Segregation of funds.** If funds are available the county legislative authority shall, at the expense of the county, refer the petition to the county engineer for a preliminary investigation as to the feasibility of the objects sought by the petition. If the investigation discloses that the matter petitioned for is feasible, conducive to the public welfare, consistent with a comprehensive plan of development and in the best interest of the district and will promote the purposes for which the district was organized, the county legislative authority shall so find, approve the petition, enter an order in his records declaring the establishment of the new boundaries as petitioned for, or as modified by him, and file a certified copy of the order with each county auditor, without filing fee, and with the board.

The board shall forthwith cause a review of the classifications and ratio of benefits, in the same manner and with the same effect as for the determination of such matters in the first instance.

The lands in the original district shall remain bound for the whole of the original unpaid assessment thereon for the payment of any outstanding warrants or bonds to be paid by such assessments. Until the assessments are collected and all indebtedness of the original district paid, separate funds shall be maintained for the original district and the revised district. [1985 c 396 § 86; 1965 c 26 § 15.]

**Severability—1985 c 396:** See RCW 85.38.900.

**86.09.710 Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation.** Flood control districts may annex territory, consolidate with other special districts, and have their operations suspended and be reactivated, in accordance with chapter 85.38 RCW. [1986 c 278 § 16.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**86.09.720 Cooperative watershed management.** In addition to the authority provided in this chapter, flood control districts may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 18.]

[Title 86 RCW—page 18]

**Finding—Intent—2003 c 327:** See note following RCW 39.34.190.

**86.09.900 Other statutes preserved.** Nothing in this chapter contained shall be construed as affecting or in any wise limiting the powers of counties, cities, towns, diking districts, drainage districts, or other municipal or public agencies in the manner authorized by law to construct and maintain dikes, levees, embankments or other structures and works, or to open, deepen, straighten and otherwise enlarge natural water courses, waterways and other channels, for the purpose of protecting such organizations from overflow. [1937 c 72 § 210; RRS § 9663E-210.]

**86.09.910 Chapter supplemental to other acts.** Nothing in this chapter contained shall be held or construed as in any manner abridging, enlarging or modifying any statute now or hereafter existing relating to the organization, operation and dissolution of flood control districts. This chapter is intended as an independent chapter providing for a separate and an additional authority from and to any other authority now existing for the organization, operation and dissolution of flood control districts, as provided in this chapter. [1937 c 72 § 211; RRS § 9663E-211.]

**86.09.920 Chapter liberally construed.** The provisions of this chapter and all proceedings thereunder shall be liberally construed with a view to effect their objects. [1937 c 72 § 212; RRS § 9663E-212.]

**86.09.930 Severability—1937 c 72.** If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional. [1937 c 72 § 213; RRS § 9663E-213.]

## Chapter 86.12 RCW

### FLOOD CONTROL BY COUNTIES

#### Sections

#### COUNTY FLOOD CONTROL

- 86.12.010 County tax for river improvement fund—Flood control maintenance account.
- 86.12.020 Authority to make improvements—Condemnation.
- 86.12.030 Eminent domain, how exercised.
- 86.12.033 Expenses to be paid out of river improvement fund.
- 86.12.034 County entitled to abandoned channels, beds, and banks.

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#### COMPREHENSIVE FLOOD CONTROL MANAGEMENT PLANS

- 86.12.200 Comprehensive flood control management plan—Elements.
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- 86.12.220 Advisory committees.

#### COUNTY FLOOD CONTROL

**86.12.010 County tax for river improvement fund—Flood control maintenance account.** The county commissioners of any county may annually levy a tax, beginning with the year 1907, in such amount as, in their judgment they

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may deem necessary or advisable, but not to exceed twenty-five cents per thousand dollars of assessed value upon all taxable property in such county, for the purpose of creating a fund to be known as "river improvement fund." There is hereby created in each such river improvement fund an account to be known as the "flood control maintenance account." [1973 1st ex.s. c 195 § 129; 1941 c 204 § 8; 1907 c 66 § 1; Rem. Supp. 1941 § 9625. FORMER PART OF SECTION: 1907 c 66 § 4, now codified as RCW 86.12.033.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

*Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55 and 59); chapter 84.52 RCW.*

**86.12.020 Authority to make improvements—Condemnation.** Said fund shall be expended for the purposes in this chapter provided. Any county, for the control of waters subject to flood conditions from streams, tidal or other bodies of water affecting such county, may inside or outside the boundaries of such county, construct, operate and maintain dams and impounding basins and dikes, levees, revetments, bulkheads, rip-rap or other protection; may remove bars, logs, snags and debris from and clear, deepen, widen, straighten, change, relocate or otherwise improve and maintain stream channels, main or overflow; may acquire any real or personal property or rights and interest therein for the prosecution of such works or to preserve any flood plain or regular or intermittent stream channels from any interference to the free or natural flow of flood or storm water; and may construct, operate and maintain any and all other works, structures and improvements necessary for such control; and for any such purpose may purchase, condemn or otherwise acquire land, property or rights, including beds of nonnavigable waters and state, county and school lands and property and may damage any land or other property for any such purpose, and may condemn land and other property and rights and interests therein and damage the same for any other public use after just compensation having been first made or paid into court for the owner in the manner prescribed in this chapter. The purposes in this chapter specified are hereby declared to be county purposes. [1970 ex.s. c 30 § 10; 1941 c 204 § 9; 1935 c 162 § 1; 1919 c 109 § 1; 1907 c 66 § 2; Rem. Supp. 1941 § 9626.]

**Severability—1970 ex.s. c 30:** See RCW 36.89.911.

*Authority and power of counties are supplemental: RCW 36.89.062.*

*Storm water control facilities, county powers and authority: Chapter 36.89 RCW.*

**86.12.030 Eminent domain, how exercised.** The taking and damaging of land, property or rights therein or thereto by any county, either inside or outside of such county, for flood control purposes of the county is hereby declared to be for a public use. Such eminent domain proceedings shall be in the name of the county, shall be had in the county where the property is situated, and may unite in a single action proceedings to condemn for county use property held by separate owners, the jury to return separate verdicts for the several lots, tracts or parcels of land, or interest therein, so taken or damaged. The proceedings may conform to the provisions of \*sections 921 to 926, inclusive, of Remington's Revised Statutes, or to any general law now or hereafter enacted govern-

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ing eminent domain proceedings by counties. The title so acquired by the county shall be the fee simple title or such lesser estate as shall be designated in the decree of appropriation. The awards in and costs of such proceedings shall be payable out of the river improvement fund. [1941 c 204 § 10; 1907 c 66 § 3; Rem. Supp. 1941 § 9627.]

**\*Reviser's note:** "Sections 921 to 926, inclusive, of Remington's Revised Statutes" (except for section 923) are codified as RCW 8.20.010 through 8.20.080. Section 923 was repealed by 1935 c 115 § 1 but compare the first paragraph of RCW 8.28.010 relating to the same subject matter as the repealed section.

**86.12.033 Expenses to be paid out of river improvement fund.** All expenses to be incurred in accomplishing the objects authorized by this act shall be paid out of said river improvement fund and which fund shall be used for no other purpose than the purposes contemplated by this chapter. [1907 c 66 § 4; RRS § 9628. Formerly RCW 86.12.010, part.]

**86.12.034 County entitled to abandoned channels, beds, and banks.** Whenever a county of this state, acting pursuant to RCW 86.12.010 through 86.12.033, shall make an improvement in connection with the course, channel or flow of a navigable river, thereby causing it to abandon its existing channel, bed, bank or banks for the entire distance covered by said improvement, or for any part or portion thereof, or by said improvement shall prevent a river from resuming at a future time an ancient or abandoned channel or bed, or shall construct improvements intended so to do, all the right, title and interest of the state of Washington in and to said abandoned channel or channels, bed or beds, bank or banks, up to and including the line of ordinary high water, shall be and the same is hereby given, granted and conveyed to the county making such improvement: PROVIDED, HOWEVER, That any such gift, grant or conveyance shall be subject to any right, easement or interest heretofore given, granted or conveyed to any agency of the state. [1963 c 90 § 1.]

#### IMMUNITY FROM LIABILITY

**86.12.037 Liability of county or counties to others.** No action shall be brought or maintained against any county alone or when acting jointly with any other county under any law, its or their agents, officers or employees, for any non-contractual acts or omissions of such county or counties, its or their agents, officers or employees, relating to the improvement, protection, regulation and control for flood prevention and navigation purposes of any river or its tributaries and the beds, banks and waters thereof: PROVIDED, That nothing contained in this section shall apply to or affect any action now pending or begun prior to the passage of this section. [1921 c 185 § 1; RRS § 9663. Formerly RCW 87.12.180.]

#### COMPREHENSIVE FLOOD CONTROL MANAGEMENT PLANS

**86.12.200 Comprehensive flood control management plan—Elements.** The county legislative authority of any county may adopt a comprehensive flood control manage-

ment plan for any drainage basin that is located wholly or partially within the county.

A comprehensive flood control management plan shall include the following elements:

(1) Designation of areas that are susceptible to periodic flooding, from inundation by bodies of water or surface water runoff, or both, including the river's meander belt or floodway;

(2) Establishment of a comprehensive scheme of flood control protection and improvements for the areas that are subject to such periodic flooding, that includes: (a) Determining the need for, and desirable location of, flood control improvements to protect or preclude flood damage to structures, works, and improvements, based upon a cost/benefit ratio between the expense of providing and maintaining these improvements and the benefits arising from these improvements; (b) establishing the level of flood protection that each portion of the system of flood control improvements will be permitted; (c) identifying alternatives to in-stream flood control work; (d) identifying areas where flood waters could be directed during a flood to avoid damage to buildings and other structures; and (e) identifying sources of revenue that will be sufficient to finance the comprehensive scheme of flood control protection and improvements;

(3) Establishing land use regulations that preclude the location of structures, works, or improvements in critical portions of such areas subject to periodic flooding, including a river's meander belt or floodway, and permitting only flood-compatible land uses in such areas;

(4) Establishing restrictions on construction activities in areas subject to periodic floods that require the flood proofing of those structures that are permitted to be constructed or remodeled; and

(5) Establishing restrictions on land clearing activities and development practices that exacerbate flood problems by increasing the flow or accumulation of flood waters, or the intensity of drainage, on low-lying areas. Land clearing activities do not include forest practices as defined in chapter 76.09 RCW.

A comprehensive flood control management plan shall be subject to the minimum requirements for participation in the national flood insurance program, requirements exceeding the minimum national flood insurance program that have been adopted by the department of ecology for a specific flood plain pursuant to RCW 86.16.031, and rules adopted by the department of ecology pursuant to RCW 86.26.050 relating to flood plain management activities. When a county plans under chapter 36.70A RCW, it may incorporate the portion of its comprehensive flood control management plan relating to land use restrictions in its comprehensive plan and development regulations adopted pursuant to chapter 36.70A RCW. [1991 c 322 § 3.]

**Findings—Intent—1991 c 322:** "(1) The legislature finds that:

(a) Floods pose threats to public health and safety including loss or endangerment to human life; damage to homes; damage to public roads, highways, bridges, and utilities; interruption of travel, communication, and commerce; damage to private and public property; degradation of water quality; damage to fisheries, fish hatcheries, and fish habitat; harm to livestock; destruction or degradation of environmentally sensitive areas; erosion of soil, stream banks, and beds; and harmful accumulation of soil and debris in the beds of streams or other bodies of water and on public and private lands;

(b) Alleviation of flood damage to property and to public health and

safety is a matter of public concern;

(c) Many land uses alter the pattern of runoff by decreasing the ability of upstream lands to store waters, thus increasing the rate of runoff and attendant downstream impacts; and

(d) Prevention of flood damage requires a comprehensive approach, incorporating storm water management and basin-wide flood damage protection planning.

(2) County legislative authorities are encouraged to use and coordinate all the regulatory, planning, and financing mechanisms available to those jurisdictions to address the problems of flooding in an equitable and comprehensive manner.

(3) It is the intent of the legislature to develop a coordinated and comprehensive state policy to address the problems of flooding and the minimization of flood damage." [1991 c 322 § 1.]

**Purpose—1991 c 322:** "The purpose of sections 3 through 13 of this act is to permit counties in cooperation and consultation with cities and towns to adopt a comprehensive system of flood control management and protection within drainage basins and to coordinate the flood control activities of the state, counties, cities, towns, and special districts within such drainage basins." [1991 c 322 § 2.]

### **86.12.210 Comprehensive flood control management plan—Participation of local officials—Arbitration of disputed issues.**

A comprehensive flood control management plan that includes an area within which a city or town, or a special district subject to chapter 85.38 RCW, is located shall be developed by the county with the full participation of officials from the city, town, or special district, including conservation districts, and appropriate state and federal agencies. Where a comprehensive flood control management plan is being prepared for a river basin that is part of the common boundary between two counties, the county legislative authority of the county preparing the plan may allow participation by officials of the adjacently located county.

Following adoption by the county, city, or town, a comprehensive flood control management plan shall be binding on each jurisdiction and special district that is located within an area included in the plan. If within one hundred twenty days of the county's adoption, a city or town does not adopt the comprehensive flood control management plan, the city or county shall request arbitration on the issue or issues in dispute. If parties cannot agree to the selection of an arbitrator, the arbitrator shall be selected according to the process described in \*RCW 7.04.050. The cost of the arbitrator shall be shared equally by the participating parties and the arbitrator's decision shall be binding. Any land use regulations and restrictions on construction activities contained in a comprehensive flood control management plan applicable to a city or town shall be minimum standards that the city or town may exceed. A city or town undertaking flood or storm water control activities consistent with the comprehensive flood control management plan shall retain authority over such activities. [1991 c 322 § 4.]

**\*Reviser's note:** RCW 7.04.050 was repealed by 2005 c 433 § 50, effective January 1, 2006.

**Findings—Intent—Purpose—1991 c 322:** See notes following RCW 86.12.200.

**86.12.220 Advisory committees.** A county may create one or more advisory committees to assist in the development of proposed comprehensive flood control management plans and to provide general advice on flood problems. The advisory committees may include city and town officials, officials of special districts subject to chapter 85.38 RCW, conserva-

tion districts, appropriate state and federal officials, and officials of other counties and other interested persons. [1991 c 322 § 5.]

**Findings—Intent—Purpose—1991 c 322:** See notes following RCW 86.12.200.

### Chapter 86.13 RCW

## FLOOD CONTROL BY COUNTIES JOINTLY

### Sections

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#### JOINT COUNTY CONTROL—1913 ACT

### 86.13.010 Boundary line rivers—Contract to control.

Wherever and whenever a river is or shall be the boundary line or part of the boundary line between two counties, or it, or its tributaries or outlet or part thereof, flows through parts of two counties, and the waters thereof have in the past been the cause of damage, by inundation or otherwise, to the roads, bridges or other public property situate in or to other public interests of both such counties, or the flow of such waters shall have alternated between the said counties so at one time or times such waters shall have caused damage to one county and at another time or times to the other county, and it shall be deemed by the boards of county commissioners of both counties to be for the public interests of their respective counties that the flow of such waters be definitely confined to a particular channel, situate in whole or in part in either county, in a manner calculated to prevent such alternation or to prevent or lessen damage in the future, it shall be lawful for the two counties, and their boards of county commissioners are hereby empowered, pursuant to resolution, to enter into a contract in writing in the names of the respective counties for the purpose of settling all disputes in relation to any such situation, and providing ways and means for the control and disposition of such waters. Any such contract may provide:

(1) That it shall be operative in perpetuity, or only for a term of years or other measure of time to be specified therein.

(2) The amount of money to be expended by each county during each year of the life of said contract, or such other method of determining the amount of expenditure or dividing the financial burden as may be agreed upon.

(3) That an annual tax shall be levied, at the same time and in the same manner as other county taxes are levied, each year during the life of the contract, by the county commis-

sioners of each county. The annual tax herein provided for need not be levied at the same rate for each county, but shall be at such rate in each county as will produce annually the amount of money for each county as is required for the fulfillment of the contract on its part: PROVIDED, HOWEVER, That in no event shall any such tax levy by either county exceed twenty-five cents per thousand dollars of assessed value for any one year.

(4) That the general scheme for the improvement of such river shall be as stated in such contract, but by consent of the contracting parties, pursuant to resolution of each board of county commissioners, such scheme may be modified from time to time during the life of the contract. The contract may but need not provide the details of such scheme, but must designate the general purpose to be accomplished. So far as details are not specified in the contract, same shall be for future determination by joint action of the two boards of county commissioners. Any such contract may be subsequently modified or abrogated by mutual consent evidenced by separate resolution of both boards of county commissioners. [1973 1st ex.s. c 195 § 130; 1913 c 54 § 1; RRS § 9651. Formerly RCW 86.12.040.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

### 86.13.020 Expenditure of funds—Joint action generally.

When such a contract shall have been entered into the prosecution of the work of improvement and the expenditure of funds thereof shall be determined upon, controlled and provided for by joint action of the boards of county commissioners of the two counties. So acting jointly, they shall have power to employ subordinates, purchase material or equipment in open market or by contract, let contracts for work, or cause work to be done by day labor, and to reject any and all bids received for work or material. All vouchers, pay rolls, reports, contracts and bonds on contracts shall be in duplicate, one copy to be filed in the office of the county auditor of each county: PROVIDED, HOWEVER, That the expenditure of said funds must be made in such manner so that the fund from each county is drawn on or expended alternately and such alternate expenditure shall be in proportion to the amount contributed by each county as nearly as may be practicable. [1913 c 54 § 2; RRS § 9652. Formerly RCW 86.12.050 and 86.12.060, part.]

### 86.13.030 Tax levy in each county—Intercounty river improvement fund.

When such a contract shall have been entered into it shall be the duty of each of the boards of county commissioners to make for their respective counties, each year, a tax levy at a rate sufficient to meet the requirements of the contract to be performed by the county, or sufficient to provide such lesser amount as the boards of county commissioners shall agree upon for such year, to be evidenced by separate resolution of each board, and when such levy shall be made the same shall be extended upon the tax rolls of the county levying the same as other taxes shall be extended, and shall be collected in the same manner and shall be a lien upon the property as in the case of other taxes. The fund realized in each county by such tax levy shall go into a separate fund in the treasury of the county collecting the same, to be designated intercounty river improvement fund,

and the entire fund so collected in the two counties shall be devoted to and be disbursed for the purposes specified in such contract and as in this chapter provided, and for no other purpose, but without regard to the particular county in which the work is performed, material required or expenditure made, it being the intent that the entire fund realized in the two counties shall be devoted to the one common purpose as if the two counties were one county and the two funds one fund. The fund in each county shall be disbursed by the county treasurer of such county upon warrants signed by the county auditor of that county. Such warrants shall be issued by order of the board of county commissioners of such county, or a majority thereof. Each county auditor shall, whenever requested by the county auditor of the other county, furnish the county auditor of the other county a statement of payments into and warrants drawn upon the fund of his county from time to time, and in addition thereto, each county auditor shall on the first Monday of January, April, July and October each year during the life of the contract furnish the other a complete statement thereof. Obligations incurred in the prosecution of such improvement and warrants issued shall be payable only out of said special funds, and no general obligation against or debt of either county shall be created thereby or by any contract entered into by virtue of this chapter, but it is not the intent of this chapter to deny to either county the right to have in the courts any proper proceeding to compel compliance with such contract on the part of the other county. [1913 c 54 § 3; RRS § 9653. Formerly RCW 86.12.100.]

*Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55 and 59); chapter 84.52 RCW.*

**86.13.040 Eminent domain—Procedure—Acquisition by purchase authorized.** When such a contract shall have been entered into the power of eminent domain is hereby vested in each of such counties, to acquire any lands necessary to straighten, widen, deepen, dike or otherwise improve any such river, its tributaries or outlet or to strengthen the banks thereof, or to acquire any land adjacent to such river, or its tributaries, or the right to cut and remove timber upon the same for the purpose of preventing or lessening the falling of timber or brush into the waters of such river or tributaries, or to acquire any rock quarry, gravel deposit or timber for material for the prosecution of such improvement, together with the necessary rights of way for the same, or to acquire any dam site or other property necessary for flood control purposes. Any such land, property or rights may be acquired by purchase instead of by condemnation proceedings. Said right of eminent domain shall extend to lands or other property owned by the state or any municipality thereof. The title to any such lands, property or rights so acquired shall vest in the county in which situate for the benefit of such enterprise and said fund, but when said contract shall have terminated by lapse of time or for any other reason, then such title shall be held by such county independent of any claims whatsoever of the other county, but any material, equipment or other chattel property on hand shall be converted into money and the money divided between the two counties in the ratio of their respective contributions to the fund. The exercise of such rights of eminent domain or purchase shall rest in the joint control of the two boards of county commissioners. Such eminent domain proceedings

shall be in the name of and had in the county where the property to be acquired is situate: PROVIDED, If either county shall fail or refuse to institute and prosecute any condemnation proceedings when directed so to do by any legal meeting provided for in RCW 86.13.050, such proceeding may be instituted and prosecuted by and in the name of the other county. The proceedings may conform to the provisions of \*sections 921 to 926, inclusive, of Remington & Ballinger's Annotated Codes and Statutes of Washington, or to any general law now or hereafter enacted governing eminent domain proceedings by counties. The awards in and costs of such proceedings shall be payable out of such funds. The purposes in this act specified are hereby declared to be county purposes of each and both of such counties. [1937 c 117 § 1; 1913 c 54 § 4; RRS § 9654. Formerly RCW 86.12.060, part, and 86.12.070.]

**\*Reviser's note:** "Sections 921 to 926, inclusive, of Remington & Ballinger's Annotated Codes and Statutes" (except for section 923) are codified as RCW 8.20.010 through 8.20.080. Section 923 was repealed by 1935 c 115 § 1 but compare the first paragraph of RCW 8.28.010 relating to the same subject matter as the repealed section.

**86.13.050 Joint county meeting—Procedure.** When such a contract shall have been entered into and occasion shall arise for the joint action of the two boards of county commissioners whether such joint action is provided for in this chapter or otherwise desired upon any matter having relation to such contract or the prosecution of such improvement, such joint action may be secured by a notice calling a joint meeting signed by two county commissioners, designating the time and place in either county of such meeting, served by one of the two county auditors upon the remaining county commissioners at least seven days (exclusive of the date of service or mailing) prior to the time so designated. If the notice is signed by two county commissioners of the same county the place of meeting shall be at some place in the other county designated in the notice. Such service may be personal or by mail addressed to the member in care of the county auditor of his county. The six county commissioners may constitute a legal meeting without notice by being present together for that purpose. The auditor's certificate of such personal service or mailing, attached to a copy of the notice, shall be made a part of the records of the meeting and be competent proof of the fact. Except in the case hereinafter provided for, the presence of four of the county commissioners shall be necessary to constitute a legal meeting. Each meeting shall be presided over by one of those present selected by vote. The county auditor of the county wherein the meeting is held shall be secretary of the meeting, and shall make duplicate record of its proceedings, one of which, with his certificate thereon, shall be forwarded to the county auditor of the other county, and such record shall be a part of the record of the board of county commissioners of each county. A majority vote of those present at any legal meeting shall be determinative upon any question properly considered at the meeting, and shall be binding upon each county as if enacted or adopted by its own board of county commissioners separately, but no joint meeting whatsoever shall in any manner continue, extend, change, alter, modify or abrogate the contract when made or any of the terms and conditions contained therein. Each county commissioner shall be paid out of said

fund in his own county all disbursements made by him for traveling and other expenses incurred in attending any joint meeting or in any way connected with the prosecution of the improvement. Any legal meeting shall have power to adjourn to another time and place. An adjourned meeting shall have all the powers of the meeting of which it is an adjournment, but shall have no power after the end of the thirtieth day following the date of the original meeting of which it is an adjournment. If the three county commissioners of either county shall fail to attend any two meetings consecutively called, the notice for the next succeeding meeting may be also served upon the special commissioner hereinafter provided for, and if he and three county commissioners attend pursuant to such notice the four shall constitute a legal meeting, but if he does not so attend and three county commissioners do attend, the same shall constitute a legal meeting: PROVIDED, All notices calling a joint meeting shall specify distinctly and separately each question to be considered at said meeting; and it shall be unlawful to consider any question at such meeting or at any adjourned meeting thereof except those which have been distinctly and separately specified, except in cases where all six county commissioners are present or five county commissioners present are unanimous on the question, and in any action which may be taken on any question other than those specified in the notice shall be void and shall not be binding on either county, except in cases where all six county commissioners are present or the action was by unanimous vote of five county commissioners present at such meeting. [1913 c 54 § 5; RRS § 9655. Formerly RCW 86.12.060, part, and 86.12.120 through 86.12.140.]

**86.13.060 Special commissioner—Powers and duties—Compensation.** When such a contract shall have been entered into there shall be designated at the first legal joint meeting, or adjournment thereof, held in each calendar year a special commissioner to serve as such until the first joint meeting held in the ensuing year. If such designation shall not be made at any such first annual meeting, the United States engineer in charge of the district in which such improvement is located shall be such special commissioner until the next succeeding first annual meeting. If a special commissioner shall for any reason fail to serve as such officer, or be removed by unanimous vote of any legal meeting, a successor to him may be chosen at any subsequent legal joint meeting during his term. Such special commissioner shall have power to attend and vote at any joint meeting in the following cases and none other, to wit: (1) In cases specially so provided in RCW 86.13.050 hereof; (2) in any case where the vote of any such joint meeting shall stand equally divided upon any question arising under this chapter or such contract or in the prosecution of the work of improvement. The special commissioner shall have no voice or vote except upon questions on which the vote of the county commissioners is equally divided. The procedure in cases covered by the foregoing subdivision (2) of this section shall be substantially as follows: It shall be the duty of the secretary of the meeting at which the division shall occur, if the attendance of the special commissioner at that meeting is not secured, to forthwith transmit to the special commissioner written notice of the fact of disagreement and the question involved, and of the time and place to which the meeting shall have been adjourned or

at which the question will recur. If there shall be no such adjournment of the meeting, or if the secretary shall not give such notice, any two commissioners may in the manner provided in RCW 86.13.050 call a joint meeting for the consideration of the question in dispute, and in such event either county auditor may give such notice to the special commissioner. No informality in the mode of securing the attendance of the special commissioner shall invalidate the proceedings of or any vote taken at any meeting which he shall attend and which he is empowered to attend by the provisions of this chapter. The special commissioner shall receive, to be paid equally out of the two funds, his traveling and other expenses incurred in attending meetings or otherwise in connection with the work of improvement, and such compensation for his services as shall be fixed by the joint meeting which shall have selected him, or failing to be so fixed, his compensation shall be ten dollars per day of actual service. [1913 c 54 § 6; RRS § 9656. Formerly RCW 86.12.150 and 86.12.160.]

**86.13.070 Chapter not exclusive.** Nothing in this chapter contained shall be construed to prevent any county which may be a party to such contract from further caring for any such river or the banks thereof, as authorized so to do by existing laws or by such laws as may be hereafter enacted, provided the rights of neither county, as fixed by contract, shall be impaired thereby. [1913 c 54 § 7; RRS § 9657. Formerly RCW 86.12.190.]

**86.13.080 Liability as between counties.** No legal claim of any kind or character whatsoever in favor of one county and against the other shall be based upon or created by the enactment hereof, except such as may arise when the contract herein provided for shall have been entered into. After such contract shall have been entered into, should any loss or damage be sustained by either county occasioned by the overflow of any such river, if caused by any act or omission to act of the other county, its officers or agents, or any other cause whatsoever, then such county so suffering or sustaining said loss shall not be entitled to recover therefor from the other county, nor shall any cause of action, legal or equitable be based thereon: PROVIDED, HOWEVER, That if either county shall suffer loss or damage because of the failure or refusal of the other county to perform any such contract on its part to be performed, the injured county shall have a cause of action against the defaulting county to recover the same, but the limit of recovery for any loss or damage suffered in any one year shall not exceed the sum of ten thousand dollars, and any such recovery shall be limited to such special fund, and in no event be recoverable out of the general fund of such defaulting county. If any such loss or damage shall be liquidated in an amount by agreement or by judgment, the defaulting county shall increase its tax levy for said special fund for the ensuing year sufficiently to provide for such liquidated amount: AND PROVIDED FURTHER, That either county may have any proper action in the courts to compel the performance of the contract or any duty imposed thereby or by this chapter. [1913 c 54 § 8; RRS § 9658. Formerly RCW 86.12.170.]

**86.13.090 Issuance of warrants.** When such a contract shall have been entered into, it shall be lawful to issue warrants upon said fund though there be at the time of such issuance no money in the fund, but in such cases the aggregate of such warrants so issued in any year shall not exceed one-half the amount of the next annual tax levy required by such contract. Such warrants shall be stamped by the county treasurer when presented to him for payment, to bear interest at a certain rate thereafter until paid, such rate to be the then current rate as determined by the county auditor. [1913 c 54 § 9; RRS § 9659. Formerly RCW 86.12.110.]

#### JOINT COUNTY CONTROL—SUPPLEMENTAL ACTS

**86.13.100 Lease or disposal of property—Disposition of proceeds.** Whenever two counties of this state, acting under a contract made pursuant to RCW 86.13.010 through 86.13.090, shall make an improvement in connection with the course, channel or flow of a river, shall acquire property by statute, purchase, gift or otherwise, said counties, acting through their boards of county commissioners jointly shall have the power, and are hereby authorized to sell, transfer, trade, lease, or otherwise dispose of said property by public or private, negotiation or sale. The deeds to the property so granted, transferred, leased or sold shall be executed by the chairman of the meeting of the joint boards of county commissioners, and attested by the secretary of said joint meeting where the sale is authorized. The proceeds of the sale of said property shall be used by said counties for the carrying on, completion or maintenance of said improvement, as directed by the boards of county commissioners of said counties acting jointly. [1915 c 103 § 1; RRS § 9660. Formerly RCW 86.12.080.]

**Construction—1915 c 103:** "This act is not intended to modify, change, alter or amend chapter 54 of the Session Laws of 1913 [RCW 86.13.010 through 86.13.090]." [1915 c 103 § 2.]

**86.13.110 State's title to abandoned channels granted to counties.** Whenever two counties of this state, acting under a contract made pursuant to RCW 86.13.010 through 86.13.090, shall make an improvement in connection with the course, channel or flow of a river, thereby causing it to abandon its existing channel, bed, bank or banks for the entire distance covered by said improvement, or for any part or portion thereof, or by said improvement shall prevent a river from resuming at a future time an ancient or abandoned channel or bed, or shall construct improvements intended so to do, all the right, title and interest of the state of Washington in and to said abandoned channel or channels, bed or beds, bank or banks, up to and including the line of ordinary high water, shall be and the same is hereby given, granted and conveyed jointly to the counties making such improvement. [1915 c 140 § 1; RRS § 9662. Formerly RCW 86.12.090.]

#### IMMUNITY FROM LIABILITY

**86.13.120 Liability of county or counties to others.** See RCW 86.12.037.

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### Chapter 86.15 RCW

#### FLOOD CONTROL ZONE DISTRICTS

##### Sections

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*Dissolution of inactive special purpose districts: Chapter 36.96 RCW.*

*Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.*

**86.15.001 Actions subject to review by boundary review board.** The creation of a flood control zone district may be subject to potential review by a boundary review board under chapter 36.93 RCW. Extensions of service outside of the boundaries of a flood control zone district may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 65.]

**86.15.010 Definitions.** The definitions set forth in this section apply through this chapter.

- (1) "Board" means the county legislative authority.
- (2) "Flood control improvement" means any works, projects, or other facilities necessary for the control of flood waters within the county or any zone or zones.
- (3) "Flood waters" and "storm waters" means any storm waste or surplus waters, including surface water, wherever located within the county or a zone or zones where such waters endanger public highways, streams and water courses, harbors, life, or property.

(4) "Participating zones" means two or more zones found to benefit from a single flood control improvement or storm water control improvement.

(5) "Storm water control improvement" means any works, projects, or other facilities necessary to control and treat storm water within the county or any zone or zones.

(6) "Supervisors" means the board of supervisors, or governing body, of a zone.

(7) "Zones" means flood control zone districts which are quasi municipal corporations of the state of Washington created by this chapter. [1983 c 315 § 11; 1961 c 153 § 1.]

**Severability—1983 c 315:** See note following RCW 90.03.500.

**86.15.020 Zones—Creation.** The board may initiate, by affirmative vote of a majority of the board, the creation of a zone or additional zones within the county, and without reference to an existing zone or zones, for the purpose of undertaking, operating, or maintaining flood control projects or storm water control projects or groups of projects that are of special benefit to specified areas of the county. Formation of a zone may also be initiated by a petition signed by twenty-five percent of the electors within a proposed zone based on the vote cast in the last county general election. If the formation of the zone is initiated by petition, the board shall incorporate the terms of the petition in a resolution within forty days after receiving the petition from the county auditor. Thereafter, the procedures for establishing a zone shall be the same whether initiated by motion of the board or by a petition of electors.

Petitions shall be in a form prescribed and approved by the county auditor and shall include the necessary legal descriptions and other information necessary for establishment of a zone by resolution. When the sponsors of a petition have acquired the necessary signatures, they shall present the petition to the county auditor who shall thereafter certify the sufficiency of the petition within forty-five days. If the petition is found to meet the requirements specified in this chapter, the auditor shall transmit the petition to the board for their action; if the petition fails to meet the requirements of this chapter, it shall be returned to the sponsors. [1983 c 315 § 12; 1961 c 153 § 2.]

**Severability—1983 c 315:** See note following RCW 90.03.500.

**86.15.023 Zones not to include area in other zones.** A board may not establish a zone including an area located in another zone unless this area is removed from the other zone, or the other zone is dissolved, as part of the action creating the new zone. [1991 c 322 § 9.]

**Findings—Intent—Purpose—1991 c 322:** See notes following RCW 86.12.200.

**86.15.025 Districts incorporating watersheds authorized—Subzones authorized—Creation, procedure—Administration—Powers.** (1) The board is authorized to establish a countywide flood control zone district incorporating the boundaries of any and all watersheds located within the county which are not specifically organized into flood control zone districts established pursuant to chapter 86.15 RCW. Upon establishment of a countywide flood control zone district as authorized by this section, the board is autho-

rized and may divide any or all of the zone so created into separately designated subzones and such subzones shall then be operated and be legally established in the same manner as any flood control zone district established pursuant to chapter 86.15 RCW.

(2) Countywide flood control zone districts shall be established pursuant to the requirements of RCW 86.15.020, 86.15.030 and \*86.15.040 as now law of [or] hereafter amended. Subzones established from countywide flood control zone districts shall be established by resolution of the board and the provisions of RCW 86.15.020, 86.15.030 and shall not apply to the establishment of such subzone as authorized by this section.

(3) Such subzones shall be operated and administered in the same manner as any other flood control zone district in accordance with the provisions of chapter 86.15 RCW.

(4) Such subzones shall have authority to exercise any and all powers conferred by the provisions of RCW 86.15.080 as now law or hereafter amended.

(5) The board shall exercise the same power, authority, and responsibility over such subzones as it exercises over flood control zone districts in accordance with the provisions of chapter 86.15 RCW as now law or hereafter amended, and without limiting the generality of this subsection, the board may exercise over such subzones, the powers granted to it by RCW 86.15.160, 86.15.170, 86.15.176 and 86.15.178 as now law or hereafter amended. [1969 ex.s. c 195 § 1.]

\*Reviser's note: RCW 86.15.040 was repealed by 1991 c 322 § 13.

**86.15.030 Districts incorporating watersheds authorized—Formation, hearing and notice.** Upon receipt of a petition asking that a zone be created, or upon motion of the board, the board shall adopt a resolution which shall describe the boundaries of such proposed zone; describe in general terms the flood control needs or requirements within the zone; set a date for public hearing upon the creation of such zone, which shall be not more than thirty days after the adoption of such resolution. Notice of such hearing and publication shall be had in the manner provided in RCW 36.32.120(7).

At the hearing scheduled upon the resolution, the board shall permit all interested parties to be heard. Thereafter, the board may reject the resolution or it may modify the boundaries of such zone and make such other corrections or additions to the resolutions as they deem necessary to the accomplishment of the purpose of this chapter: PROVIDED, That if the boundaries of such zone are enlarged, the board shall hold an additional hearing following publication and notice of such new boundaries: PROVIDED FURTHER, That the boundaries of any zone shall generally follow the boundaries of the watershed area affected: PROVIDED FURTHER, That the immediately preceding proviso shall in no way limit or be construed to prohibit the formation of a countywide flood control zone district authorized to be created by RCW 86.15.025.

Within ten days after final hearing on a resolution, the board shall issue its order. [1969 ex.s. c 195 § 2; 1961 c 153 § 3.]

**86.15.035 Cooperative watershed management.** In addition to the authority provided in this chapter, flood control zone districts may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 19.]

**Finding—Intent—2003 c 327:** See note following RCW 39.34.190.

**86.15.050 Zones—Supervisors—Election of supervisors.** (1) The board of county commissioners of each county shall be ex officio, by virtue of their office, supervisors of the zones created in each county. In any zone with more than two thousand residents, an election of supervisors other than the board of county commissioners may be held as provided in this section.

(2) When proposed by citizen petition or by resolution of the board of county commissioners, a ballot proposition authorizing election of the supervisors of a zone shall be submitted by ordinance to the voters residing in the zone at any general election, or at any special election which may be called for that purpose.

(3) The ballot proposition shall be submitted (a) if the board of county supervisors enacts an ordinance submitting the proposition after adopting a resolution proposing the election of supervisors of a zone; or (b) if a petition proposing the election of supervisors of a zone is submitted to the county auditor of the county in which the zone is located that is signed by registered voters within the zone, numbering at least fifteen percent of the votes cast in the last county general election by registered voters within the zone.

(4) Upon receipt of a citizen petition under subsection (3)(b) of this section, the county auditor shall determine whether the petition is signed by a sufficient number of registered voters, using the registration records and returns of the preceding general election, and, no later than forty-five days after receipt of the petition, shall attach to the petition the auditor's certificate stating whether or not sufficient signatures have been obtained. If the signatures are found by the auditor to be insufficient, the petition shall be returned to the person filing it.

(5) The ballot proposition authorizing election of supervisors of zones shall appear on the ballot of the next general election or at the next special election date specified under \*RCW 29.13.020 occurring sixty or more days after the last resolution proposing election of supervisors or the date the county auditor certifies that the petition proposing such election contains sufficient valid signatures.

(6) The petition proposing the election of zone supervisors, or the ordinance submitting the question to the voters, shall describe the proposed election process. The ballot proposition shall include the following:

"For the direct election of flood control zone district supervisors."

"Against the direct election of flood control zone district supervisors."

(7) The ordinance or petition submitting the ballot proposition shall designate the proposed composition of the supervisors of zones, which shall be clearly described in the

ballot proposition. The ballot proposition shall state that the zone supervisors shall thereafter be selected by election, and, at the same election at which the proposition is submitted to the voters as to whether to elect zone supervisors, three zone supervisors shall be elected. The election of zone supervisors is null and void if the voters, by a simple majority, do not approve the direct election of the zone supervisors. Candidates shall run for specific supervisor positions. No primary may be held to nominate candidates. The person receiving the greatest number of votes for each position shall be elected as a supervisor. The staggering of the terms of office shall occur as follows: (a) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (b) the person who is elected receiving the second greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (c) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial supervisors shall take office immediately when they are elected and qualified, and for purposes of computing their terms of office the terms shall be assumed to commence on the first day of January in the year after they are elected. Thereafter, all supervisors shall be elected to six-year terms of office. All supervisors shall serve until their respective successors are elected and qualified and assume office in accordance with \*\*RCW 29.04.170. Vacancies may occur and shall be filled as provided in chapter 42.12 RCW.

(8) The costs and expenses directly related to the election of zone supervisors shall be borne by the zone. [2003 c 304 § 1; 1961 c 153 § 5.]

**Reviser's note:** \*(1) RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

\*\* (2) RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**86.15.055 Elected supervisors—Compensation.** In a zone with supervisors elected pursuant to RCW 86.15.050, the supervisors may each receive up to seventy dollars for attendance at official meetings of the supervisors and for each day or major part thereof for all necessary services actually performed in connection with their duties as a supervisor. The board of county commissioners shall fix any such compensation to be paid to the initial supervisors during their initial terms of office. The supervisors shall fix the compensation to be paid to the supervisors thereafter. Compensation for the supervisors shall not exceed six thousand seven hundred twenty dollars in one calendar year. A supervisor is entitled to reimbursement for reasonable expenses actually incurred in connection with performance of the duties of a supervisor, including subsistence and lodging, while away from the supervisor's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW.

Any supervisor may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver

filed with the supervisors as provided in this section. The waiver, to be effective, must be filed any time after the member's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. [2005 c 127 § 2.]

**Effective date—2005 c 127:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 2005]." [2005 c 127 § 3.]

**86.15.060 Administration.** (1) Except as provided in subsection (2) of this section, administration of the affairs of zones shall be in the county engineer. The engineer may appoint such deputies and engage such employees, specialists, and technicians as may be required by the zone and as are authorized by the zone's budget. Subject to the approval of the supervisors, the engineer may organize, or reorganize as required, the zone into such departments, divisions, or other administrative relationships as he deems necessary to its efficient operation.

(2) In a zone with supervisors elected pursuant to RCW 86.15.050, the supervisors may provide for administration of the affairs of the zone by other than the county engineer, pursuant to the authority established in RCW 86.15.095 to hire employees, staff, and services and to enter into contracts. [2005 c 127 § 1; 1961 c 153 § 6.]

**Effective date—2005 c 127:** See note following RCW 86.15.055.

**86.15.070 Advisory committees.** The board may appoint a county-wide advisory committee, which shall consist of not more than fifteen members. The board also may appoint an advisory committee for any zone or combination of two or more zones which committees shall consist of not more than five members. Members of an advisory committee shall serve without pay and shall serve at the pleasure of the board. [1967 ex.s. c 136 § 6; 1961 c 153 § 7.]

**86.15.080 General powers.** A zone or participating zone may:

(1) Exercise all the powers vested in a county for flood water or storm water control purposes under the provisions of chapters 86.12, 86.13, 36.89, and 36.94 RCW: PROVIDED, That in exercising such powers, all actions shall be taken in the name of the zone and title to all property or property rights shall vest in the zone;

(2) Plan, construct, acquire, repair, maintain, and operate all necessary equipment, facilities, improvements, and works to control, conserve, and remove flood waters and storm waters and to otherwise carry out the purposes of this chapter including, but not limited to, protection of the quality of water sources;

(3) Take action necessary to protect life and property within the district from flood water damage;

(4) Control, conserve, retain, reclaim, and remove flood waters and storm waters, including waters of lakes and ponds within the district, and dispose of the same for beneficial or useful purposes under such terms and conditions as the board may deem appropriate, subject to the acquisition by the board of appropriate water rights in accordance with the statutes;

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(5) Acquire necessary property, property rights, facilities, and equipment necessary to the purposes of the zone by purchase, gift, or condemnation: PROVIDED, That property of municipal corporations may not be acquired without the consent of such municipal corporation;

(6) Sue and be sued in the name of the zone;

(7) Acquire or reclaim lands when incidental to the purposes of the zone and dispose of such lands as are surplus to the needs of the zone in the manner provided for the disposal of county property in chapter 36.34 RCW;

(8) Cooperate with or join with the state of Washington, United States, another state, any agency, corporation or political subdivision of the United States or any state, Canada, or any private corporation or individual for the purposes of this chapter;

(9) Accept funds or property by loan, grant, gift or otherwise from the United States, the state of Washington, or any other public or private source;

(10) Remove debris, logs, or other material which may impede the orderly flow of waters in streams or water courses: PROVIDED, That such material shall become property of the zone and may be sold for the purpose of recovering the cost of removal: PROVIDED FURTHER, That valuable material or minerals removed from public lands shall remain the property of the state. [1983 c 315 § 13; 1961 c 153 § 8.]

**Severability—1983 c 315:** See note following RCW 90.03.500.

**86.15.090 Extraterritorial powers.** A zone may, when necessary to protect life and property within its limits from flood water, exercise any of its powers specified in RCW 86.15.080 outside its territorial limits. [1961 c 153 § 9.]

**86.15.095 Zones constitute quasi municipal corporation—Constitutional and statutory powers.** A flood control zone district is a quasi municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

A flood control zone district constitutes a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued. [1983 c 315 § 6.]

**Severability—1983 c 315:** See note following RCW 90.03.500.

**86.15.100 Flood control or storm water control improvements—Authorization.** The supervisors may authorize the construction, extension, enlargement, or acquisition of necessary flood control or storm water control improvements within the zone or any participating zones. The improvements may include, but shall not be limited to the extension, enlargement, construction, or acquisition of dikes and levees, drain and drainage systems, dams and reservoirs, or other flood control or storm water control improvements; widening, straightening, or relocating of stream or water courses; and the acquisition, extension, enlargement, or construction of any works necessary for the

protection of stream and water courses, channels, harbors, life, and property. [1983 c 315 § 14; 1961 c 153 § 10.]

**Severability—1983 c 315:** See note following RCW 90.03.500.

**86.15.110 Flood control or storm water control improvements—Initiation—Comprehensive plan.** Flood control or storm water control improvements may be extended, enlarged, acquired, or constructed by a zone pursuant to a resolution adopted by the supervisors. The resolution shall specify:

(1) Whether the improvement is to be extended, enlarged, acquired, or constructed;

(2) That either:

(a) A comprehensive plan of development for flood control has been prepared for the stream or water course upon which the improvement will be enlarged, extended, acquired, or constructed, and that the improvement generally contributes to the objectives of the comprehensive plan of development: PROVIDED, That the plan shall be first submitted to the state department of ecology at least ninety days in advance of the beginning of any flood control project or improvement; and shall be subject to all the regulatory control provisions by the department of ecology as provided in chapter 86.16 RCW; or

(b) A comprehensive plan of development for storm water control has been prepared for the area that will be served by the proposed storm water control facilities;

(3) If the improvement is to be constructed, that preliminary engineering studies and plans have been made, and that the plans and studies are on file with the county engineer;

(4) The estimated cost of the acquisition or construction of the improvement, together with such supporting data as will reasonably show how the estimates were arrived at; and

(5) That the improvement will benefit:

(a) Two or more zones, hereinafter referred to as participating zones; or

(b) A single zone; or

(c) The county as a whole, as well as a zone or participating zones. [1983 c 315 § 15; 1961 c 153 § 11.]

**Severability—1983 c 315:** See note following RCW 90.03.500.

**86.15.120 Flood control or storm water control improvements—Hearing, notice.** Before finally adopting a resolution to undertake any flood control improvement or storm water control improvement, the supervisors shall hold a hearing thereon. Notice and publication of the hearing shall be given under RCW 36.32.120(7). The supervisors may conduct any such hearing concurrently with a hearing on the establishment of a flood control zone, and may in such case designate the proposed zone a beneficiary of any improvement. [1983 c 315 § 16; 1961 c 153 § 12.]

**Severability—1983 c 315:** See note following RCW 90.03.500.

**86.15.130 Zone treasurer—Funds.** The treasurer of each zone shall be the county treasurer. He shall establish within his office a zone flood control fund for each zone into which shall be deposited the proceeds of all tax levies, assessments, gifts, grants, loans, or other revenues which may become available to a zone.

The treasurer shall also establish the following accounts within the zone fund:

(1) For each flood control improvement financed by a bond issue, an account to which shall be deposited the proceeds of any such bond issue; and

(2) An account for each outstanding bond issue to which will be deposited any revenues collected for the retirement of such outstanding bonds or for the payment of interest or charges thereon; and

(3) A general account to which all other receipts of the zone shall be deposited. [1961 c 153 § 13.]

**86.15.140 Budget.** The supervisors shall annually at the same time county budgets are prepared adopt a budget for the zone, which budget shall be divided into the following appropriation items: (1) Overhead and administration; (2) maintenance and operation; (3) construction and improvements; and (4) bond retirement and interest. In preparing the budget, the supervisors shall show the total amount to be expended in each appropriation item and the proportionate share of each appropriation item to be paid from each account of the zone.

In preparing the annual budget, the supervisors shall under the appropriation item of construction and improvement list each flood control improvement or storm water control improvement and the estimated expenditure to be made for each during the ensuing year. The supervisors may at any time during the year, if additional funds become available to the zone, adopt a supplemental budget covering additional authorized improvements.

The zone budget or any supplemental budget shall be approved only after a public hearing, notice of which shall be given as provided by RCW 36.32.120(7). [1983 c 315 § 17; 1961 c 153 § 14.]

**Severability—1983 c 315:** See note following RCW 90.03.500.

**86.15.150 County aid.** Whenever the supervisors have found under the provisions of RCW 86.15.110 that a flood control improvement or storm water control improvement initiated by any zone will be of benefit to the county as a whole, as well as to the zone or participating zones; or whenever the supervisors have found that the maintenance and operation of any flood control improvement or storm water control improvement within any zone will be of benefit to the overall flood control program or storm water control program of the county, the board may authorize the transfer of any funds available to the county for flood control or storm water control purposes to any zone or participating zones for flood control or storm water control purposes. [1983 c 315 § 18; 1961 c 153 § 15.]

**Severability—1983 c 315:** See note following RCW 90.03.500.

**86.15.160 Excess levies, assessments, regular levies, and charges—Local improvement districts.** For the purposes of this chapter the supervisors may authorize:

(1) An annual excess ad valorem tax levy within any zone or participating zones when authorized by the voters of the zone or participating zones under RCW 84.52.052 and 84.52.054;

(2) An assessment upon property, including state property, specially benefited by flood control improvements or

storm water control improvements imposed under chapter 86.09 RCW;

(3) Within any zone or participating zones an annual ad valorem property tax levy of not to exceed fifty cents per thousand dollars of assessed value when the levy will not take dollar rates that other taxing districts may lawfully claim and that will not cause the combined levies to exceed the constitutional and/or statutory limitations, and the additional levy, or any portion thereof, may also be made when dollar rates of other taxing units is released therefor by agreement with the other taxing units from their authorized levies;

(4) A charge, under RCW 36.89.080, for the furnishing of service to those who are receiving or will receive benefits from storm water control facilities and who are contributing to an increase in surface water runoff. The rate or charge imposed under this section shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested;

(5) Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state and state property, shall be liable for the charges to the same extent a private person and privately owned property is liable for the charges, and in setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property;

(6) The creation of local improvement districts and utility local improvement districts, the issuance of improvement district bonds and warrants, and the imposition, collection, and enforcement of special assessments on all property, including any state-owned or other publicly-owned property, specially benefited from improvements in the same manner as provided for counties by chapter 36.94 RCW. [2003 c 394 § 8; 1986 c 278 § 60; 1983 c 315 § 19; 1973 1st ex.s. c 195 § 131; 1961 c 153 § 16.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Severability—1983 c 315:** See note following RCW 90.03.500.

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

*Rates and charges for storm water control facilities—Limitations—Definitions:* RCW 90.03.500 through 90.03.525. See also RCW 35.67.025, 35.92.021, 36.89.085, and 36.94.145.

**86.15.162 Delinquent assessment—Sale of parcel—Accrual of interest.** If the delinquent assessment remains unpaid on the date fixed for the sale under RCW 86.09.496 and 86.09.499, the parcel shall be sold in the same manner as provided under \*RCW 87.03.310 through 87.03.330. If the district reconveys the land under \*RCW 87.03.325 due to accident, inadvertence, or misfortune, however, interest shall accrue not at the rate provided in RCW 87.03.270, but at the rate provided in RCW 86.09.505. [1983 c 315 § 7.]

\*Reviser's note: RCW 87.03.310 through 87.03.330 were repealed by 1988 c 134 § 15. Later enactment, see chapter 87.06 RCW.

**Severability—1983 c 315:** See note following RCW 90.03.500.

**86.15.165 Voluntary assessments for flood control or storm water control improvements—Procedure—Dispo-**

**sition of proceeds—Use.** The supervisors may provide by resolution for levying voluntary assessments, under a mode of annual installments extending over a period not exceeding fifteen years, on property benefited from a flood control improvement or storm water control improvement. The voluntary assessment shall be imposed only after each owner of property benefited by the flood control improvement has agreed to the assessment by written agreement with the supervisors. The agreement shall be recorded with the county auditor and the obligations under the agreement shall be binding upon all heirs and all successors in interest of the property.

The voluntary assessments need not be uniform or directly related to benefits to the property from the flood control improvement or storm water control improvement.

The levying, collection, and enforcement authorized in this section shall be in the manner now and hereafter provided by law for the levying, collection, and enforcement of local improvement assessments by cities and towns, insofar as those provisions are not inconsistent with the provisions of this chapter.

The disposition of all proceeds from voluntary assessments shall be in accordance with RCW 86.15.130.

The proceeds from voluntary assessments may be used for any flood control improvement or storm water control improvement not inconsistent with the provisions of this chapter, and in addition the proceeds may be used for operation and maintenance of flood control improvements or storm water control improvements constructed under the authority of this chapter. [1983 c 315 § 20; 1969 ex.s. c 195 § 3.]

**Severability—1983 c 315:** See note following RCW 90.03.500.

**86.15.170 General obligation bonds.** The supervisors may authorize the issuance of general obligation bonds to finance any flood control improvement or storm water control improvement and provide for the retirement of the bonds with ad valorem property tax levies. The general obligation bonds may be issued and the bond retirement levies imposed only when the voters of the flood control zone district approve a ballot proposition authorizing both the bond issuance and imposition of the excess bond retirement levies pursuant to Article VIII, section 6 and Article VII, section 2(b) of the state Constitution and RCW 84.52.056. Elections shall be held as provided in RCW 39.36.050. The bonds shall be issued on behalf of the zone or participating zones and be approved by the voters of the zone or participating zones when the improvement has by the resolution, provided in RCW 86.15.110, been found to be of benefit to a zone or participating zones. The bonds may not exceed an amount, together with any outstanding general obligation indebtedness, equal to three-fourths of one percent of the value of taxable property within the zone or participating zones, as the term "value of the taxable property" is defined in RCW 39.36.015. The bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 62. Prior: 1983 c 315 § 21; 1983 c 167 § 211; 1961 c 153 § 17.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Severability—1983 c 315:** See note following RCW 90.03.500.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**86.15.175 Community revitalization financing—Public improvements.** In addition to other authority that a flood control zone district possesses, a flood control zone district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a flood control zone district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 23.]

**Severability—2001 c 212:** See RCW 39.89.902.

**86.15.176 Service charges authorized—Disposition of revenue.** The supervisors may provide by resolution for revenues by fixing rates and charges for the furnishing of service to those served or receiving benefits from a flood control improvement including public entities, except as otherwise provided in RCW 90.03.525. The service charge shall be uniform for the same class of benefits or service. In classifying services furnished or benefits received the board may in its discretion consider the character and use of land and its water runoff characteristics and any other matters that present a reasonable difference as a ground for distinction. Service charges shall be applicable to a zone or participating zones. The disposition of all revenue from service charges shall be in accordance with RCW 86.15.130. [1986 c 278 § 61; 1983 c 315 § 22; 1967 ex.s. c 136 § 7.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Severability—1983 c 315:** See note following RCW 90.03.500.

**86.15.178 Revenue bonds—Lien for delinquent service charges.** (1) The supervisors may authorize the issuance of revenue bonds to finance any flood control improvement or storm water control improvement. The bonds may be issued by the supervisors in the same manner as prescribed in RCW 36.67.510 through 36.67.570 pertaining to counties. The bonds shall be issued on behalf of the zone or participating zones when the improvement has by the resolution, provided in RCW 86.15.110, been found to be of benefit to a zone or participating zones. The bonds may be in any form, including bearer bonds or registered bonds.

Each revenue bond shall state on its face that it is payable from a special fund, naming the fund and the resolution creating the fund.

Revenue bond principal, interest, and all other related necessary expenses shall be payable only out of the appropriate special fund.

A zone or participating zones shall have a lien for delinquent service charges, including interest thereon, against the premises benefited by a flood control improvement or storm water control improvement, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. The lien shall be effective and shall be enforced and foreclosed in the same manner as provided for sewerage liens of cities and towns by RCW 35.67.200 through 35.67.290.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter

39.46 RCW. [1991 c 322 § 10. Prior: 1983 c 315 § 23; 1983 c 167 § 212; 1967 ex.s. c 136 § 8.]

**Findings—Intent—Purpose—1991 c 322:** See notes following RCW 86.12.200.

**Severability—1983 c 315:** See note following RCW 90.03.500.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**86.15.180 Protection of public property.** Any agency or department of the state of Washington, or any political subdivision or municipal corporation of the state may contribute funds to the county or any zone or zones to assist the county, zone or zones in carrying out the purposes of this chapter when such agency, department, subdivision or municipal corporation finds such action will materially contribute to the protection of publicly owned property under its jurisdiction. [1961 c 153 § 18.]

**86.15.190 Abatement of nuisances.** The supervisors may order, on behalf of the zone or participating zones, that an action be brought in the superior court of the county to require the removal of publicly or privately owned structures, improvements, facilities, or accumulations of debris or materials that materially contribute to the dangers of loss of life or property from flood waters. Where the structures, improvements, facilities, or accumulations of debris or materials are found to endanger the public health or safety the court shall declare them a public nuisance, and forthwith order their abatement. If the abatement is not completed within the time ordered by the court, the county may abate the nuisance and charge the cost of the action against the land upon which the nuisance is located, and the payment of the charge may be enforced and collected in the same manner at the same time as county property taxes. [1983 c 315 § 24; 1961 c 153 § 19.]

**Severability—1983 c 315:** See note following RCW 90.03.500.

**86.15.200 Flood control zones—Consolidation, abolishment.** The board may consolidate any two or more zones or abolish any zone pursuant to a resolution adopted by the board providing for such action. Before adopting such a resolution, the board shall conduct a public hearing notice of which shall be given as provided by RCW 36.32.120(7). Any indebtedness of any zone or zones which are abolished or consolidated shall not be impaired by their abolishment or consolidation, and the board shall continue to levy and collect all necessary taxes and assessments until such debts are retired. Whenever twenty-five percent of the electors of any zone file a petition, meeting the requirements of sufficiency set forth in RCW 86.15.020, asking that a zone be abolished, the board shall: (1) Adopt a resolution abolishing the zone or (2) at the next general election place a proposition on the ballot calling for a yes or no vote on the abolition of the zone. [1961 c 153 § 20.]

**86.15.210 Transfer of property.** A diking, drainage, or sewerage improvement district, flood control district, diking district, drainage district, intercounty diking and drainage district, or zone may convey title to any property improvements or assets of the districts or zone to the county or a zone for flood control purposes. If the property improvements or

assets are surplus to the needs of the district or zone the transfer may be made by private negotiations, but in all other cases the transfers are subject to the approval of a majority of the registered voters within the district or zone. Nothing in this section permits any district or zone to impair the obligations of any debt or contract of the district or zone. [1983 c 315 § 25; 1961 c 153 § 21.]

**Severability—1983 c 315:** See note following RCW 90.03.500.

**86.15.220 Planning of improvements.** Nothing in this chapter shall be construed as limiting the right of counties under the provisions of chapters 86.12 and 86.13 RCW to undertake the planning or engineering studies necessary for flood control improvements or financing the same from any funds available for such purposes. [1961 c 153 § 22.]

**86.15.230 Public necessity of chapter.** This chapter is hereby declared to be necessary for the public health, safety, and welfare and that the taxes and special assessments authorized hereby are found to be for a public purpose. [1961 c 153 § 23.]

**86.15.900 Severability—Construction—1961 c 153.** If any provision of this chapter, as now or hereafter amended, or its application to any person or circumstance is held invalid, the remainder of the chapter, and its application to other persons or circumstances shall not be affected. [1961 c 153 § 24.]

**86.15.910 Construction of chapter.** This chapter shall be complete authority for the accomplishment of purposes hereby authorized, and shall be liberally construed to accomplish its purposes. Any restrictions, limitations or regulations contained shall not apply to this chapter. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purpose of this chapter only. [1961 c 153 § 25.]

**86.15.920 Titles not part of the chapter.** The section titles shall not be considered a part of this chapter. [1961 c 153 § 26.]

**Chapter 86.16 RCW**

**FLOOD PLAIN MANAGEMENT**

(Formerly: Flood control zones by state)

Sections

86.16.010	Statement of policy—State control assumed.
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86.16.025	Authority of department.
86.16.031	Duties of the department of ecology.
86.16.035	Department of ecology—Control of dams and obstructions.
86.16.041	Flood plain management ordinances and amendments—Filing with the department of ecology—Disapproval by the department—Adoption of rules for repair or replacement of existing residential structures.
86.16.045	Adoption of ordinances or requirements that exceed minimum federal requirements.
86.16.051	Basis for state and local flood plain management.
86.16.061	Adoption of rules.
86.16.071	Chapter not to create liability for damages against the state.
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86.16.110	Appeals.
86.16.120	Flood damages defined.

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86.16.130	Supervisor’s other powers and duties unaffected by chapter.
86.16.150	Severability—1935 c 159.
86.16.160	Local programs not prevented.
86.16.180	Processing of permits and authorizations for emergency water withdrawal and facilities to be expedited.
86.16.190	Livestock flood sanctuary areas.
86.16.900	Chapter liberally construed.

**86.16.010 Statement of policy—State control assumed.** The legislature finds that the alleviation of recurring flood damages to public and private property and to the public health and safety is a matter of public concern. As an aid in effecting such alleviation the state of Washington, in the exercise of its sovereign and police powers, hereby assumes full regulatory control over the navigable and non-navigable waters flowing or lying within the borders of the state subject always to the federal control of navigation, to the extent necessary to accomplish the objects of this chapter. In addition, in an effort to alleviate flood damage and expenditures of government funds, the federal government adopted the national flood insurance act of 1968 and subsequently the flood disaster protection act of 1973. The department of ecology is the state agency in Washington responsible for coordinating the flood plain management regulation elements aspects of the national flood insurance program. [1987 c 523 § 1; 1935 c 159 § 1; RRS § 9663A-1.]

**86.16.020 Flood plain management regulation.** State-wide flood plain management regulation shall be exercised through: (1) Local governments’ administration of the national flood insurance program regulation requirements, (2) the establishment of minimum state requirements for flood plain management that equal the minimum federal requirements for the national flood insurance program, and (3) the issuance of regulatory orders. This regulation shall be exercised over the planning, construction, operation and maintenance of any works, structures and improvements, private or public, which might, if improperly planned, constructed, operated and maintained, adversely influence the regimen of a stream or body of water or might adversely affect the security of life, health and property against damage by flood water. [1989 c 64 § 1; 1987 c 523 § 2; 1935 c 159 § 3; RRS § 9663A-3. FORMER PART OF SECTION: 1939 c 85 § 1 now codified as RCW 86.16.025 and 86.16.027.]

*Appeal of orders under RCW 86.16.020: RCW 43.21B.310.*

**86.16.025 Authority of department.** Subject to RCW 43.21A.068, with respect to such features as may affect flood conditions, the department shall have authority to examine, approve or reject designs and plans for any structure or works, public or private, to be erected or built or to be reconstructed or modified upon the banks or in or over the channel or over and across the floodway of any stream or body of water in this state. [1995 c 8 § 4; 1989 c 64 § 2; 1987 c 109 § 50; 1939 c 85 § 1; 1935 c 159 § 6; RRS § 9663A-6. Formerly RCW 86.16.020, part.]

**Findings—1995 c 8:** See note following RCW 43.21A.064.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**86.16.031 Duties of the department of ecology.** The department of ecology shall:

(1) Review and approve county, city, or town flood plain management ordinances pursuant to RCW 86.16.041;

(2) When requested, provide guidance and assistance to local governments in development and amendment of their flood plain management ordinances;

(3) Provide technical assistance to local governments in the administration of their flood plain management ordinances;

(4) Provide local governments and the general public with information related to the national flood insurance program;

(5) When requested, provide assistance to local governments in enforcement actions against any individual or individuals performing activities within the flood plain that are not in compliance with local, state, or federal flood plain management requirements;

(6) Establish minimum state requirements that equal minimum federal requirements for the national flood insurance program;

(7) Assist counties, cities, and towns in identifying the location of the one hundred year flood plain, and petitioning the federal government to alter its designations of where the one hundred year flood plain is located if the federally recognized location of the one hundred year flood plain is found to be inaccurate; and

(8) Establish minimum state requirements for specific flood plains that exceed the minimum federal requirements for the national flood insurance program, but only if: (a) The location of the one hundred year flood plain has been reexamined and is certified by the department as being accurate; (b) negotiations have been held with the affected county, city, or town over these regulations; (c) public input from the affected community has been obtained; and (d) the department makes a finding that these increased requirements are necessary due to local circumstances and general public safety. [1989 c 64 § 3; 1987 c 523 § 3.]

**86.16.035 Department of ecology—Control of dams and obstructions.** Subject to RCW 43.21A.068, the department of ecology shall have supervision and control over all dams and obstructions in streams, and may make reasonable regulations with respect thereto concerning the flow of water which he deems necessary for the protection to life and property below such works from flood waters. [1995 c 8 § 5. Prior: 1987 c 523 § 9; 1987 c 109 § 53; 1935 c 159 § 8; RRS § 9663A-8. Formerly RCW 86.16.030, part.]

**Findings—1995 c 8:** See note following RCW 43.21A.064.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**86.16.041 Flood plain management ordinances and amendments—Filing with the department of ecology—Disapproval by the department—Adoption of rules for repair or replacement of existing residential structures.**

(1) Beginning July 26, 1987, every county and incorporated city and town shall submit to the department of ecology any new flood plain management ordinance or amendment to any existing flood plain management ordinance. Such ordinance or amendment shall take effect thirty days from filing with the department unless the department disapproves such ordinance or amendment within that time period.

(2) The department may disapprove any ordinance or amendment submitted to it under subsection (1) of this section if it finds that an ordinance or amendment does not comply with any of the following:

(a) Restriction of land uses within designated floodways including the prohibition of construction or reconstruction, repair, or replacement of residential structures, except for: (i) Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (ii) repairs, reconstruction, or improvements to a structure the cost of which does not exceed fifty percent of the market value of the structure either, (A) before the repair, reconstruction, or repair is started, or (B) if the structure has been damaged, and is being restored, before the damage occurred. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code or building enforcement official and which are the minimum necessary to ensure safe living conditions shall not be included in the fifty percent determination. However, the floodway prohibition in this subsection does not apply to existing farmhouses in designated floodways that meet the provisions of subsection (3) of this section, or to substantially damaged residential structures other than farmhouses that meet the depth and velocity and erosion analysis in subsection (4) of this section, or to structures identified as historic places;

(b) The minimum requirements of the national flood insurance program; and

(c) The minimum state requirements adopted pursuant to RCW 86.16.031(8) that are applicable to the particular county, city, or town.

(3) Repairs, reconstruction, replacement, or improvements to existing farmhouse structures located in designated floodways and which are located on lands designated as agricultural lands of long-term commercial significance under RCW 36.70A.170 shall be permitted subject to the following:

(a) The new farmhouse is a replacement for an existing farmhouse on the same farm site;

(b) There is no potential building site for a replacement farmhouse on the same farm outside the designated floodway;

(c) Repairs, reconstruction, or improvements to a farmhouse shall not increase the total square footage of encroachment of the existing farmhouse;

(d) A replacement farmhouse shall not exceed the total square footage of encroachment of the farmhouse it is replacing;

(e) A farmhouse being replaced shall be removed, in its entirety, including foundation, from the floodway within ninety days after occupancy of a new farmhouse;

(f) For substantial improvements, and replacement farmhouses, the elevation of the lowest floor of the improvement and farmhouse respectively, including basement, is a minimum of one foot higher than the base flood elevation;

(g) New and replacement water supply systems are designed to eliminate or minimize infiltration of flood waters into the system;

(h) New and replacement sanitary sewerage systems are designed and located to eliminate or minimize infiltration of flood water into the system and discharge from the system into the flood waters; and

(i) All other utilities and connections to public utilities are designed, constructed, and located to eliminate or minimize flood damage.

(4) For all substantially damaged residential structures other than farmhouses that are located in a designated floodway, the department, at the request of the town, city, or county with land use authority over the structure, is authorized to assess the risk of harm to life and property posed by the specific conditions of the floodway, and, based upon scientific analysis of depth, velocity, and flood-related erosion, may exercise best professional judgment in recommending to the permitting authority, repair, replacement, or relocation of such damaged structures. The effect of the department's recommendation, with the town, city, or county's concurrence, to allow repair or replacement of a substantially damaged residential structure within the designated floodway is a waiver of the floodway prohibition.

(5) The department shall develop a rule or rule amendment guiding the assessment procedures and criteria described in subsections (3) and (4) of this section no later than December 31, 2000.

(6) For the purposes of this section, "farmhouse" means a single-family dwelling located on a farm site where resulting agricultural products are not produced for the primary consumption or use by the occupants and the farm owner. [2000 c 222 § 1; 1999 c 9 § 1; 1989 c 64 § 4; 1987 c 523 § 4.]

**Effective date—1999 c 9:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 15, 1999]." [1999 c 9 § 2.]

**86.16.045 Adoption of ordinances or requirements that exceed minimum federal requirements.** A county, city, or town may adopt flood plain management ordinances or requirements that exceed the minimum federal requirements of the national flood insurance program without following the procedures provided in RCW 86.16.031(8). [1989 c 64 § 6.]

**86.16.051 Basis for state and local flood plain management.** The basis for state and local flood plain management regulation shall be the areas designated as special flood hazard areas on the most recent maps provided by the federal emergency management agency for the national flood insurance program. Best available information shall be used if these maps are not available or sufficient. [1987 c 523 § 5.]

**86.16.061 Adoption of rules.** The department of ecology after consultation with the public shall adopt such rules as are necessary to implement this chapter. [1989 c 64 § 5; 1987 c 523 § 6.]

**86.16.071 Chapter not to create liability for damages against the state.** The exercise by the state of the authority, duties, and responsibilities as provided in this chapter shall not imply or create any liability for any damages against the state. [1987 c 523 § 7.]

**86.16.081 Enforcement of chapter—Civil penalty—Review by pollution control hearings board or local legislative authority.** (1) Except as provided in RCW 43.05.060

through 43.05.080 and 43.05.150, the attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to ensure compliance with this chapter.

(2) Any person who fails to comply with this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each violation or each day of noncompliance shall constitute a separate violation.

(3) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(4) Any penalty imposed pursuant to this section by the department shall be subject to review by the pollution control hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the pollution control hearings board. [1995 c 403 § 634; 1987 c 523 § 8.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**86.16.110 Appeals.** Any person, association, or corporation, public, municipal, or private, feeling aggrieved at any order, decision, or determination of the department or director pursuant to this chapter, affecting his or her interest, may have the same reviewed pursuant to RCW 43.21B.310. [1991 c 322 § 11. Prior: (Repealed by 1987 c 523 § 12); 1987 c 109 § 23; 1935 c 159 § 17; RRS § 9663A-17.]

**Reviser's note:** This section was repealed by 1987 c 523 § 12 without cognizance of its amendment by 1987 c 109 § 23, and was subsequently reenacted by 1991 c 322 § 11.

**Findings—Intent—Purpose—1991 c 322:** See notes following RCW 86.12.200.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**86.16.120 Flood damages defined.** Damages within the meaning of this chapter shall include harmful inundation, water erosion of soil, stream banks and beds, stream channel shifting and changes, harmful deposition by water of eroded and shifting soils and debris upon property or in the beds of streams or other bodies of water, damages by high water to public roads, highways, bridges, utilities and to works built for protection against floods or inundation, the interruption by floods of travel, communication and commerce, and all other high water influences and results which injuriously affect the public health and the safety of property. [1935 c 159 § 2; RRS § 9663A-2.]

**86.16.130 Supervisor's other powers and duties unaffected by chapter.**

**Reviser's note:** RCW 86.16.130 was amended by 1987 c 109 § 61 without reference to its repeal by 1987 c 523 § 12. It has been decodified for publication purposes pursuant to RCW 1.12.025.

**86.16.150 Severability—1935 c 159.** If any section or provisions of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional. [1935 c 159 § 20; RRS § 9663A-20.]

**86.16.160 Local programs not prevented.** Nothing in this chapter shall prevent any county, city or town from establishing, pursuant to any authority otherwise available to them, flood control regulation programs and related land use control measures in areas which are subject to flooding or flood damages. [1973 c 75 § 2.]

**86.16.180 Processing of permits and authorizations for emergency water withdrawal and facilities to be expedited.** All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application. [1989 c 171 § 9; 1987 c 343 § 7.]

**Severability—1989 c 171:** See note following RCW 43.83B.400.

**Severability—1987 c 343:** See note following RCW 43.83B.300.

**86.16.190 Livestock flood sanctuary areas.** Local governments that have adopted flood plain management regulations pursuant to this chapter shall include provisions that allow for the establishment of livestock flood sanctuary areas at a convenient location within a farming unit that contains domestic livestock. Local governments may limit the size and configuration of the livestock flood sanctuary areas, but such limitation shall provide adequate space for the expected number of livestock on the farming unit and shall be at an adequate elevation to protect livestock. Modification to flood plain management regulations required pursuant to this section shall be within the minimum federal requirements necessary to maintain coverage under the national flood insurance program. [1991 c 322 § 17.]

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.

**86.16.900 Chapter liberally construed.** The provisions of this chapter and all proceedings thereunder shall be liberally construed with a view to effect their object. [1935 c 159 § 19; RRS § 9663A-19.]

## Chapter 86.18 RCW

### FLOOD CONTROL CONTRIBUTIONS

#### Sections

86.18.010	Declaration of purpose.
86.18.030	Conditions and limitations on expenditures and contributions from appropriations—Warrants.
86.18.900	Construction—1967 ex.s. c 136.
86.18.910	Severability—1967 ex.s. c 136.

**86.18.010 Declaration of purpose.** Economic development and growth of the state is dependent on the control of flood waters. The legislature declares, in the exercise of its sovereign and police powers, that the purpose of this chapter is to provide for contributions of funds for assisting political subdivisions of the state in the protection of lands from inundation; the protection of public highways; the control of storm drainage; the maintenance of stream channels and water courses; and the protection of life and property.

It is the intent of the legislature that funds be provided to political subdivisions of the state to assist in the development of those flood control improvements and projects, which cannot be reasonably and practicably financed through the normal methods of financing available to such political subdivisions. [1967 ex.s. c 136 § 1.]

**86.18.030 Conditions and limitations on expenditures and contributions from appropriations—Warrants.** Funds shall be expended and contributions made to a political subdivision of the state from flood control appropriations only after:

(1) The project for which the funds are to be used has been approved by the department of ecology in accordance with the regulatory provisions of chapter 86.16 RCW.

(2) Engineering studies and plans have been made and filed with the county engineer of the county in which the project is located, or the county engineers of all counties in which the project is located, if it is located in more than one county.

(3) The estimate of cost of acquisition of necessary lands, rights of way and construction of the project or improvements, together with adequate supporting data have been completed and filed with the department of ecology.

(4) A comprehensive plan for the area involved has been completed and filed with the department.

(5) The political subdivision desiring a contribution has made an application for a contribution to the department showing the estimated cost of the project and the requested contribution.

(6) Federal funds are available for contribution for payment of a portion of the cost of the project.

The director of ecology is authorized to determine when these conditions have been met and to request the proper warrant for the state's contribution. Contributions to a political subdivision for a specific project shall not exceed fifty percent of the cost of acquisition of necessary lands and rights of way, and construction of the project or works of improvement. [1987 c 109 § 63; 1980 c 32 § 12; 1967 ex.s. c 136 § 3.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**86.18.900 Construction—1967 ex.s. c 136.** This legislative proposal shall be complete authority for the accomplishment of purposes hereby authorized, and shall be liberally construed to accomplish its purposes. [1967 ex.s. c 136 § 4.]

**86.18.910 Severability—1967 ex.s. c 136.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the

application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 136 § 5.]

### Chapter 86.24 RCW

## FLOOD CONTROL BY STATE IN COOPERATION WITH FEDERAL AGENCIES, ETC.

#### Sections

86.24.010	Declaration of policy.
86.24.020	Cooperation authorized.
86.24.030	Contracts authorized—Extent of participation.
86.24.040	Contracts between flood control districts and other governmental units.
86.24.050	State participation where state interest affected.

**86.24.010 Declaration of policy.** It is the purpose of the state of Washington, in the exercise of its sovereign and police powers, and in the interests of public welfare, to establish a state policy for the control of floods to the extent practicable and by economically feasible methods. [1935 c 163 § 1; RRS § 9662-1.]

**86.24.020 Cooperation authorized.** The department of ecology, in cooperation with the corps of engineers of the United States army, and any other agencies of the United States, and in cooperation with any official, agency or institution of the state and any flood control district created under the laws of the state, and any county, or any counties acting jointly pursuant to RCW 86.13.010 through 86.13.090, shall act for the state in the formulation of plans for the control of floods in the several flood areas of the state, and shall consider the extent to which the state should participate therein with the United States and/or any flood control district, or county, or counties so acting jointly. In case of federal participation, the plan of development and the surveys, plans and specifications for such flood control projects shall be in accordance with the federal requirements therefor. [1987 c 109 § 64; 1935 c 163 § 2; RRS § 9662-2.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**86.24.030 Contracts authorized—Extent of participation.** The state director of ecology, when state funds shall be available therefor, shall have authority on behalf of the state to enter into contracts with the United States or any agency thereof and/or with any such flood control district, county, or counties so acting jointly, for flood control purposes for any such flood control district, county or counties so acting jointly, the amount of the state's participation in any such contract to be such sum as may be appropriated therefor, or, in event of unallocated state appropriations for flood control purposes, in such necessary sum as to any such contract as he shall determine. [1988 c 127 § 39; 1935 c 163 § 4; RRS § 9662-4.]

**86.24.040 Contracts between flood control districts and other governmental units.** In any case where the boundaries of any flood control district shall embrace all or any part of any county, city, town, diking, or drainage district, subject to flood conditions, the governing authorities thereof may contract with the directors of such flood control district, with the written approval of the state director, for the

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maintenance, repair, renewal and extension of any existing flood control works of such county, city, town, diking, or drainage district, situated within the flood control district, and for the construction and maintenance of specific flood control projects, for such term of years and for the payment to such flood control district therefor of such annual sums as in said contract specified. [1979 ex.s. c 30 § 19; 1935 c 163 § 6; RRS § 9662-6.]

**86.24.050 State participation where state interest affected.** State participation in flood control projects shall be in such as are affected with a state interest and to such extent as the legislature may determine. [1935 c 163 § 3; RRS § 9662-3.]

### Chapter 86.26 RCW

## STATE PARTICIPATION IN FLOOD CONTROL MAINTENANCE

#### Sections

86.26.005	Declaration of purpose.
86.26.007	Flood control assistance account—Use.
86.26.010	Administration and enforcement.
86.26.040	Duties of local engineer—Approval of plans, etc., by department of ecology—Grants to prepare comprehensive flood control management plan.
86.26.050	Projects in which state will participate—Allocation of funds.
86.26.060	Allocation of funds.
86.26.070	Flood control maintenance fund of municipal corporation—Composition—Use.
86.26.080	Annual budget reports of municipal corporations—Allocation of funds.
86.26.090	Scope of maintenance in which state will participate.
86.26.100	Agreement as to participation—Limit on amount.
86.26.105	Comprehensive flood control management plan—Requirements—Time for completion.

**86.26.005 Declaration of purpose.** It is the purpose of the state in the exercise of its sovereign and police powers and in the interest of public welfare, to establish a state and local participating flood control maintenance policy. [1951 c 240 § 2.]

**86.26.007 Flood control assistance account—Use.** The flood control assistance account is hereby established in the state treasury. At the beginning of the 2005-2007 fiscal biennium, the state treasurer shall transfer three million dollars from the general fund to the flood control assistance account. Each biennium thereafter the state treasurer shall transfer four million dollars from the general fund to the flood control assistance account. Moneys in the flood control assistance account may be spent only after appropriation for purposes specified under this chapter. [2005 c 518 § 947; 2003 1st sp.s. c 25 § 943; 1997 c 149 § 914; 1996 c 283 § 903; 1995 2nd sp.s. c 18 § 915; 1993 sp.s. c 24 § 928; 1991 sp.s. c 13 § 24; 1986 c 46 § 1; 1985 c 57 § 88; 1984 c 212 § 1.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—1997 c 149:** See notes following RCW 43.08.250.

**Severability—Effective date—1996 c 283:** See notes following RCW 43.08.250.

**Severability—Effective date—1995 2nd sp.s. c 18:** See notes following RCW 19.118.110.

**Severability—Effective dates—1993 sp.s. c 24:** See notes following RCW 28A.310.020.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**86.26.010 Administration and enforcement.** The department of ecology shall have charge for the state of the administration and enforcement of all laws relating to flood control. [1984 c 212 § 2; 1951 c 240 § 3.]

**86.26.040 Duties of local engineer—Approval of plans, etc., by department of ecology—Grants to prepare comprehensive flood control management plan.** Whenever state grants under this chapter are used in a flood control maintenance project, the engineer of the county within which the project is located shall approve all plans for the specific project and shall supervise the work. The approval of such plans, construction and expenditures by the department of ecology, in consultation with the department of fish and wildlife, shall be a condition precedent to state participation in the cost of any project beyond planning and designing the specific project.

Additionally, state grants may be made to counties for preparation of a comprehensive flood control management plan required to be prepared under RCW 86.26.050. [1994 c 264 § 77; 1988 c 36 § 63; 1986 c 46 § 2; 1984 c 212 § 3; 1951 c 240 § 6.]

**86.26.050 Projects in which state will participate—Allocation of funds.** (1) State participation shall be in such preparation of comprehensive flood control management plans under this chapter and chapter 86.12 RCW, cost sharing feasibility studies for new flood control projects, projects pursuant to section 33, chapter 322, Laws of 1991, and flood control maintenance projects as are affected with a general public and state interest, as differentiated from a private interest, and as are likely to bring about public benefits commensurate with the amount of state funds allocated thereto.

(2) No participation for flood control maintenance projects may occur with a county or other municipal corporation unless the director of ecology has approved the flood plain management activities of the county, city, or town having planning jurisdiction over the area where the flood control maintenance project will be, on the one hundred year flood plain surrounding such area.

The department of ecology shall adopt rules concerning the flood plain management activities of a county, city, or town that are adequate to protect or preclude flood damage to structures, works, and improvements, including the restriction of land uses within a river's meander belt or floodway to only flood-compatible uses. Whenever the department has approved county, city, and town flood plain management activities, as a condition of receiving an allocation of funds under this chapter, each revision to the flood plain management activities must be approved by the department of ecology, in consultation with the department of fish and wildlife.

No participation with a county or other municipal corporation for flood control maintenance projects may occur

unless the county engineer of the county within which the flood control maintenance project is located certifies that a comprehensive flood control management plan has been completed and adopted by the appropriate local authority, or is being prepared for all portions of the river basin or other area, within which the project is located in that county, that are subject to flooding with a frequency of one hundred years or less.

(3) Participation for flood control maintenance projects and preparation of comprehensive flood control management plans shall be made from grants made by the department of ecology from the flood control assistance account. Comprehensive flood control management plans, and any revisions to the plans, must be approved by the department of ecology, in consultation with the department of fish and wildlife. The department may only grant financial assistance to local governments that, in the opinion of the department, are making good faith efforts to take advantage of, or comply with, federal and state flood control programs. [1994 c 264 § 78; 1991 c 322 § 6; 1988 c 36 § 64; 1986 c 46 § 3; 1985 c 454 § 1; 1984 c 212 § 4; 1951 c 240 § 7.]

**Findings—Intent—Purpose—1991 c 322:** See notes following RCW 86.12.200.

**86.26.060 Allocation of funds.** Grants for flood control maintenance shall be so employed that as far as possible, funds will be on hand to meet unusual, unforeseeable and emergent flood conditions. Allocations by the department of ecology, for emergency purposes, shall in each instance be in amounts which together with funds provided by local authority, if any, under reasonable exercise of its emergency powers, shall be adequate for the preservation of life and property, and with due regard to similar needs elsewhere in the state. [1984 c 212 § 5; 1951 c 240 § 8.]

**86.26.070 Flood control maintenance fund of municipal corporation—Composition—Use.** Any municipal corporation subject to flood conditions, may establish in its treasury a flood control maintenance fund. Such fund may be maintained by transfer thereto of moneys derived from regular or special lawful levies for flood control purposes, moneys which may be lawfully transferred to it from any other municipal fund; and gifts and contributions received for flood control purposes. All costs and expenses for flood control maintenance purposes shall be paid out of said flood control maintenance fund, which fund shall not be used for any other purpose. [1951 c 240 § 9.]

**86.26.080 Annual budget reports of municipal corporations—Allocation of funds.** Any municipal corporation intending to seek state participating funds shall, within thirty days after final adoption of its annual budget for flood control purposes, report the amount thereof, to the engineer of the county within whose boundaries the municipal corporation lies. The county engineer shall submit such reports, together with reports from the county itself, to the department of ecology. On the basis of all such budget reports received, the department may thereupon prepare a tentative and preliminary plan for the orderly and most beneficial allocation of funds from the flood control assistance account for the ensu-

ing calendar year. Soil conservation districts shall be exempted from the provisions of this section. [1984 c 212 § 6; 1951 c 240 § 10.]

**86.26.090 Scope of maintenance in which state will participate.** The state shall participate with eligible local authorities in maintaining and restoring the normal and reasonably stable river and stream channel alignment and the normal and reasonably stable river and stream channel capacity for carrying off flood waters with a minimum of damage from bank erosion or overflow of adjacent lands and property; and in restoring, maintaining and repairing natural conditions, works and structures for the maintenance of such conditions. State participation in the repair of flood control facilities may include the enhancement of such facilities. The state shall likewise participate in the restoration and maintenance of natural conditions, works or structures for the protection of lands and other property from inundation or other damage by the sea or other bodies of water. Funds from the flood control assistance account shall not be available for maintenance of works or structures maintained solely for the detention or storage of flood waters. [1991 c 322 § 7; 1984 c 212 § 7; 1951 c 240 § 11.]

**Findings—Intent—Purpose—1991 c 322:** See notes following RCW 86.12.200.

**86.26.100 Agreement as to participation—Limit on amount.** State participation in the cost of any flood control maintenance project shall be provided for by a written memorandum agreement between the director of ecology and the legislative authority of the county submitting the request, which agreement, among other things, shall state the estimated cost and the percentage thereof to be borne by the state. In no instance, except on emergency projects, shall the state's share exceed seventy-five percent of the total cost of the project, to include project planning and design. Grants for cost sharing feasibility studies for new flood control projects shall not exceed fifty percent of the matching funds that are required by the federal government, and shall not exceed twenty-five percent of the total costs of the feasibility study. However, grants to prepare a comprehensive flood control management plan required under RCW 86.26.050 shall not exceed seventy-five percent of the full planning costs, but not to exceed amounts for either purpose specified in rule and regulation by the department of ecology. [2000 c 20 § 1; 1991 c 322 § 8; 1986 c 46 § 4; 1984 c 212 § 8; 1951 c 240 § 12.]

**Findings—Intent—Purpose—1991 c 322:** See notes following RCW 86.12.200.

**86.26.105 Comprehensive flood control management plan—Requirements—Time for completion.** A comprehensive flood control management plan shall determine the need for flood control work, consider alternatives to in-stream flood control work, identify and consider potential impacts of in-stream flood control work on the state's in-stream resources, and identify the river's meander belt or floodway. A comprehensive flood control management plan shall be completed and adopted within at least three years of the certification that it is being prepared, as provided in RCW 86.26.050.

If after this three-year period has elapsed such a comprehensive flood control plan has not been completed and adopted, grants for flood control maintenance projects shall not be made to the county or municipal corporations in the county until a comprehensive flood control plan is completed and adopted by the appropriate local authority. These limitations on grants shall not preclude allocations for emergency purposes made pursuant to RCW 86.26.060. [1986 c 46 § 5; 1984 c 212 § 9.]



# Title 87

## IRRIGATION

### Chapters

- 87.03** Irrigation districts generally.
- 87.04** Director divisions.
- 87.06** Delinquent assessments.
- 87.19** Refunding bonds—1923 act.
- 87.22** Refunding bonds—1929 act.
- 87.25** Certification of bonds.
- 87.28** Revenue bonds for water, power, drains, etc.
- 87.48** Indemnity to state on land settlement contracts.
- 87.52** Dissolution of districts without bonds.
- 87.53** Dissolution of districts with bonds.
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- 87.68** Districts under contract with United States.
- 87.76** Association of irrigation districts.
- 87.80** Joint control of irrigation districts.
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*Conveyance of real property by public bodies—Recording: RCW 65.08.095.*

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*Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.*

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### Chapter 87.03 RCW

#### IRRIGATION DISTRICTS GENERALLY

#### Sections

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**Reviser's note:** The language "this act," "this chapter," and words of similar import appear throughout chapter 87.03 RCW. This chapter is almost entirely comprised of the basic irrigation act of 1889-90 p 671 et seq. as amended and as expressly added thereto by subsequent enactments. The chapter is codified in the session law order of the basic act with a few independent sections which are in *pari materia* being also codified herein. Many sections were added to the basic law by being expressly added to the chapter of the code or compilation in which the basic act was currently published at the time of the particular enactment. Similarly many sections have been amended by reference to the compilation number only. Some of these sections contain legislative language "this act," "this chapter," or both, which appear in the session law either as original legislative language or reenactments by the legislature of a compiler's translation. Therefore, throughout chapter 87.03 RCW such language is retained wherever it appears in the most recent session law enactment. Situations concerning effective dates of particular acts or having express restrictive application are otherwise specially noted.

*Deferral of special assessments:* Chapter 84.38 RCW.

*Disposal of real property on abandonment of irrigation district right of way—Right of adjacent owners:* RCW 57.90.100.

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*Local governmental organizations, actions affecting boundaries, etc., review by boundary review board:* Chapter 36.93 RCW.

*Plats, approval of plat within irrigation districts prohibited without provision for irrigation water:* RCW 58.17.310.

*Special purpose districts, expenditures to recruit job candidates:* RCW 42.24.170.

**87.03.001 Actions subject to review by boundary review board.** The formation of an irrigation district may be subject to potential review by a boundary review board under chapter 36.93 RCW. The alteration of the boundaries of an irrigation district, including but not limited to a consolidation, addition of lands, exclusion of lands, or merger, may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 66.]

**87.03.005 District proposed—Powers, when organized.** Whenever fifty or a majority of the holders of title to, or of evidence of title to land susceptible of "irrigation" desire to organize an irrigation district for any or all of the purposes mentioned in RCW 87.03.010 and 87.03.015, they may propose the organization of an irrigation district in the manner provided herein; and when so organized, such district shall have all the powers that may now or hereafter be conferred by law. [1923 c 138 § 1; 1917 c 162 § 1; 1915 c 179 § 1; 1895 c 165 § 1; 1889-90 p 671 § 1; RRS § 7417. Formerly RCW 87.01.020, part.]

**87.03.010 Certain purposes for which district may be formed.** An irrigation district may be organized or maintained for any or all the following purposes:

(1) The construction or purchase of works, or parts of same, for the irrigation of lands within the operation of the district.

(2) The reconstruction, repair or improvement of existing irrigation works.

(3) The operation or maintenance of existing irrigation works.

(4) The construction, reconstruction, repair or maintenance of a system of diverting conduits from a natural source of water supply to the point of individual distribution for irrigation purposes.

(5) The execution and performance of any contract authorized by law with any department of the federal government or of the state of Washington, for reclamation and irrigation purposes.

(6) The performance of all things necessary to enable the district to exercise the powers herein granted. [1923 c 138 § 2, part; RRS § 7417-1. Formerly RCW 87.01.010.]

**87.03.013 Development of hydroelectric generation capabilities—Legislative finding, intent—Limitation.** The legislature finds that a significant potential exists for the development of the hydroelectric generation capabilities of present and future irrigation systems serving irrigation districts. The legislature also finds that the development of such hydroelectric generation capabilities is beneficial to the present and future electrical needs of the citizens of the state of Washington, furthers a state purpose and policy, and is in the public interest. The legislature further finds that it is necessary to revise and add to the authority of irrigation districts

to obtain the most favorable interest rates possible in the financing of irrigation district projects which serve the agricultural community and hydroelectric facilities. It is the intent of the legislature to provide irrigation districts with the authority to develop these hydroelectric generation capabilities in connection with irrigation facilities. Further, it is the intent of the legislature that the development of hydroelectric generation capabilities pursuant to \*this 1979 act not become the sole purpose or function of irrigation districts in existence on May 14, 1979, nor become a major function of irrigation districts created after that date. Nothing herein shall authorize an irrigation district to sell electric power or energy to any municipal corporation not engaged in the distribution of electric power or energy. [1979 ex.s. c 185 § 1.]

**\*Reviser's note:** For codification of "this 1979 act" [1979 ex.s. c 185], see Codification Tables, Volume 0.

**Effective date—1979 ex.s. c 185:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1979 ex.s. c 185 § 24.] Because of this emergency section the effective date of 1979 ex.s. c 185 was May 14, 1979.

**Severability—1979 ex.s. c 185:** "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 185 § 23.]

### **87.03.015 Certain powers of district enumerated.**

Any irrigation district, operating and maintaining an irrigation system, in addition to other powers conferred by law, shall have authority:

(1) To purchase and sell electric power to the inhabitants of the irrigation district for the purposes of irrigation and domestic use, to acquire, construct, and lease dams, canals, plants, transmission lines, and other power equipment and the necessary property and rights therefor and to operate, improve, repair, and maintain the same, for the generation and transmission of electrical energy for use in the operation of pumping plants and irrigation systems of the district and for sale to the inhabitants of the irrigation district for the purposes of irrigation and domestic use; and, as a further and separate grant of authority and in furtherance of a state purpose and policy of developing hydroelectric capability in connection with irrigation facilities, to construct, finance, acquire, own, operate, and maintain, alone or jointly with other irrigation districts, boards of control, other municipal or quasi-municipal corporations or cooperatives authorized to engage in the business of distributing electricity, or electrical companies subject to the jurisdiction of the utilities and transportation commission, hydroelectric facilities including but not limited to dams, canals, plants, transmission lines, other power equipment, and the necessary property and rights therefor, located within or outside the district, for the purpose of utilizing for the generation of electricity, water power made available by and as a part of the irrigation water storage, conveyance, and distribution facilities, waste ways, and drainage water facilities which serve irrigation districts, and to sell any and all the electric energy generated at any such hydroelectric facilities or the irrigation district's share of such energy, to municipal or quasi-municipal corporations and cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission, or

to other irrigation districts, and on such terms and conditions as the board of directors shall determine, and to enter into contracts with other irrigation districts, boards of control, other municipal or quasi-municipal corporations and cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission: PROVIDED, That no contract entered into by the board of directors of any irrigation district for the sale of electrical energy from such hydroelectric facility for a period longer than forty years from the date of commercial operation of such hydroelectric facility shall be binding on the district until ratified by a majority vote of the electors of the district at an election therein, called, held and canvassed for that purpose in the same manner as that provided by law for district bond elections.

(2) To construct, repair, purchase, maintain or lease a system for the sale or lease of water to the owners of irrigated lands within the district for domestic purposes.

(3) To construct, repair, purchase, lease, acquire, operate and maintain a system of drains, sanitary sewers, and sewage disposal or treatment plants as herein provided.

(4) To assume, as principal or guarantor, any indebtedness to the United States under the federal reclamation laws, on account of district lands.

(5) To maintain, repair, construct and reconstruct ditches, laterals, pipe lines and other water conduits used or to be used in carrying water for irrigation of lands located within the boundaries of a city or town or for the domestic use of the residents of a city or town where the owners of land within such city or town shall use such works to carry water to the boundaries of such city or town for irrigation, domestic or other purposes within such city or town, and to charge to such city or town the pro rata proportion of the cost of such maintenance, repair, construction and reconstruction work in proportion to the benefits received by the lands served and located within the boundaries of such city or town, and if such cost is not paid, then and in that event said irrigation district shall have the right to prevent further water deliveries through such works to the lands located within the boundaries of such city or town until such charges have been paid.

(6) To acquire, install and maintain as a part of the irrigation district's water system the necessary water mains and fire hydrants to make water available for fire fighting purposes; and in addition any such irrigation district shall have the authority to repair, operate and maintain such hydrants and mains.

(7) To enter into contracts with other irrigation districts, boards of control, municipal or quasi-municipal corporations and cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission to jointly acquire, construct, own, operate, and maintain irrigation water, domestic water, drainage and sewerage works, and electrical power works to the same extent as authorized by subsection (1) of this section, or portions of such works.

(8) To acquire from a water-sewer district wholly within the irrigation district's boundaries, by a conveyance without cost, the water-sewer district's water system and to operate the same to provide water for the domestic use of the irrigation district residents. As a part of its acceptance of the con-

veyance the irrigation district must agree to relieve the water-sewer district of responsibility for maintenance and repair of the system. Any such water-sewer district is authorized to make such a conveyance if all indebtedness of the water-sewer district, except local improvement district bonds, has been paid and the conveyance has been approved by a majority of the water-sewer district's voters voting at a general or special election.

This section shall not be construed as in any manner abridging any other powers of an irrigation district conferred by law. [1999 c 153 § 74; 1979 ex.s. c 185 § 2; 1967 c 206 § 1; 1965 c 141 § 1; 1943 c 57 § 1; 1941 c 143 § 1; 1933 c 31 § 1; 1923 c 138 § 2, part; RRS § 7417-2. Formerly RCW 87.01.210, part.]

**Part headings not law—1999 c 153:** See note following RCW 87.04.050.

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

*District bond elections:* RCW 87.03.200.

*Heating systems authorized:* RCW 35.97.020.

*Prerequisite to furnishing water or power outside of district:* RCW 87.03.115.

**87.03.016 District may provide street lighting—Limitations.** In addition to other powers conferred by law, an irrigation district is authorized to construct, purchase, lease, or otherwise acquire, maintain, and operate a system for lighting public streets and highways and to enter into a contract or contracts with electric utilities, either public or private, to provide that service. However, no contract entered into by the board for providing street lighting for a period exceeding ten years is binding upon the district unless ratified by a majority vote of the electors of the district at an election called, held, and canvassed for that purpose in the same manner as provided by law for district bond elections.

The authority granted by this section applies only to an irrigation district that has begun the construction, purchase, lease, or acquisition of a street lighting system by January 1, 1984, or has entered into a contract for that service by that date. [1984 c 168 § 1.]

**87.03.017 District may assist residential owners in financing for conservation of energy—When—Plan—Limitations.** Any irrigation district engaged in the distribution of energy is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of residential structures in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy in such structures pursuant to an energy conservation plan adopted by the irrigation district if the cost per unit of energy saved or produced by the use of such materials and equipment is less than the cost per unit of energy produced by the next least costly new energy resource which the irrigation district could acquire to meet future demand. Except where otherwise authorized, such assistance shall be limited to:

(1) Providing an inspection of the residential structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation materials and equipment for which financial assistance will be approved

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and the estimated life cycle savings in energy costs that are likely to result from the installation of such materials or equipment.

(2) Providing a list of businesses who sell and install such materials and equipment within or in close proximity to the service area of the irrigation district, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize such materials in accordance with the prevailing national standards.

(3) Arranging to have approved conservation materials and equipment installed by a private contractor whose bid is acceptable to the owner of the residential structure and verifying such installation.

(4) Arranging or providing financing for the purchase and installation of approved conservation materials and equipment. Such materials and equipment shall be purchased from a private business and shall be installed by a private business or the owner.

(5) Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length. [1982 c 42 § 1. Prior: 1981 c 345 § 3.]

**87.03.0175 District assistance for conservation, improvement, preservation, and efficient use.** (1) Any irrigation district organized under this chapter may, for compensation, reimbursement, or otherwise, within limits established by the state Constitution, assist the owners of land receiving water distributed by the irrigation district or discharging, with the district's approval, water from the land into irrigation district-maintained facilities to finance, acquire, install, lease, and use equipment, fixtures, programs, and systems to conserve, improve, preserve, and efficiently use the land, water delivered by the irrigation district, or water discharged from the land into irrigation district-maintained facilities. Assistance may include, but is not limited to, grants, loans, and financing to purchase, lease, install, and use approved conservation, improvement, and preservation equipment, fixtures, programs, and systems. The equipment, fixtures, programs, and systems may be leased, purchased, or installed by a private business, the owner of the land, or the irrigation district. "Conserve," "improve," and "preserve" as used in this section, include enhancing the quality of water delivered by the irrigation district or discharged from the land into irrigation district-maintained facilities.

(2) The district may charge the owner and the land if district money or credit is used or extended to provide the assistance in subsection (1) of this section. The district's board of directors may also levy and fix assessments, rates, tolls, and charges and collect them from all persons for whom, and all land on which, district money or credit is provided, or the board may require landowner repayment for landowner assistance by assessments, charges, rates, or tolls in the same manner as provided by RCW 87.03.445. [1999 c 234 § 1.]

**87.03.018 Creation of legal authority to carry out powers—Method—Indebtedness.** Two or more irrigation districts may create a separate legal authority to carry out any or all of the powers described in RCW 87.03.015. To enable

such a legal authority to carry out its delegated powers, the irrigation districts creating the authority may assign, convey, or otherwise transfer to it any or all of their respective property, rights, or obligations, including, without limitation, the power to issue revenue obligations and the power of condemnation. Such a legal authority shall be created and organized by contract in the manner described in chapter 39.34 RCW and shall be a separate legal entity.

A separate legal authority shall only have power to incur indebtedness that is repayable from rates, tolls, charges, or contract payments for services or electricity provided by the authority and to pledge such revenues for the payment and retirement of indebtedness issued for the construction or acquisition of hydroelectric facilities. An authority shall not have power to levy taxes or to impose assessments for the payment of obligations of the authority. Every bond or other evidence of indebtedness issued by an authority shall provide (1) that repayment shall be limited solely to the revenues of the authority; and (2) that no member of the authority shall be obligated to repay directly or indirectly any obligation of the authority except to the extent of fair value for services actually received from the authority. No member may pledge its revenues to support the issuance of revenue bonds or other indebtedness of an authority. [1984 c 168 § 5; 1981 c 62 § 1.]

**87.03.019 Cooperative watershed management.** In addition to the authority provided throughout this title, an irrigation district, reclamation district, and similar districts organized pursuant to the authority of this title may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 15.]

**Finding—Intent—2003 c 327:** See note following RCW 39.34.190.

**87.03.020 Organization of district—Petition—Bond—Notice—Hearing—Order—Notice of election.** For the purpose of organizing an irrigation district, a petition, signed by the required number of holders of title or evidence of title to land within the proposed district, shall be presented to the board of county commissioners of the county in which the lands, or the greater portion thereof, are situated, which petition shall contain the following:

(1) A description of the lands to be included in the operation of the district, in legal subdivisions or fractions thereof, and the name of the county or counties in which said lands are situated.

(2) The signature and post office address of each petitioner, together with the legal description of the particular lands within the proposed district owned by said respective petitioners.

(3) A general statement of the probable source or sources of water supply and a brief outline of the plan of improvement, which may be in the alternative, contemplated by the organization of the district.

(4) A statement of the number of directors, either three or five, desired for the administration of the district and of the

name by which the petitioners desire the district to be designated.

(5) Any other matter deemed material.

(6) A prayer requesting the board to take the steps necessary to organize the district.

The petition must be accompanied by a good and sufficient bond, to be approved by the board of county commissioners, in double the amount of the probable cost of organizing the district, and conditioned that the bondsmen will pay all of the cost in case such organization shall not be effected. Said petition shall be presented at a regular meeting of the said board, or at any special meeting ordered to consider and act upon said petition, and shall be published once a week, for at least two weeks (three issues) before the time at which the same is to be presented, in some newspaper of general circulation printed and published in the county where said petition is to be presented, together with a notice signed by the clerk of the board of county commissioners stating the time of the meeting at which the same will be presented. There shall also be published a notice of the hearing on said petition in a newspaper published at Olympia, Washington, to be designated by the director of ecology from year to year, which said notice shall be published for at least two weeks (three issues) prior to the date of said meeting and shall contain the name of the county or counties and the number of each township and range in which the lands embraced within the boundaries of the proposed district are situated, also the time, place and purpose for said meeting, which said notice shall be signed by the petitioner whose name first appears upon the said petition. If any portion of the lands within said proposed district lie within another county or counties, then the said petition and notice shall be published for the time above provided in one newspaper printed and published in each of said counties. The said notice, together with a map of the district, shall also be served by registered mail at least thirty days before the said hearing upon the state director of ecology at Olympia, Washington, who shall, at the expense of the district in case it is later organized, otherwise at the expense of the petitioners' bondsmen, make such investigation of the sufficiency of the source and supply of water for the purposes of the proposed district, as he may deem necessary, and file a report of his findings, together with a statement of his costs, with the board of county commissioners at or prior to the time set for said hearing. When the petition is presented, the board of county commissioners shall hear the same, shall receive such evidence as it may deem material, and may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing shall establish and define the boundaries of the district along such lines as in the judgment of the board will best reclaim the lands involved and enter an order to that effect: PROVIDED, That said board shall not modify the boundaries so as to except from the operation of the district any territory within the boundaries outlined in the petition, which is susceptible of irrigation by the same system of works applicable to other lands in such proposed district and for which a water supply is available; nor shall any lands which, in the judgment of said board, will not be benefited, be included within such district; any lands included within any district, which have a partial or full water right shall be given equitable credit therefor in the apportionment of the assessments in this act provided for: AND PROVIDED FUR-

THER, That any owner, whose lands are susceptible of irrigation from the same source, and in the judgment of the board it is practicable to irrigate the same by the proposed district system, shall, upon application to the board at the time of the hearing, be entitled to have such lands included in the district.

At said hearing the board shall also give the district a name and shall order that an election be held therein for the purpose of determining whether or not the district shall be organized under the provisions of this act and for the purpose of electing directors.

The clerk of the board of county commissioners shall then give notice of the election ordered to be held as aforesaid, which notice shall describe the district boundaries as established, and shall give the name by which said proposed district has been designated, and shall state the purposes and objects of said election, and shall be published once a week, for at least two weeks (three issues) prior to said election, in a newspaper of general circulation published in the county where the petition aforesaid was presented; and if any portion of said proposed district lies within another county or counties, then said notice shall be published in like manner in a newspaper within each of said counties. Said election notice shall also require the electors to cast ballots which shall contain the words "Irrigation District—Yes," and "Irrigation District—No," and also the names of persons to be voted for as directors of the district: PROVIDED, That where in this act publication is required to be made in a newspaper of any county, the same may be made in a newspaper of general circulation in such county, selected by the person or body charged with making the publication and such newspaper shall be the official paper for such purpose. [1988 c 127 § 40; 1923 c 138 § 3; 1921 c 129 § 1; 1919 c 180 § 1; 1915 c 179 § 2; 1913 c 165 § 1; 1895 c 165 § 2; 1889-90 p 671 § 2; RRS § 7418. Formerly RCW 87.01.020, part, 87.01.030, 87.01.040, and 87.01.050.]

**87.03.025 State lands situated in or taken into district—Procedure—Assessments, collection.** Whenever public lands of the state are situated in or taken into an irrigation district they shall be treated the same as other lands, except as hereinafter provided. The commissioner of public lands shall be served with a copy of the petition proposing to include such lands, together with a map of the district and notice of the time and place of hearing thereon, at least thirty days before the hearing, and if he determines that such lands will be benefited by being included in the district he shall give his consent thereto in writing. If he determines that they will not be benefited he shall file with the board a statement of his objections thereto.

Any public lands of the state which are situated within the boundaries of an irrigation district, but which were not included in the district at the time of its organization, may be included after a hearing as herein provided.

Whenever the commissioner or any interested person desires to have state public lands included in an existing district, he shall file a request to that effect in writing with the district board, which shall thereupon fix a time and place for hearing the request and post notice thereof in three public conspicuous places in the district, one of which shall be at the place of hearing, at least twenty days before the hearing, and send by registered mail a copy of the notice to the commis-

sioner. The notice shall describe the lands to be included and direct all persons objecting to such inclusion to appear at the time and place stated and present their objections. At the hearing the district board shall consider all objections and may adjourn to a later date, and by resolution determine the matter, and its determination shall be final: PROVIDED, That no such lands shall be included in a district without the written consent of the commissioner of public lands.

Any public lands of the state situated in any irrigation district shall be subject to the provisions of the laws of this state relating to the collection of irrigation district assessments to the same extent and in the same manner in which lands of like character held under private ownership are subject thereto, but collection and payment of the assessments shall be governed solely by the provisions of chapter 79.44 RCW. [1963 c 20 § 13; 1951 2nd ex.s. c 15 § 1; 1951 c 212 § 1; 1923 c 138 § 4; 1921 c 129 § 2; 1919 c 180 § 2; RRS § 7419. Formerly RCW 87.01.060.]

*Irrigation district assessments: RCW 87.03.240 through 87.03.305.*

**87.03.030 Elections are governed by irrigation district laws.** All elections of irrigation districts, general or special, for any district purpose and in any county of the state shall be called, noticed, and conducted in accordance with the laws of the state, specifically relating to irrigation districts. [1951 c 201 § 1. Formerly RCW 87.01.095.]

**Validation—1951 c 201:** "All irrigation district elections heretofore called, noticed and conducted for any district purpose in accordance with the laws of the state, specifically relating to irrigation districts irrespective of any contrary general election laws; and any irrigation district election heretofore called, noticed and conducted in accordance with said irrigation district laws is hereby approved and confirmed." [1951 c 201 § 2.]

*Ballots, declaration of candidacy: RCW 87.03.075.*

*Certain elections—Districts of two hundred thousand acres: RCW 87.68.060.*

*Times for holding elections and primaries: RCW 29A.04.311 through 29A.04.330.*

**87.03.031 Absentee voting—Certification of inconvenience.** Any qualified district elector who certifies as provided in RCW 87.03.032 through 87.03.034 that he cannot conveniently be present to cast his ballot at his proper election precinct on the day of any irrigation district election shall be entitled to vote by absentee ballot in such election in the manner herein provided. [1961 c 105 § 2. Formerly RCW 87.01.096.]

**87.03.032 Absentee voting—Notice of election, contents—Ballot and form of certificate of qualifications to be furnished.** The notice of election shall conform to the requirements for election notices provided by Title 87 RCW for the election being held, and shall specify in addition that any qualified district elector who certifies that he cannot conveniently be present at his proper election precinct on the day of election may vote by absentee ballot, and that a ballot and form of certificate of qualifications will be furnished to him on written request being made of the district's secretary. The requisite ballot and a form of certificate of qualifications shall be furnished by the district's secretary to any person who prior to the date of election makes written request therefor, stating that he is a qualified district elector. Such ballot

and form may be furnished also to qualified district electors in any way deemed to be convenient without regard to requests having been made therefor. [1961 c 105 § 3. Formerly RCW 87.01.097.]

**87.03.033 Absentee voting—Requirements for ballot to be counted—Statement of qualifications—Form of ballot.** (1) To be counted in a given election, an absentee ballot must conform to these requirements:

(a) It must be sealed in an unmarked envelope and delivered to the district's principal office prior to the close of the polls on the day of that election; or be sealed in an unmarked envelope and mailed to the district's secretary, postmarked not later than midnight of that election day and received by the secretary within five days of that date.

(b) The sealed envelope containing the ballot shall be accompanied by a certificate of qualifications stating, with respect to the voter, his name, age, citizenship, residence, that he holds title or evidence of title to lands within the district which, under RCW 87.03.045 entitles him to vote in the election, and that he cannot conveniently be present to cast his ballot at his proper election precinct on election day.

(c) The statements in the certificate of qualifications shall be certified as correct by the voter by the affixing of his signature thereto in the presence of a witness who is acquainted with the voter, and the voter shall enclose and seal his ballot in the unmarked envelope in the presence of this witness but without disclosing his vote. The witness, by affixing his signature to the certificate of qualifications, shall certify that he is acquainted with the voter, that in his presence the voter's signature was affixed and the ballot enclosed as required in this paragraph.

(2) The form of statement of qualifications and its certification shall be substantially as prescribed by the district's board of directors. This form may also provide that the voter shall describe all or some part of his lands within the district which, under RCW 87.03.045 entitles him to vote in the election, but a voter otherwise qualified shall not be disqualified because of the absence or inaccuracy of the description so given. The regular form of irrigation district ballot shall be used by absentee voters. [1961 c 105 § 4. Formerly RCW 87.01.098.]

**87.03.034 Absentee voting—How incoming ballots are handled—Canvass—Statement of result of both regular and absentee ballots.** (1) Absentee ballots shall be accumulated and kept, unopened, by the district's secretary until the time in which such ballots may be received is closed. The secretary shall deliver them to the board of directors as early as practicable on the following day. That board shall proceed at once to determine whether the voters submitting absentee ballots are qualified so to vote and to count and tally the votes of those so determined to be qualified. The board shall make, record, and certify the result of its determinations and count; and promptly thereafter it shall deliver the ballots, certificates of qualifications, and its certificate to the district's secretary. The provisions of RCW 87.03.100 with respect to recount shall govern also in the case of absentee ballots.

(2) On the completion of the canvass of the regular returns of the several election precincts as provided in RCW

87.03.105, the board of directors shall canvass the returns of the absentee votes and declare the result thereof in substantially the same manner as provided for the returns of the votes cast in the regular manner. Thereupon the statement of the result conforming as nearly as practicable to the requirements of RCW 87.03.110 shall be made covering both regular and absentee votes. [1961 c 105 § 5. Formerly RCW 87.01.099.]

**87.03.035 Elections to form district—How conducted.** The board of county commissioners shall establish a convenient number of election precincts in the proposed district and define the boundaries thereof, and designate a polling place and appoint the necessary election officers for each precinct; which precincts may thereafter be changed by the district board. The election shall be conducted as nearly as practicable in the manner provided for the election of directors. Where a nonassessable area is situated in a district, any notice, delinquent list, or other announcement required by this title to be posted, may be posted in the area and any election may be held therein. [1955 c 57 § 2. Prior: 1921 c 129 § 3, part; 1917 c 162 § 2, part; 1913 c 165 § 2, part; 1889-90 p 672 § 3, part; RRS § 7420, part. Formerly RCW 87.01.070.]

**87.03.040 Elections to form district—Canvass of returns—Order.** The board of county commissioners shall meet on the second Monday after the election and canvass the returns, and if it appears that at least two-thirds of all the votes cast are in favor of the district the board shall by an order declare the district duly organized and shall declare the qualified persons receiving the highest number of votes to be duly elected directors, and shall cause a certified copy of the order to be filed for record in the offices of the auditor and assessor of each county in which any portion of the district is situated. From the date of the filing the organization of the district shall be complete and the directors may, upon qualifying, enter immediately upon the duties of their office, and shall hold office until their successors are elected and qualified. Upon filing the order, the county assessor shall write the name of the district on the permanent tax roll in a column provided for that purpose opposite each description of land in the district. Such column shall be carried forward each year on the current tax roll. In the event of a change in the boundaries of a district, the assessor shall note it in the column upon the tax roll. [1955 c 57 § 3. Prior: 1921 c 129 § 3, part; 1917 c 162 § 2, part; 1913 c 165 § 2, part; 1889-90 p 672 § 3, part; RRS § 7420, part. Formerly RCW 87.01.080.]

**87.03.045 Qualifications of voters and directors—Districts of two hundred thousand acres.** In districts with two hundred thousand acres or more, a person eighteen years old, being a citizen of the United States and a resident of the state and who holds title or evidence of title to land in the district or proposed district shall be entitled to vote therein. He shall be entitled to one vote for the first ten acres of said land or fraction thereof and one additional vote for all of said land over ten acres. A majority of the directors shall be residents of the county or counties in which the district is situated and all shall be electors of the district. If more than one elector residing outside the county or counties is voted for as director, only that one who receives the highest number of votes

shall be considered in ascertaining the result of the election. Where land is community property both the husband and wife may vote if otherwise qualified. An agent of a corporation owning land in the district, duly authorized in writing, may vote on behalf of the corporation by filing with the election officers his instrument of authority. An elector resident in the district shall vote in the precinct in which he resides, all others shall vote in the precinct nearest their residence. [1985 c 66 § 1; 1971 ex.s. c 292 § 72; 1961 c 192 § 12; 1955 c 57 § 4. Prior: 1953 c 122 § 1; 1921 c 129 § 3, part; 1917 c 162 § 2, part; 1913 c 165 § 2, part; 1889-90 p 672 § 3; RRS § 7420, part. Formerly RCW 87.01.090.]

**Severability—1985 c 66:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 66 § 6.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

*Certain elections—Districts of two hundred thousand acres:* RCW 87.68.060.

**87.03.051 Qualifications of voters and directors—Districts of less than two hundred thousand acres.** In districts with less than two hundred thousand acres, a person eighteen years old, being a citizen of the United States and a resident of the state and who holds title or evidence of title to assessable land in the district or proposed district shall be entitled to vote therein, and to be recognized as an elector. A corporation, general partnership, limited partnership, limited liability company, or other legal entity formed pursuant to the laws of the state of Washington or qualified to do business in the state of Washington owning land in the district shall be recognized as an elector. As used in this section, "entity" means a corporation, general partnership, limited partnership, limited liability company, or other legal entity formed pursuant to the laws of the state of Washington or qualified to do business in the state of Washington. "Ownership" shall mean the aggregate of all assessable acres owned by an elector, individually or jointly, within one district. Voting rights shall be allocated as follows: Two votes for each five acres of assessable land or fraction thereof. No one ownership may accumulate more than forty-nine percent of the votes in one district. If assessments are on the basis of shares instead of acres, an elector shall be entitled to two votes for each five shares or fraction thereof. The ballots cast for each ownership of land or shares shall be exercised by common agreement between electors or when land is held as community property, the accumulated votes may be divided equally between husband and wife. Except for community property ownership, in the absence of the submission of the common agreement to the secretary of the district at least twenty-four hours before the opening of the polls, the election board shall recognize the first elector to appear on election day as the elector having the authority to cast the ballots for that parcel of land for which there is more than one ownership interest. A majority of the directors shall be residents of the county or counties in which the district is situated and all shall be electors of the district. If more than one elector residing outside the county or counties is voted for as director, only that one who receives the highest number of votes shall be considered in ascertaining the result of the election. An agent of an entity owning land in the district, duly authorized in writing, may vote on

behalf of the entity by filing with the election officers his or her instrument of authority. An elector resident in the district shall vote in the precinct in which he or she resides, all others shall vote in the precinct nearest their residence. No director shall be qualified to take or retain office unless the director holds title or evidence of title to land within the district. [1997 c 354 § 1; 1985 c 66 § 2.]

**Severability—1985 c 66:** See note following RCW 87.03.045.

**87.03.071 Certain districts—Individual ownerships—Two votes.** In any irrigation district where more than fifty percent of the total acreage of the district is owned in individual ownerships of less than five acres, each elector who is otherwise qualified to vote pursuant to RCW 87.03.045 shall be entitled to two votes regardless of the size of ownership. Each ownership shall be represented by two votes. If there are multiple owners or joint owners of a single ownership, the owners shall decide among themselves what their two votes shall be. If the ownership is held as community property, the husband shall be entitled to one vote and the wife shall be entitled to one vote or they may vote by common agreement. [1985 c 66 § 3.]

**Severability—1985 c 66:** See note following RCW 87.03.045.

**87.03.075 Ballots in all elections—Declaration of candidacy—Petition of nomination—When election not required.** Voting in an irrigation district shall be by ballot. Ballots shall be of uniform size and quality, provided by the district, and for the election of directors shall contain only the names of the candidates who have filed with the secretary of the district a declaration in writing of their candidacy, or a petition of nomination as hereinafter provided, not later than five o'clock p.m. on the first Monday in November. Ballots shall contain space for sticker voting or for the writing in of the name of an undeclared candidate. Ballots shall be issued by the election board according to the number of votes an elector is entitled to cast. A person filing a declaration of candidacy, or petition of nomination as hereinafter provided, shall designate therein the position for which he is a candidate. No ballots on any form other than the official form shall be received or counted.

In any election for directors where the number of votes which may be received will have no bearing on the length of the term to be served, the candidates for the position of director, in lieu of filing a declaration of candidacy hereunder, shall file with the secretary of the district a petition of nomination signed by at least ten qualified electors of the district, or of the division if the district has been divided into director divisions, not later than five o'clock p.m. on the first Monday in November. If, after the expiration of the date for filing petitions of nomination, it appears that only one qualified candidate has been nominated thereby for each position to be filled it shall not be necessary to hold an election, and the board of directors shall at their next meeting declare such candidate elected as director. The secretary shall immediately make and deliver to such person a certificate of election signed by him and bearing the seal of the district. The procedure set forth in this paragraph shall not apply to any other irrigation district elections. [1985 c 66 § 4; 1981 c 345 § 1;

1981 c 208 § 1; 1963 c 68 § 1; 1961 c 105 § 1; 1941 c 171 § 2; Rem. Supp. 1941 § 7420-1. Formerly RCW 87.01.110.]

**Severability—1985 c 66:** See note following RCW 87.03.045.

**87.03.080 Directors—Election—Terms—Increase and decrease.** An election of directors in an irrigation district shall be held on the second Tuesday of December of each year, and the term of each director shall be three years from the first Tuesday of January following his election. The directors elected at the organization election shall serve until their successors are elected and qualified. At the first annual election occurring thirty days or more after the date of the order establishing the district, there shall be elected directors to succeed those chosen at the organization election. If the board consists of three directors the candidate receiving the highest number of votes shall serve a term of three years; the next highest, two years; and the next highest, one year. In case of five directors, the two candidates receiving the highest number of votes shall each serve a term of three years; the next two highest, two years; and the next highest, one year; or until successors are elected and qualified. In case of seven directors, the three candidates receiving the highest number of votes shall each serve a term of three years, the next two highest, two years, and the next two highest, one year, or until their successors are elected and qualified. Whenever a district with three directors desires to increase the number of its directors to five directors or whenever a district with five directors desires to increase the number of its directors to seven directors, the board of directors, acting on its own initiative or on the written petition of at least twenty electors of the district, shall submit the question to the electors of the district at a regular or special district election. In the event the electors by a majority of the votes cast favor an increase in the number of directors, there shall be elected at the next annual district election two additional directors. The person receiving the highest number of votes shall serve for a three year term and the next highest, a two year term.

The number of directors may be decreased to five or three, as the case may be, substantially in the same manner as that provided for the increase of directors. In case of three directors the term of one director only shall expire annually. [1961 c 192 § 14. Prior: 1931 c 41 § 1, part; 1921 c 129 § 4, part; 1919 c 180 § 3, part; 1915 c 179 § 3, part; 1913 c 165 § 3, part; 1895 c 165 § 3, part; 1889-90 p 673 § 4, part; RRS § 7421, part. Formerly RCW 87.01.100.]

**87.03.081 Directors—Vacancies, how filled.** A vacancy in the office of director shall be filled by appointment by the board of county commissioners of the county in which the proceedings for the organization of the district were had. At the next annual election occurring thirty days or more after the date of the appointment, a successor shall be elected who shall take office on the first Tuesday in January following and shall serve for the remainder of the unexpired term.

A director appointed to fill a vacancy occurring after the expiration of the term of a director shall serve until his successor is elected and qualified. At the next election of directors occurring thirty days or more after the appointment, a successor shall be elected who shall take office on the first

Tuesday in January next and shall serve for the term for which he was elected.

Failure on the part of any irrigation district to hold one or more annual elections for selection of officers, or otherwise to provide district officers shall not dissolve the district or impair its powers, where later officers for the district are appointed or elected and qualify as such and exercise the powers and duties of their offices in the manner provided by law. [1961 c 192 § 15. Prior: 1931 c 41 § 1, part; 1921 c 129 § 4, part; 1919 c 180 § 3, part; 1915 c 179 § 3, part; 1913 c 165 § 3, part; 1895 c 165 § 3, part; 1889-90 p 673 § 4, part; RRS § 7421, part. Formerly RCW 87.01.120.]

**87.03.082 Directors—Oaths of office and official bonds—Secretary.** Each director shall take and subscribe an official oath for the faithful discharge of the duties of his office, and shall execute a bond to the district in the sum of one thousand dollars, conditioned for the faithful discharge of his duties, which shall be approved by the judge of the superior court of the county where the district was organized, and the oath and bond shall be recorded in the office of the county clerk of that county and filed with the secretary of the board of directors. The secretary shall take and subscribe a written oath of office and execute a bond in the sum of not less than one thousand dollars to be fixed by the directors, which shall be approved and filed as in the case of the bond of a director. If a district is appointed fiscal agent of the United States to collect money for it, the secretary and directors and the district treasurer shall each execute such additional bonds as the secretary of the interior may require, conditioned for the faithful discharge of their duties which shall be approved, recorded, and filed as other official bonds. All such bonds shall be secured at the cost of the district. [1961 c 192 § 16. Prior: 1931 c 41 § 1, part; 1921 c 129 § 4, part; 1919 c 180 § 3, part; 1915 c 179 § 3, part; 1913 c 165 § 3, part; 1895 c 165 § 3, part; 1889-90 p 673 § 4, part; RRS § 7421, part. Formerly RCW 87.01.130.]

*Conflicts of interest, irrigation district officers:* RCW 42.23.030.

*Conviction of public officer forfeits trust:* RCW 9.92.120.

*Director divisions:* Chapter 87.04 RCW.

*Misconduct of public officers:* Chapter 42.20 RCW.

**87.03.083 Directors—Recall and discharge.** Every member of an irrigation district board of directors is subject to recall and discharge by the legal voters of such district pursuant to the provisions of \*chapter 29.82 RCW. [1979 ex.s. c 185 § 15.]

**\*Reviser's note:** Chapter 29.82 RCW was recodified as chapter 29A.56 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**87.03.085 Post-organization district elections—Election boards—Notice.** Fifteen days before any election held under this chapter, subsequent to the organization of any district, the secretary of the board of directors shall cause notices to be posted in three public places in each election precinct, of the time and place of holding the election. The secretary shall also post a general notice of the same in the office of the board, which shall be established and kept at some fixed

place to be determined by the board, specifying the polling places of each precinct. Prior to the time for posting the notices, the board must appoint for each precinct, from the electors thereof, one inspector and two judges, who shall constitute a board of election for the precinct. If the board fails to appoint a board of election, or the members appointed do not attend at the opening of the polls on the morning of election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the house or place within the precinct where the election must be held. However, in any irrigation district that is less than two hundred thousand acres in size and is divided into director divisions, the board of directors in its discretion may designate one polling place within the district to serve more than one election precinct. The board of directors of any irrigation district may designate the principal business office of the district as a polling place to serve one or more election precincts and may do so regardless of whether the business office is located within or outside of the boundaries of the district. If the board of directors does designate a single polling place for more than one election precinct, then the election officials appointed by the board of directors may serve more than one election precinct and the election officials may be electors of any of the election precincts for which they are the election board. [1987 c 123 § 1; 1984 c 168 § 2; 1889-90 p 674 § 5; RRS § 7422. Formerly RCW 87.01.140.]

**87.03.090 Post-organization district elections—Election officers—Voting hours.** The inspector is chairman of the election board, and may

First: Administer all oaths required in the progress of an election.

Second: Appoint judges and clerks, if, during the progress of the election, any judge or clerk cease to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election. The board of election for each precinct may, if they deem it necessary, before opening the polls, appoint two persons to act as clerks of the election. Before opening the polls, each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The polls must be opened at one o'clock p.m. on the afternoon of the election, and be kept open until eight o'clock p.m., when the same must be closed. The provisions of the general election law of this state, concerning the form of ballots to be used shall not apply to elections held under this act: PROVIDED, That any district elections called \*before this act shall take effect shall be noticed and conducted in the manner prescribed by law in effect at the time the election is called. [1931 c 60 § 1; 1889-90 p 674 § 6; RRS § 7423. Formerly RCW 87.01.150.]

**\*Reviser's note:** The language "before this act shall take effect" in the proviso refers to 1931 c 60 which became effective on midnight June 10, 1931; see preface, 1931 session laws.

**87.03.095 Post-organization district elections—Counting votes—Record of ballots.** Voting may commence as soon as the polls are opened, and may be continued

during all the time the polls remain opened. As soon as the polls are closed, the judges shall open the ballot box and commence counting the votes; and in no case shall the ballot box be removed from the room in which the election is held until all the ballots have been counted. The counting of ballots shall in all cases be public. The ballots shall be taken out, one by one, by the inspector or one of the judges, who shall open them and read aloud the names of each person contained therein and the office for which every such person is voted for. Each clerk shall write down each office to be filled, and the name of each person voted for for such office, and shall keep the number of votes by tallies, as they are read aloud by the inspector or judge. The counting of votes shall be continued without adjournment until all have been counted. [1889-90 p 675 § 7; RRS § 7424. Formerly RCW 87.01.160.]

**87.03.100 Post-organization district elections—Certification of returns—Preservation for recount.** As soon as all the votes are read off and counted, a certificate shall be drawn upon each of the papers containing the poll list and tallies, or attached thereto, stating the number of votes each one voted for has received, and designating the office to fill which he was voted for, which number shall be written in figures and in words at full length. Each certificate shall be signed by the clerk[s], judge[s], and the inspector. One of said certificates, with the poll list and the tally paper to which it is attached, shall be retained by the inspector, and preserved by him at least six months. The ballots, together with the other of said certificates, with the poll list and tally paper to which it is attached, shall be sealed by the inspector, in the presence of the judges and clerks, and endorsed "Election returns of [naming the precinct] precinct," and be directed to the secretary of the board of directors, and shall be immediately delivered by the inspector, or by some other safe and responsible carrier designated by said inspector, to said secretary, and the ballots shall be kept unopened for at least six months, and if any person be of the opinion that the vote of any precinct has not been correctly counted, he may appear on the day appointed for the board of directors to open and canvass the returns, and demand a recount of the vote of the precinct that is so claimed to have been incorrectly counted. [1981 c 345 § 2; 1981 c 208 § 2; 1889-90 p 675 § 8; RRS § 7425. Formerly RCW 87.01.170 and 87.01.210, part.]

**87.03.105 Post-organization district elections—Canvass.** No list, tally paper or certificate returned from any election shall be set aside or rejected for want of form, if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election, to canvass the returns. If, at the time of meeting, the returns from each precinct in the district in which the polls were opened have been received, the board of directors must then and there proceed to canvass the returns, but if all the returns have not been received, the canvass must be postponed from day to day until all the returns have been received, or until six postponements have been had. The canvass must be made in public, and by opening the returns and estimating the vote of the district for each person voted for, and declaring the result thereof. [1889-90 p 676 § 9; RRS § 7426. Formerly RCW 87.01.180.]

**87.03.110 Post-organization district elections—Statement of result of election—Certificate of election.** The secretary of the board of directors must, as soon as the result is declared, enter in the records of such board a statement of such result, which statement must show:

- (1) The whole number of votes cast in the district;
- (2) The name of the persons voted for;
- (3) The office to fill which each person was voted for;
- (4) The number of votes given in each precinct to each of such persons;
- (5) The number of votes given in each precinct for and against any proposition voted upon.

The board of directors must declare elected the person having the highest number of votes given for each office. The secretary must immediately make out, and deliver to such person a certificate of election signed by him and authenticated by the seal of the district. [1913 c 165 § 4; 1895 c 165 § 4; 1889-90 p 676 § 10; RRS § 7427. Formerly RCW 87.01.190.]

*Statement of result covering both absentee and regular ballots: RCW 87.03.034.*

**87.03.115 Organization of board—Meetings—Quorum—Certain powers and duties.** The directors of the district shall organize as a board and shall elect a president from their number, and appoint a secretary, who shall keep a record of their proceedings. The office of the directors and principal place of business of the district shall be at some place in the county in which the organization was effected, to be designated by the directors. The directors serving districts of five thousand acres or more shall hold a regular monthly meeting at their office on the first Tuesday in every month, or on such other day in each month as the board shall direct in its bylaws, and may adjourn any meeting from time to time as may be required for the proper transaction of business. Directors serving districts of less than five thousand acres shall hold at least quarterly meetings on a day designated by the board's bylaws, and may adjourn any meeting from time to time as may be required for the proper transaction of business. Special meetings shall be called and conducted in the manner required by chapter 42.30 RCW. All meetings of the directors must be public. A majority of the directors shall constitute a quorum for the transaction of business, and in all matters requiring action by the board there shall be a concurrence of at least a majority of the directors. All records of the board shall be open to the inspection of any electors during business hours. The board shall have the power, and it shall be its duty, to adopt a seal of the district, to manage and conduct the business and affairs of the district, to make and execute all necessary contracts, to employ and appoint such agents, officers and employees as may be necessary and prescribe their duties, and to establish equitable bylaws, rules and regulations for the government and management of the district, and for the equitable distribution of water to the lands within the district, upon the basis of the beneficial use thereof, and generally to perform all such acts as shall be necessary to fully carry out the provisions of this chapter: PROVIDED, That all water, the right to the use of which is acquired by the district under any contract with the United States shall be distributed and apportioned by the district in accordance with the acts of congress, and rules and regula-

tions of the secretary of the interior until full reimbursement has been made to the United States, and in accordance with the provisions of said contract in relation thereto. The bylaws, rules and regulations must be on file and open to inspection of any elector during regular business hours. All leases, contracts, or other form of holding any interest in any state or other public lands shall be, and the same are hereby declared to be title to and evidence of title to lands and for all purposes within \*this act, shall be treated as the private property of the lessee or owner of the contractual or possessory interest: PROVIDED, That nothing in this section shall be construed to affect the title of the state or other public ownership, nor shall any lien for such assessment attach to the fee simple title of the state or other public ownership. The board of directors shall have authority to develop and to sell, lease, or rent the use of: (1) Water derived from the operation of the district water facilities to such municipal and quasi municipal entities, the state of Washington, and state entities and agencies, public and private corporations and individuals located within and outside the boundaries of the district and on such terms and conditions as the board of directors shall determine; and (2) power derived from hydroelectric facilities authorized by RCW 87.03.015(1) as now or hereafter amended, to such municipal or quasi municipal corporations and cooperatives authorized to engage in the business of distributing electricity, electrical companies subject to the jurisdiction of the utilities and transportation commission, and other irrigation districts and on such terms and conditions as the board of directors shall determine: PROVIDED, No water shall be furnished for use outside of said district until all demands and requirements for water for use in said district are furnished and supplied by said district: AND PROVIDED FURTHER, That as soon as any public lands situated within the limits of the district shall be acquired by any private person, or held under any title of private ownership, the owner thereof shall be entitled to receive his proportion of water as in case of other land owners, upon payment by him of such sums as shall be determined by the board, and at the time to be fixed by the board, which sums shall be such equitable amount as such lands should pay having regard to placing said lands on the basis of equality with other lands in the district as to benefits received, and giving credit if equitable for any sums paid as water rent by the occupant of said lands prior to the vesting of private ownership, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed. [1983 c 262 § 1; 1979 ex.s. c 185 § 3; 1921 c 129 § 5; 1919 c 180 § 4; 1915 c 179 § 4; 1913 c 165 § 5; 1889-90 p 677 § 11; RRS § 7428. Formerly RCW 87.01.200 and 87.32.010, part.]

\*Reviser's note: "This act" first appears in 1921 c 129 § 5.

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

*Director divisions: Chapter 87.04 RCW.*

**87.03.120 System of drainage, sanitary sewers, or sewage disposal or treatment plants—Question—Notice—Meeting—Resolution.** Whenever, in the judgment of the district board, a system of drainage, sanitary sewers, or sewage disposal or treatment plants for any lands included in the operation of the district will be of special benefit to the lands of the district as a whole, it shall pass a resolution to

that effect and call a further meeting of the board to determine the question. Notice of said meeting shall be given by the secretary for the same length of time and in the same manner as required by law for the meeting of the county board to hear the petition for the organization of the district. At the time and place mentioned in the notice the board shall meet, hear such evidence as shall be presented, and fully determine the matter by resolution which said resolution shall be final and conclusive upon all persons as to the benefit of said system of drainage, sanitary sewers, or sewage disposal or treatment plants to the lands in the district. [1965 c 141 § 3; 1923 c 138 § 5, part; RRS § 7428-1. Formerly RCW 87.08.130, part.]

*Organization of district—Notice:* RCW 87.03.020.

**87.03.125 System of drainage, sanitary sewers, or sewage disposal or treatment plants—Powers upon passage of resolution.** Upon the passing of said resolution, the district shall in all respects have the same power and authority as is now, or may hereafter be, conferred respecting irrigation and all powers in this act conferred upon irrigation districts with respect to irrigation shall be construed to include drainage systems, sanitary sewers, and sewage disposal or treatment plants in conjunction therewith as herein provided. [1965 c 141 § 4; 1923 c 138 § 5, part; RRS § 7428-2. Formerly RCW 87.08.130, part.]

**87.03.130 District change of name.** Any district heretofore or hereafter organized and existing, may change its name by filing with the board of county commissioners of the county in which was filed the original petition for the organization of the district, a certified copy of a resolution of its board of directors adopted by the unanimous vote of all the members of said board at a regular meeting thereof providing for such change of name; and thereafter all proceedings of such district shall be had under such changed name, but all existing obligations and contracts of the district entered into under its former name shall remain outstanding without change and with the validity thereof unimpaired and unaffected by such change of name, and a change of name heretofore made by any existing irrigation district in this state, substantially in the manner above provided is hereby ratified, confirmed and validated. [1965 c 141 § 5; 1923 c 138 § 5, part; RRS § 7428-3. Formerly RCW 87.08.140.]

**87.03.135 Sale or lease of district personal property.** An irrigation district has the power to sell or lease personal property owned by the district whenever its board of directors, by resolution: Determines that the property is not necessary or needed for the use of the district; and authorizes the sale or lease. No sale or lease of such property shall be made until notice of the sale or lease is given by publication at least twenty days before the date of the sale or lease in a newspaper of general circulation in the county where the property or part of the property is located or, if there is no such newspaper in the county, in a newspaper of general circulation published in an adjoining county. The publication shall be made at least once a week during three consecutive weeks before the day fixed for making the sale or lease. The publication shall contain notice of the intention of the board of directors to make

the sale or lease and shall state the time and place at which proposals for the sale or lease will be considered and at which the sale or lease will be made. Any such property so sold or leased shall be sold or leased to the highest and best bidder.

The provisions of this section relating to publication of notice shall not apply when the value of the property to be sold or leased is less than five hundred dollars. [1994 c 117 § 1; 1975 1st ex.s. c 163 § 1; 1967 ex.s. c 144 § 7; 1933 c 43 § 1; 1931 c 82 § 1; RRS § 7428-4. Formerly RCW 87.08.150.]

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

*Official paper for publication:* RCW 87.03.020.

*Organization of board (holding of interest in public lands as evidence of title):* RCW 87.03.115.

**87.03.136 Sale or lease of district real property.** An irrigation district has the power to sell or lease real property owned by the district whenever its board of directors, by resolution: Determines that the property is not necessary or needed for the use of the district; and authorizes the sale or lease. Notice of the district's intention to sell or lease the property shall be made by publication at least twenty days before the transaction is executed regarding the property in a newspaper of general circulation in the county where the property or part of the property is located or, if there is no such newspaper in the county, in a newspaper of general circulation published in an adjoining county. The publication shall be made at least once a week during three consecutive weeks. The notice shall state whether the sale or lease will be negotiated by the district or will be awarded by bid.

The district may lease the property from year to year, afford the lessee the option to purchase the property, sell the property on contract for deferred payments, sell the property pursuant to a promissory note secured by a mortgage or deed of trust, or sell the property for cash and conveyance by deed. The appropriate documents shall be executed by the president of the board and acknowledged by the secretary.

The resolution authorizing the sale or lease shall be entered in the minutes of the board and shall fix the price at which the lease, option, or sale may be made. The price shall be not less than the reasonable market value of the property; however, the board may, without consideration, dedicate, grant, or convey district land or easements in district land for highway or public utility purposes that convenience the inhabitants of the district if the board deems that the action will enhance the value of the remaining district land to an extent equal to or greater than the value of the land or easement dedicated, granted, or conveyed. [1994 c 117 § 2.]

**87.03.137 Purchase or condemnation for developing hydroelectric generation capabilities—Limitations.** For the purpose of developing hydroelectric generation capabilities in connection with irrigation facilities, the board of directors of an irrigation district shall have the power, in accordance with procedures provided in this chapter, to acquire, either by purchase or condemnation, or other legal means, all lands, waters, water rights, and other property located within or outside the boundaries of the district necessary for the construction, use, supply, maintenance, repair, or improvement of hydroelectric facilities to the extent authorized by RCW 87.03.015(1), as now or hereafter amended.

Irrigation districts are prohibited from condemning: (1) Any hydroelectric power plants, hydroelectric power sites, power lines or other power facilities or any lands, water rights, or other property of municipal and quasi municipal corporations, cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission; and (2) water rights held by private individual landowners where such waters are being put to beneficial use. [1979 ex.s. c 185 § 4.]

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**87.03.138 Civil immunity of directors, officers, employees, or agents for good faith performance of official duties.** Directors, officers, employees, or agents of irrigation districts shall be immune from civil liability for any cause of action or claim for damages for any mistakes and errors of judgment in the good faith performance of acts within the scope of their official duties involving any discretionary decision or failure to make a discretionary decision which relate solely to their responsibilities for electrical utilities, hydroelectric facilities, potable water facilities, or irrigation works. This grant of immunity shall not be construed as modifying the liability of the irrigation district. [2004 c 215 § 1; 1983 1st ex.s. c 48 § 3.]

**Severability—1983 1st ex.s. c 48:** See note following RCW 35.21.415.

**87.03.139 Lawful disposal of sewage and waste by others—Immunity.** No irrigation district, its directors, officers, employees, or agents operating and maintaining irrigation works for any purpose authorized by law, including the production of food for human consumption and other agricultural and domestic purposes, is liable for damages to persons or property arising from the disposal of sewage and waste discharged by others into the irrigation works pursuant to federal or state statutes, rules, or regulations permitting the discharge. [1997 c 354 § 2.]

**87.03.140 Board's powers and duties generally—Condemnation procedure.** The board, and its agents and employees, shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation or drainage works, power plants, power sites or power lines and the line for any canal or canals, and the necessary branches of laterals for the same, on any lands which may be deemed best for such location. Said board shall also have the power to acquire, either by purchase or condemnation, or other legal means, all lands, waters, water rights, and other property necessary for the construction, use, supply, maintenance, repair and improvements of said canal or canals and irrigation and drainage works, including canals and works constructed or being constructed by private owners, or any other person, lands for reservoirs for the storage of needful waters and all necessary appurtenances. The board may also construct the necessary dams, reservoirs and works for the collection of water for the said district, and may enter into contracts for a water supply to be delivered to the canals and works of the district, and do any and every lawful act necessary to be done in order to carry out the purposes of this act; and in carrying

out the aforesaid purposes the bonds of the district may be used by the board, at not less than ninety percent of their par value in payment. The board may enter into any obligation or contract with the United States or with the state of Washington for the supervision of the construction, for the construction, reconstruction, betterment, extension, sale or purchase, or operation and maintenance of the necessary works for the delivery and distribution of water therefrom under the provisions of the state reclamation act, or under the provisions of the federal reclamation act, and all amendments or extensions thereof, and the rules and regulations established thereunder, or it may contract with the United States for a water supply or for reclamation purposes in general under any act of congress which, for the purposes of this act, shall be deemed to include any act of congress for reclamation purposes heretofore or hereafter enacted providing for and permitting such contract, or for the collection of money due or to become due to the United States, or for the assumption of the control and management of the works; and in case contract has been or may hereafter be made with the United States, as herein provided, bonds of the district may be deposited with the United States as payment or as security for future payment at not less than ninety percent of their par value, the interest on said bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contract, and if bonds of the district are not so deposited, it shall be the duty of the board of directors to include as part of any levy or assessment provided in RCW 87.03.260 an amount sufficient to meet each year all payments accruing under the terms of any such contract. The board may accept on behalf of the district appointment of the district as fiscal agent of the United States or the state of Washington or other authorization of the district by the United States or the state of Washington to make collections of money for or on behalf of the United States or the state of Washington in connection with any federal or other reclamation project, whereupon the district, and the county treasurer for the district, shall be authorized to so act and to assume the duties and liability incident to such action, and the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto.

The use of all water required for the irrigation of the lands within any district, together with rights-of-way for canals, laterals, ditches, sites for reservoirs, power plants, sites, and lines, and all other property required in fully carrying out the purposes of the organization of the district is hereby declared to be a public use; and in condemnation proceedings to acquire any property or property rights for the use of the district, the board of directors shall proceed in the name of the district, in the manner provided in this state in cases of appropriation of lands, real estate and other property by private corporations: PROVIDED, That the irrigation district, at its option, pursuant to resolution to that end duly passed by its board of directors may unite in a single action proceedings for the acquisition and condemnation of different tracts of land needed by it for rights-of-way for canals, laterals, power plants, sites, and lines and other irrigation works which are held by separate owners. And the court may, on the motion of

any party, consolidate into a single action separate suits for the condemnation of rights-of-way for such irrigation works whenever from motives of economy or the expediting of business it appears desirable so to do: PROVIDED FURTHER, That there shall be a separate finding of the court or jury as to each tract held in separate ownership.

In any condemnation proceeding brought under the provisions of this act to acquire canals, laterals and ditches and rights-of-way therefor, sites, reservoirs, power plants and pumping plants and sites therefor, power canals, transmission lines, electrical equipment and any other property, and if the owner or owners thereof or their predecessors shall have issued contracts or deeds agreeing to deliver to the holders of said contracts or deeds water for irrigation purposes, or authorizing the holders thereof to take or receive water for irrigation purposes from any portion of said property or works, and if the delivery of said water or the right to take or receive the same shall in any manner constitute a charge upon, or a right in the property and works sought to be acquired, or any portion thereof, the district shall be authorized to institute and maintain said condemnation proceedings for the purpose of acquiring said property and works, and the interest of the owners therein subject to the rights of the holders of such contracts or deeds, and the court or jury making the award shall determine and award to such owner or owners the value of the interest to be so appropriated in said condemnation proceedings. [1921 c 129 § 6; 1919 c 180 § 5; 1915 c 179 § 5; 1913 c 165 § 6; 1913 c 13 § 1; 1889-90 p 678 § 12; RRS § 7429. Formerly RCW 87.01.210, part and 87.08.080.]

*Bonds of director, secretary or county treasurer when fiscal agent of United States:* RCW 87.03.082.

*Cancellation of assessments due United States—Procedure:* RCW 87.03.280.

*Certain powers of district enumerated:* RCW 87.03.015.

*Certain purposes for which district may be formed:* RCW 87.03.010.

*Condemnation—Title acquired by district (may be conveyed to United States or state):* RCW 87.03.150.

*Contracts with state or United States for local improvement work:* RCW 87.03.520.

*Districts right to cross other property:* RCW 87.03.455.

*Eminent domain by corporations:* Chapter 8.20 RCW.

*Federal reclamation laws:* 43 USC §§ 371-498.

*Indemnity to state on land settlement contracts:* Chapter 87.48 RCW.

*Reclamation Service may make findings:* RCW 87.03.185.

*State Reclamation Act:* Chapter 89.16 RCW.

**87.03.145 Condemnation—Finding of benefits and damages—Judgment—Costs.** The jury, or the court if the jury be waived, in such condemnation proceedings shall find and return a verdict for the amount of damages sustained: PROVIDED, That the court or jury, in determining the amount of damages, shall take into consideration the special benefits, if any, that will accrue to the property damaged by reason of the proposed improvement, and shall make special findings in the verdict of the gross amount of damages to be sustained and the gross amount of special benefits that will accrue. If it shall appear by the verdict or findings, that the gross damages exceed said gross benefits, judgment shall be entered against the district, and in favor of the owner or owners of the property damaged, in the amount of the excess of

damages over said benefits, and for the costs of the proceedings, and upon payment of the judgment to the clerk of the court for the owner or owners, a decree of appropriation shall be entered, vesting the title to the property appropriated in the irrigation district. If it shall appear by the verdict that the gross benefits equal or exceed the gross damages, judgment shall be entered against the district and in favor of the owner or owners for the costs only, and upon payment of the judgment for costs a decree of appropriation shall be entered, vesting the title to the property appropriated in the irrigation district. The verdict and findings of the court or jury as to damages and benefits shall be binding upon the board of directors of the irrigation district in their levy of assessments to pay the cost of the irrigation system or improvements on behalf of which the condemnation was had: PROVIDED, That nothing herein contained shall be construed to prevent the district from assessing the remaining lands of the owner or owners, so damaged, for deficiencies on account of the principal and interest on bonds and for other benefits not considered by the jury in the condemnation proceedings. The damages thus allowed but not paid shall be applied pro tanto to the satisfaction of the levies made for such construction costs upon the lands on account of which the damages were awarded. [1923 c 138 § 6; 1919 c 180 § 6; RRS § 7429-1. Formerly RCW 87.08.090.]

**87.03.150 Condemnation—Title acquired by district.**

The title to all property acquired under the provisions of this chapter shall immediately, and by operation of law, vest in such irrigation district and shall be held by such district in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in this chapter; and said board is hereby authorized and empowered to hold, use, acquire, manage, occupy and possess said property as herein provided: PROVIDED, HOWEVER, That any property so acquired by the district may be conveyed to the United States, or the state of Washington, insofar as the same may be for the benefit of the district under any contract that may be entered into with the United States, or the state of Washington, pursuant to this act.

The title acquired by an irrigation district under the provisions of this act shall be the fee simple title or such lesser estate as shall be designated in the decree of appropriation. [1921 c 129 § 7; 1917 c 162 § 3; 1915 c 179 § 6; 1889-90 p 679 § 13; RRS § 7430. Formerly RCW 87.08.170.]

*Board's powers and duties (contracts with state or United States):* RCW 87.03.140.

**87.03.155 Conveyances—Actions by and against district.** The said board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this act, in the name of such irrigation district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this act, or acquired in pursuance thereof; and in all courts, actions, suits or proceedings, the said board may sue, appear and defend, in person or by attorneys, and in the name of such irrigation district.

[1889-90 p 679 § 14; RRS § 7431. Formerly RCW 87.01.230.]

**87.03.158 Officers, employees, agents—Legal representation—Costs of defense.** The board of directors of an irrigation district may authorize an attorney of its choosing to defend an officer, employee, or agent of the district, present or former, who requests representation as a result of an action, claim, or proceeding instituted against him or her. The costs of defense, including attorney's fees and any obligation for payment arising from the action, may be paid from district funds. Costs of defense, and judgment or settlement not in the person's favor, shall not be paid by the district if the court finds the person was not acting in good faith or within the scope of the person's employment or duties for the district. [1986 c 8 § 1.]

**87.03.160 Group insurance—Purchase.** The board of directors of irrigation districts shall have the authority and power to contract for and to pay the premium upon group life, health and accident insurance upon its employees; and to make all such insurance available to its directors, subject to payment by the directors of all costs of insurance for directors. [1975 c 14 § 1; 1951 c 159 § 1. Formerly RCW 87.01.225.]

*Hospitalization and medical insurance authorized: RCW 41.04.180.*

*Hospitalization and medical insurance not deemed additional compensation: RCW 41.04.190.*

**87.03.162 Liability insurance for officials and employees.** The board of directors of each irrigation district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 8.]

**87.03.164 Liability insurance for officers and employees authorized.** See RCW 36.16.138.

**87.03.165 Proposed works—Surveys, maps and plans to be prepared.** For the purpose of construction, reconstruction, betterment, extension or acquisition of the necessary property and rights therefor, and otherwise carrying out the provisions of law relating to irrigation districts, the board of directors of any such district must, as soon after such district has been organized as may be practicable, and whenever thereafter the board deems it necessary or expedient to raise additional money for said purpose, cause the necessary surveys, examinations, maps and plans to be made and shall demonstrate the practicability of the general plan of the district's proposed works and furnish the proper basis for an estimate of the cost of carrying out the same. [1923 c 138 § 7, part; RRS § 7431 1/2. Formerly RCW 87.12.010, part and 87.16.010.]

*Map of district: RCW 87.03.775.*

**87.03.170 Proposed works—Certification filed with director of ecology.** Such examinations, surveys, maps,

plans and specifications with estimates of cost as are deemed necessary for an understanding of the proposed plan of development shall be certified by the district board and its engineer and filed with the state director of ecology at Olympia, Washington. [1988 c 127 § 41; 1923 c 138 § 7, part; RRS § 7431 1/2-1. Formerly RCW 87.12.020, part.]

**87.03.175 Proposed works—Director's findings to district board.** Said director shall forthwith consider said certified report and if he deem it advisable make, through the appropriate divisions of his department, additional studies of the project at the expense of the district, and as soon as practicable thereafter, but in any event within ninety days from the receipt of said certified report, make his findings and submit the same to the district board. [1923 c 138 § 7, part; RRS § 7431 1/2-2. Formerly RCW 87.12.020, part.]

**87.03.180 Proposed works—Substance of director's findings.** In his findings said state director shall give generally his conclusions regarding the supply of water available for the project, the nature of the soil proposed to be irrigated and its susceptibility to irrigation, the duty of water for irrigation and the probable need of drainage, the probable cost of works, water rights and other property necessary for the project, the conditions of land settlement therein, and the proper amount and dates of maturity of the bonds proposed to be issued, and such other matters as he deems pertinent to the success of the project, provided that said findings and conclusions shall be advisory only and shall not be binding upon the directors of the irrigation district. [1923 c 138 § 7, part; RRS § 7431 1/2-3. Formerly RCW 87.12.030.]

**87.03.185 Proposed works—Reclamation Service may make findings.** In the case of an irrigation district under contract or in cooperation with the United States under the provisions of the United States Reclamation Act, the investigation and findings above required to be made by the state director of ecology may be made by the United States Reclamation Service with the same authority and under like conditions, if it so elects. [1988 c 127 § 42; 1923 c 138 § 7, part; RRS § 7431 1/2-4. Formerly RCW 87.12.040.]

**87.03.190 Proposed works—Plan of development—Special election.** Upon receipt of said findings the district board shall thereupon finally determine the plan of development and estimate and determine the amount of money to be raised and shall immediately thereafter call a special election as provided by law. [1923 c 138 § 7, part; RRS § 7431 1/2-5. Formerly RCW 87.12.050.]

*Elections are governed by irrigation district laws: RCW 87.03.030.*

*Post-organization district elections: RCW 87.03.085 through 87.03.110.*

**87.03.195 Proposed works—Certain irrigation districts excepted.** As to irrigation districts existing on March 17, 1923, the provisions of RCW 87.03.165 through 87.03.190 relating to the filing of examinations, surveys, maps, plans and specifications of the plan of development with the director of ecology and to an examination and the filing of findings and conclusions by that department, shall not

apply. [1988 c 127 § 43; 1923 c 138 § 8; RRS § 7431 1/2-6. Formerly RCW 87.12.010, part.]

**87.03.200 Bonds—Election for—Form and contents—Exchange—Cancellation—Sale and issue—Reissue—Election concerning contract with United States—Penalty.** (1) At the election provided for in RCW 87.03.190, there shall be submitted to the electors of the district possessing the qualifications prescribed by law the question of whether or not the bonds of the district in the amount and of the maturities determined by the board of directors shall be issued. Bonds issued under the provisions of \*this act shall be serial bonds payable in legal currency of the United States in such series and amounts as shall be determined and declared by the board of directors in the resolution calling the election: PROVIDED, That the first series shall mature not later than ten years and the last series not later than forty years from the date thereof: PROVIDED FURTHER, That bonds, authorized by a special election held in the district under the provisions of a former statute, which has subsequent to the authorization been amended, but not issued prior to the amendment of the former statute, may be issued in the form provided in the former statute, and any such bonds heretofore or hereafter so issued and sold are hereby confirmed and validated.

Notice of such bond election must be given by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least two weeks (three times). Such notices must specify the time of holding the election, and the amount and maturities of bonds proposed to be issued; and the election must be held and the results thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of law governing the election of the district officers: PROVIDED, That no informality in conducting such election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds Yes" and "Bonds No," or words equivalent thereto. If a majority of the votes cast are cast "Bonds Yes," the board of directors shall thereupon have authority to cause bonds in such amount and maturities to be issued. If the majority of the votes cast at any bond election are "Bonds No," the result of such election shall be so declared and entered of record; but if contract is made or is to be made with the United States as in RCW 87.03.140 provided, and bonds are not to be deposited with the United States in connection with such contract, the question submitted at such special election shall be whether contract shall be entered into with the United States. The notice of election shall state under the terms of what act or acts of congress contract is proposed to be made, and the maximum amount of money payable to the United States for construction purposes exclusive of penalties and interest. The ballots for such election shall contain the words "Contract with the United States Yes" and "Contract with the United States No," or words equivalent thereto. And whenever thereafter the board, in its judgment, deems it for the best interest of the district that the question of issuance of bonds for such amount, or any amount, or the question of entering into a contract with the United States, shall be submitted to the electors, it shall so declare, by resolution

recorded in its minutes, and may thereupon submit such question to the electors in the same manner and with like effect as at such previous election.

(2) All bonds issued under \*this act shall bear interest at such rate or rates as the board of directors may determine, payable semiannually on the first day of January and of July of each year. The principal and interest shall be payable at the office of the county treasurer of the county in which the office of the board of directors is situated, or if the board of directors shall so determine at the fiscal agency of the state of Washington in New York City, the place of payment to be designated in the bond. The bonds may be in such denominations as the board of directors may in its discretion determine, except that bonds other than bond number one of any issue shall be in a denomination that is a multiple of one hundred dollars. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. The bonds shall be negotiable in form, signed by the president and secretary, and the seal of the district shall be affixed thereto. The printed, engraved, or lithographed facsimile signatures of the president and secretary of the district's board of directors shall be sufficient signatures on the bonds or any coupons: PROVIDED, That such facsimile signatures on the bonds may be used only after the filing, by the officer whose facsimile signature is to be used, with the secretary of state of his or her manual signature certified by him or her under oath, whereupon that officer's facsimile signature has the same legal effect as his or her manual signature: PROVIDED, FURTHER, That either the president of the board of directors' or the secretary's signature on the bonds shall be manually subscribed: AND PROVIDED FURTHER, That whenever such facsimile reproduction of the signature of any officer is used in place of the manual signature of such officer, the district's board of directors shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds or any coupons upon which such facsimile signature is to be printed, engraved, or lithographed and the manner of numbering the bonds or any coupons upon which such signature shall be placed. Within ninety days after the completion of the printing, engraving, or lithographing of such bonds or any coupons, the plate or plates used for the purpose of affixing the facsimile signature shall be destroyed, and it shall be the duty of the district's board of directors, within ninety days after receipt of the completed bonds or any coupons, to ascertain that such plate or plates have been destroyed. Every printer, engraver, or lithographer who, with the intent to defraud, prints, engraves, or lithographs a facsimile signature upon any bond or any coupon without written order of the district's board of directors, or fails to destroy such plate or plates containing the facsimile signature upon direction of such issuing authority, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) Whenever the electors shall vote to authorize the issuance of bonds of the district such authorization shall nullify and cancel all unsold bonds previously authorized, and if the question is submitted to and carried by the electors at the bond election, any bond issue may be exchanged in whole or in part, at par, for any or all of a valid outstanding bond issue of the district when mutually agreeable to the owner or owners thereof and the district, and the amount of the last bond

issue in excess, if any, of that required for exchange purposes, may be sold as in the case of an original issue. The bonds of any issue authorized to be exchanged in whole or in part for outstanding bonds shall state on their face the amount of such issue so exchanged, and shall contain a certificate of the treasurer of the district as to the amount of the bonds exchanged, and that the outstanding bonds have been surrendered and canceled: PROVIDED FURTHER, That where bonds have been authorized and unsold, the board of directors may submit to the qualified voters of the district the question of canceling the previous authorization, which question shall be submitted upon the same notice and under the same regulations as govern the submission of the original question of authorizing a bond issue. At such election the ballots shall contain the words "Cancellation Yes," and "Cancellation No," or words equivalent thereto. If at such election a majority of the votes are "Cancellation Yes," the issue shall be thereby canceled and no bonds may be issued thereunder. If the majority of ballots are "Cancellation No," the original authorization shall continue in force with like effect as though the cancellation election had not been held: PROVIDED, That bonds deposited with the United States in payment or in pledge may call for the payment of such interest at such rate or rates, may be of such denominations, and call for the repayment of the principal at such times as may be agreed upon between the board and the secretary of the interior.

(4) Each issue shall be numbered consecutively as issued, and the bonds of each issue shall be numbered consecutively and bear date at the time of their issue. The bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. The bonds shall express upon their face that they were issued by authority of \*\*this act, stating its title and date of approval, and shall also state the number of issue of which such bonds are a part. In case the money received by the sale of all bonds issued be insufficient for the completion of plans of the canals and works adopted, and additional bonds be not voted, or a contract calling for additional payment to the United States be not authorized and made, as the case may be, it shall be the duty of the board of directors to provide for the completion of the plans by levy of assessments therefor. It shall be lawful for any irrigation districts which have heretofore issued and sold bonds under the law then in force, to issue in place thereof an amount of bonds not in excess of such previous issue, and to sell the same, or any part thereof, as hereinafter provided, or exchange the same, or any part thereof, with the owners of such previously issued bonds which may be outstanding, upon such terms as may be agreed upon between the board of directors of the district and the holders of such outstanding bonds: PROVIDED, That the question of such reissue of bonds shall have been previously voted upon favorably by the legally qualified electors of such district, in the same manner as required for the issue of original bonds, and the board shall not exchange any such bonds for a less amount in par value of the bonds received; all of such old issue in place of which new bonds are issued shall be destroyed whenever lawfully in possession of the board. Bonds issued under the provisions of this section may, when so authorized by the electors, include a sum sufficient to pay the interest thereon for a period not exceeding the first four years. Whenever an issue of bonds shall have been autho-

rized pursuant to law, and any of the earlier series shall have been sold, and the later series, or a portion thereof, remain unsold, the directors may sell such later series pursuant to law, or such portion thereof as shall be necessary to pay the earlier series, or the directors may exchange the later series for the earlier series at not less than the par value thereof, the sale or exchange to be made not more than six months before the maturity of the earlier series and upon the exchange being made the maturing bonds shall be disposed of as hereinbefore provided in the case of bonds authorized to be exchanged in whole or in part for outstanding bonds.

(5) Notwithstanding subsections (1) through (4) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2003 c 53 § 411; 1983 c 167 § 213; 1977 ex.s. c 119 § 1; 1970 ex.s. c 56 § 95; 1969 ex.s. c 232 § 46; 1963 c 68 § 2; 1923 c 138 § 9; 1921 c 129 § 8; 1917 c 162 § 3A; 1915 c 179 § 7; 1895 c 165 § 5; 1889-90 p 679 § 15; RRS § 7432. Formerly RCW 87.16.020 through 87.16.070.]

**Reviser's note:** \*(1) "This act" appears to refer to 1921 c 129.

\*\*\*(2) "This act" appears to refer to 1889-90 p. 679.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**87.03.205 Sections exclusive of other bonding methods—Validation.** The procedure outlined in RCW 87.03.165 through 87.03.190, 87.03.200, and in 87.03.210, for the authorization, issuance and disposal of bonds as heretofore constituted and shall hereafter constitute a method independent and exclusive of that provided by any other statute or statutes, for the authorization, issuance and disposal of bonds of the district for any and all of the objects and purposes in said sections provided, and any or all proceedings heretofore had, official acts heretofore performed or any bonds heretofore authorized or issued or disposed of in substantial accordance with the provisions of said sections are hereby validated and confirmed. [1933 ex.s. c 11 § 5; RRS § 7432 1/2. Formerly RCW 87.16.130.]

**87.03.210 Sale or pledge of bonds.** (1) The board may sell the bonds of the district or pledge the same to the United States from time to time in such quantities as may be necessary and most advantageous to raise money for the construction, reconstruction, betterment or extension of such canals and works, the acquisition of said property and property rights, the payment of outstanding district warrants when consented to in writing by the director of ecology, and to such extent as shall be authorized at said election, the assumption of indebtedness to the United States for the district lands, and otherwise to fully carry out the objects and purposes of the district organization, and may sell such bonds, or any of them, at private sale whenever the board deems it for the best interest of the district so to do: PROVIDED, That no election to authorize bonds to refund outstanding warrants shall be held and canvassed after the expiration of the year 1934. The board of directors shall also have power to sell said bonds, or

any portion thereof, at private sale, and accept in payment therefor, property or property rights, labor and material necessary for the construction of its proposed canals or irrigation works, power plants, power sites and lines in connection therewith, whenever the board deems it for the best interests of the district so to do. If the board shall determine to sell the bonds of the district, or any portion thereof, at public sale, the secretary shall publish a notice of such sale for at least three weeks in such newspaper or newspapers as the board may order. The notice shall state that sealed proposals will be received by the board, at its office, for the purchase of the bonds to be sold, until the day and hour named in the notice. At the time named in the notice, the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids: PROVIDED, That such bonds shall not be sold for less than ninety percent of their face value: AND PROVIDED, FURTHER, That the proceeds of all bonds sold for cash must be paid by the purchaser to the county treasurer of the county in which the office of the board is located, and credited to the bond fund.

(2) Notwithstanding subsection (1) of this section, such bonds may also be issued and sold in accordance with chapter 39.46 RCW. [1988 c 127 § 44; 1983 c 167 § 214; 1933 c 43 § 2; 1921 c 129 § 9; 1915 c 179 § 8; 1913 c 165 § 7; 1895 c 165 § 6; 1889-90 p 681 § 16; RRS § 7433. Formerly RCW 87.16.080.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.03.215 Payment of bonds and interest, other indebtedness—Lien, enforcement of—Scope of section.** Said bonds and interest thereon and all payments due or to become due to the United States or the state of Washington under any contract between the district and the United States or the state of Washington accompanying which bonds of the district have not been deposited with the United States or the state of Washington, as in RCW 87.03.140 provided, shall be paid by revenue derived from an annual assessment upon the real property of the district, and all the real property in the district shall be and remain liable to be assessed for such payments until fully paid as hereinafter provided. And in addition to this provision and the other provisions herein made for the payment of said bonds and interest thereon as the same may become due, said bonds, or the contract with the United States or the state of Washington accompanying which bonds have not been deposited with the United States or the state of Washington, shall become a lien upon all the water rights and other property acquired by any irrigation district formed under the provisions of this chapter, and upon any canal or canals, ditch or ditches, flumes, feeders, storage reservoirs, machinery and other works and improvements acquired, owned or constructed by said irrigation district, and if default shall be made in the payment of the principal of said bonds or interest thereon, or any payment required by the contract with the United States, or the state of Washington, according to the terms thereof, the owner of said bonds, or any part thereof or the United States or the state of Washington as the case may be, shall have the right to enter upon and take possession of all the water rights, canals, ditches, flumes, feeders, storage reservoirs, machinery, property and improvements of said irrigation district, and to hold and control the same, and enjoy

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the rents, issues and profits thereof, until the lien hereby created can be enforced in a civil action in the same manner and under the same proceedings as given in the foreclosure of a mortgage on real estate. This section shall apply to all bonds heretofore issued or any contract heretofore made with the United States, or which may hereafter be issued or made by any district: PROVIDED, That when any such contract made after December 1, 1981, between any district and the United States or the state of Washington covers only the real property in a portion or portions of the district, all payments due or to become due to the United States or the state of Washington shall be paid by revenue derived from an annual assessment upon the real property only in that portion or portions of the district covered by the contract and the real property shall be and remain liable to be assessed for such payments until fully paid and any assessment lien which attaches thereto shall be the exclusive lien notwithstanding other liens provided for in this section. In the event of a contract between the district and the United States or the state of Washington accompanying which bonds of the district have not been deposited with the United States or the state of Washington as provided in RCW 87.03.140 and the contract covers real property in only a portion or portions of the district, the question of whether the district should enter the contract shall be submitted only to those qualified electors who hold title or evidence of title to real property within that portion or portions of the district and in the same manner as provided in RCW 87.03.200. [1983 c 167 § 215; 1981 c 209 § 16; 1921 c 129 § 10; 1915 c 179 § 9; 1913 c 165 § 8; 1895 c 165 § 7; 1889-90 p 681 § 17; RRS § 7434. Formerly RCW 87.16.090.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Effective date—1981 c 209:** "This act shall take effect December 1, 1981, and shall apply to assessments made in 1981 and thereafter." [1981 c 209 § 18.] For codification of 1981 c 209, see Codification Tables, Volume 0.

**87.03.220 Refunding bonds, 1923 act.** See chapter 87.19 RCW.

**87.03.225 Refunding bonds, 1929 act.** See chapter 87.22 RCW.

**87.03.230 Revenue bonds for water, power, drains, sewers, sewage disposal, etc.** See chapter 87.28 RCW.

**87.03.235 Rights of federal agencies as to certain district bonds.** If the United States under any act of congress or under rules and regulations adopted by the secretary of the interior, shall be willing to guarantee the interest upon bonds of any irrigation district, or shall be willing to receive bonds of any such district in payment of, or as security for payment upon, any contract of the United States, then the United States shall have all the remedies given by law to a bondholder, and, in cases of payment under any guaranty, the United States shall be subrogated to all the rights and remedies of the bondholder to the extent of any such payment; and the United States, or its proper department officers, may make such rules and regulations as may be necessary for the purpose of insuring the carrying out of any plan or project which may have been approved by them as the basis of any

guaranty. [1915 c 99 § 6; RRS § 7435. Formerly RCW 87.16.100.]

**87.03.240 Assessments, how and when made—Assessment roll.** Assessments made in order to carry out the purpose of this act shall be made in proportion to the benefits accruing to the lands assessed and equitable credit shall be given to the lands having a partial or full water right: PROVIDED, That nothing herein shall be construed to affect or impair the obligation of any existing contract providing for a water supply to lands so assessed, unless the right under such contract shall first have been acquired by said district, and in acquiring such rights, the district may exercise the right of eminent domain.

The secretary must between the first Monday in March and the first Tuesday in November each year prepare an assessment roll with appropriate headings in which must be listed all the lands within the district. In such book must be specified, in separate columns, under the appropriate headings:

First, the name of the person to whom the property is assessed. If the name is not known to the secretary, the property shall be assessed to "unknown owners".

Second, land by township, range and section or fractional section, and when such land is not a legal subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, city and town lots, naming the city or town, and the number and block according to the system of numbering in such city or town.

Assessors' plat tax numbers used by county assessors for general state and county taxes in the county where such land is situate may be used for such identification in such assessment roll.

Third, in further columns with appropriate headings shall be specified the ratio of benefits, or, when deemed by the secretary more practicable, the per acre value, or the amount of benefits, for general and special district and local improvement district purposes, and the total amount assessed against each tract of land.

Any property which may have escaped assessment for any year or years, shall in addition to the assessment for the then current year, be assessed for such year or years with the same effect and with the same penalties as are provided for such current year and any property delinquent in any year may be directly assessed during the current year for any expenses caused the district on account of such delinquency.

Where the district embraces lands lying in more than one county the assessment roll shall be so arranged that the lands lying in each county shall be segregated and grouped according to the county in which the same are situated. [1933 c 43 § 3; 1921 c 129 § 11; 1919 c 180 § 7; 1917 c 162 § 4; 1915 c 179 § 10; 1913 c 165 § 9; 1895 c 165 § 8; 1889-90 p 681 § 18; RRS § 7436. Formerly RCW 87.32.010, part and 87.32.020.]

*Assessments*

*districts under contract with United States: Chapter 87.68 RCW.*  
*when delinquent—Notice—Collection: RCW 87.03.270.*

*Certain excess lands, assessments against (director districts): RCW 87.04.100.*

*Director districts—Limit of levy until water is received (federal contracts): RCW 87.04.090.*

*District elections (assessment roll): RCW 87.03.040.*

*Eminent domain: RCW 87.03.140 through 87.03.150.*

*Evidence of assessment, what is: RCW 87.03.420.*

**87.03.242 Exemption of farm and agricultural land from special benefit assessments.** See RCW 84.34.300 through 84.34.380 and 84.34.922.

**87.03.245 Deputy secretaries for assessment.** The board of directors must allow the secretary as many deputies, to be appointed by them, as will, in the judgment of the board, enable him to complete the assessment within the time herein prescribed. The board must fix the compensation of such deputies for the time actually engaged. [1919 c 180 § 8; 1895 c 165 § 9; 1889-90 p 682 § 19; RRS § 7437. Formerly RCW 87.08.180.]

**87.03.250 Assessment roll to be filed—Notice of equalization.** On or before the first Tuesday in September in each year to and including the year 1923, and on or before the first Tuesday in November beginning with the year 1924 and each year thereafter, the secretary must complete his assessment roll and deliver it to the board, who must immediately give a notice thereof, and of the time the board of directors, acting as a board of equalization will meet to equalize assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than twenty nor more than thirty days from the first publication of the notice, and in the meantime the assessment roll must remain in the office of the secretary for the inspection of all persons interested. [1921 c 129 § 12; 1919 c 180 § 9; 1895 c 165 § 10; 1889-90 p 682 § 20; RRS § 7438. Formerly RCW 87.32.030.]

**87.03.255 Equalization of assessments.** Upon the day specified in the notice required by RCW 87.03.250 for the meeting, the board of directors, which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from day to day as long as may be necessary, not to exceed ten days, exclusive of Sundays, to hear and determine such objections to the said assessment roll as may come before them; and the board may change the same as may be just. The secretary of the board shall be present during its session, and note all changes made at said hearing; and on or before the 30th day of October in each year to and including the year 1923, and on or before the 15th day of January beginning with the [year] 1925 and each year thereafter he shall have the assessment roll completed as finally equalized by the board. [1921 c 129 § 13; 1919 c 180 § 10; 1915 c 179 § 11; 1889-90 p 682 § 21; RRS § 7439. Formerly RCW 87.32.040.]

**87.03.260 Levies, amount—Special funds—Failure to make levy, procedure.** The board of directors shall in each year before said roll is delivered by the secretary to the respective county treasurers, levy an assessment sufficient to raise the ensuing annual interest on the outstanding bonds, and all payments due or to become due in the ensuing year to the United States or the state of Washington under any contract between the district and the United States or the state of Washington accompanying which bonds of the district have

not been deposited with the United States or the state of Washington as in this act provided. Beginning in the year preceding the maturity of the first series of the bonds of any issue, the board must from year to year increase said assessment for the ensuing years in an amount sufficient to pay and discharge the outstanding bonds as they mature. Similar levy and assessment shall be made for the expense fund which shall include operation and maintenance costs for the ensuing year. The board shall also at the time of making the annual levy, estimate the amount of all probable delinquencies on said levy and shall thereupon levy a sufficient amount to cover the same and a further amount sufficient to cover any deficit that may have resulted from delinquent assessments for any preceding year. The board shall also, at the time of making the annual levy, estimate the amount of the assessments to be made against lands owned by the district, including local improvement assessments, and shall levy a sufficient amount to pay said assessments. All lands owned by the district shall be exempt from general state and county taxes: PROVIDED, HOWEVER, That in the event any lands, and any improvements located thereon, acquired by the district by reason of the foreclosure of irrigation district assessments, shall be by said district resold on contract, then and in that event, said land, and any such improvements, shall be by the county assessor immediately placed upon the tax rolls for taxation as real property and shall become subject to general property taxes from and after the date of said contract, and the secretary of the said irrigation district shall be required to immediately report such sale within ten days from the date of said contract to the county assessor who shall cause the property to be entered on the tax rolls as of the first day of January following.

The board may also at the time of making the said annual levy, levy an amount not to exceed twenty-five percent of the whole levy for the said year for the purpose of creating a surplus fund. This fund may be used for any of the district purposes authorized by law. The assessments, when collected by the county treasurer, shall constitute a special fund, or funds, as the case may be, to be called respectively, the "Bond Fund of . . . . . Irrigation District," the "Contract Fund of . . . . . Irrigation District," the "Expense Fund of . . . . . Irrigation District," the "Warrant Fund of . . . . . Irrigation District," the "Surplus Fund of . . . . . Irrigation District".

If the annual assessment roll of any district has not been delivered to the county treasurer on or before the 15th day of January in the year 1927, and in each year thereafter, he shall notify the secretary of the district by registered mail that said assessment roll must be delivered to the office of the county treasurer forthwith. If said assessment roll is not delivered within ten days from the date of mailing of said notice to the secretary of the district, or if said roll when delivered is not equalized and the required assessments levied as required by law, or if for any reason the required assessment or levy has not been made, the county treasurer shall immediately notify the legislative authority of the county in which the office of the board of directors is situated, and said county legislative authority shall cause an assessment roll for the said district to be prepared and shall equalize the same if necessary and make the levy required by this chapter in the same manner and with like effect as if the same had been equalized and made by the said board of directors, and all expenses incident

thereto shall be borne by the district. In case of neglect or refusal of the secretary of the district to perform the duties imposed by law, then the treasurer of the county in which the office of the board of directors is situated must perform such duties, and shall be accountable therefor, on his official bond, as in other cases.

At the time of making the annual levy in the year preceding the final maturity of any issue of district bonds, the board of directors shall levy a sufficient amount to pay and redeem all bonds of said issue then remaining unpaid. All surplus remaining in any bond fund after all bonds are paid in full must be transferred to the surplus fund of the district.

Any surplus moneys in the surplus fund or any surplus moneys in the bond fund when so requested by the board of directors shall be invested by the treasurer of said county under the direction of said board of directors in United States bonds or bonds of the state of Washington, or any bonds pronounced by the treasurer of the state of Washington as valid security for the deposit of public funds, and in addition thereto any bonds or warrants of said district, all of which shall be kept in the surplus fund until needed by the district for the purposes authorized by law. [1983 c 167 § 216; 1967 c 169 § 1; 1941 c 157 § 1; 1929 c 185 § 1; 1927 c 243 § 1; 1923 c 138 § 10; 1921 c 129 § 14; 1919 c 180 § 11; 1915 c 179 § 12; 1913 c 165 § 10; 1895 c 165 § 11; 1889-90 p 683 § 22; Rem. Supp. 1941 § 7440. Formerly RCW 87.32.060, 87.32.070, 87.32.080, and 87.32.090.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

*Board's powers and duties generally—Condemnation procedure:* RCW 87.03.140.

*Bonds—Election for, etc.:* RCW 87.03.200.

*Certain excess lands, assessment against:* RCW 87.04.100.

*Irrigation district L.I.D. guarantee fund:* RCW 87.03.510.

*Limit of levy until water is received (federal contracts—director districts):* RCW 87.04.090.

*Payment of bonds and interest, other indebtedness—Lien, enforcement of—Scope of section:* RCW 87.03.215.

*Power as to incurring indebtedness:* RCW 87.03.475.

*Rights of federal agencies as to certain district bonds:* RCW 87.03.235.

*Sale or lease of district personal property:* RCW 87.03.135.

*Sale or pledge of bonds:* RCW 87.03.210.

**87.03.265 Lien of assessment.** The assessment upon real property shall be a lien against the property assessed, from and after the first day of January in the year in which it is levied, but as between grantor and grantee such lien shall not attach until the fifteenth day of February of the year in which the assessment is payable, which lien shall be paramount and superior to any other lien theretofore or thereafter created, whether by mortgage or otherwise, except for a lien for prior assessments, and such lien shall not be removed until the assessments are paid or the property sold for the payment thereof as provided by law. And the lien for the bonds of any issue shall be a preferred lien to that of any subsequent issue. Also the lien for all payments due or to become due under any contract with the United States, or the state of Washington, accompanying which bonds of the district have not been deposited with the United States or the state of Washington, as in RCW 87.03.140 provided, shall be a preferred lien to any issue of bonds subsequent to the date of

such contract. [1939 c 171 § 2; 1921 c 129 § 15; 1915 c 179 § 13; 1913 c 165 § 11; 1889-90 p 684 § 23; RRS § 7441. Formerly RCW 87.32.100.]

*Acquisition, construction and operating funds—Tolls and assessments, alternative methods of—Liens, foreclosure of—Delinquencies by tenants: RCW 87.03.445.*

*Delinquent assessments: Chapter 87.06 RCW.*

**87.03.270 Assessments, when delinquent—Assessment book, purpose—Statement of assessments due—Collection—Additional fee for delinquency.** The assessment roll, before its equalization and adoption, shall be checked and compared as to descriptions and ownerships, with the county treasurer's land rolls. On or before the fifteenth day of January in each year the secretary must deliver the assessment roll or the respective segregation thereof to the county treasurer of each respective county in which the lands therein described are located, and said assessments shall become due and payable on the fifteenth day of February following.

All assessments on said roll shall become delinquent on the first day of May following the filing of the roll unless the assessments are paid on or before the thirtieth day of April of said year: PROVIDED, That if an assessment is ten dollars or more for said year and if one-half of the assessment is paid on or before the thirtieth day of April, the remainder shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date. All delinquent assessments shall bear interest at the rate of twelve percent per annum, computed on a monthly basis and without compounding, from the date of delinquency until paid.

Upon receiving the assessment roll the county treasurer shall prepare therefrom an assessment book in which shall be written the description of the land as it appears in the assessment roll, the name of the owner or owners where known, and if assessed to the unknown owners, then the word "unknown", and the total assessment levied against each tract of land. Proper space shall be left in said book for the entry therein of all subsequent proceedings relating to the payment and collection of said assessments.

On or before April 1st of each year, the treasurer of the district shall send a statement of assessments due. County treasurers who collect irrigation district assessments may send the statement of irrigation district assessments together with the statement of general taxes.

Upon payment of any assessment the county treasurer must enter the date of said payment in said assessment book opposite the description of the land and the name of the person paying and give a receipt to such person specifying the amount of the assessment and the amount paid with the description of the property assessed.

It shall be the duty of the treasurer of the district to furnish upon request of the owner, or any person interested, a statement showing any and all assessments levied as shown by the assessment roll in his office upon land described in such request. All statements of irrigation district assessments covering any land in the district shall show the amount of the irrigation district assessment, the dates on which the assessment is due, the place of payment, and, if the property was sold for delinquent assessments in a prior year, the amount of the delinquent assessment and the notation "certificate

issued": PROVIDED, That the failure of the treasurer to render any statement herein required of him shall not render invalid any assessments made by any irrigation district.

It shall be the duty of the county treasurer of any county, other than the county in which the office of the board of directors is located, to make monthly remittances to the county treasurer of the county in which the office of the board of directors is located covering all amounts collected by him for the irrigation district during the preceding month.

When the treasurer collects a delinquent assessment, the treasurer shall collect any other amounts due by reason of the delinquency, including accrued costs, which shall be deposited to the treasurer's operation and maintenance fund. [1988 c 134 § 13; 1982 c 102 § 1; 1981 c 209 § 1; 1967 c 169 § 2; 1939 c 171 § 3; 1933 c 43 § 4; 1931 c 60 § 2; 1929 c 181 § 1; 1921 c 129 § 16; 1919 c 180 § 12; 1917 c 162 § 5; 1915 c 179 § 14; 1913 c 165 § 12; 1913 c 13 § 2; 1895 c 165 § 12; 1889-90 p 684 § 24; RRS § 7442. Formerly RCW 87.32.050.]

**Effective date—1982 c 102:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 15, 1982." [1982 c 102 § 3.]

**Effective date—1981 c 209:** See note following RCW 87.03.215.

*Assessments*

*districts under contract with United States: Chapter 87.68 RCW.*

*how and when made—Assessment roll: RCW 87.03.240.*

*Equalization of assessments: RCW 87.03.255.*

*Evidence of assessment, what is: RCW 87.03.420.*

**87.03.271 Lien for delinquent assessment to include costs and interest.** The lien for delinquent assessments shall include the district's and treasurer's costs attributable to the delinquency and interest at the rate of twelve percent per year, computed monthly and without compounding, on the assessments and costs. The word "costs" as used in this section includes all costs of collection, including but not limited to reasonable attorneys' fees, publication costs, costs of preparing certificates of delinquency, title searches, and the costs of foreclosure proceedings. [1988 c 134 § 14.]

**87.03.272 Secretary may act as collection agent of nondelinquent assessments—Official bond—Collection procedure—Delinquency list.** Notwithstanding the provisions of RCW 87.03.260, 87.03.270, 87.03.440 and 87.03.445 the board of directors of any district acting as fiscal agent for the United States or the state of Washington for the collection of any irrigation charges may authorize the secretary of the district to act as the exclusive collection agent for the collection of all nondelinquent irrigation assessments of the district pursuant to such rules and regulations as the board of directors may adopt.

When the secretary acts as collection agent, his official bond shall be of a sufficient amount as determined by the board of directors of the district to cover any amounts he may be handling while acting as collection agent, in addition to any other amount required by reason of his other duties.

The assessment roll of such district shall be delivered to the county treasurer in accordance with the provisions of RCW 87.03.260 and 87.03.270 and the assessment roll shall be checked and verified by the county treasurer as provided in RCW 87.03.270.

After the assessment roll has been checked and verified by the county treasurer, the secretary of the district shall proceed to publish the notice as required under RCW 87.03.270; except that the notice shall provide that until the assessments and tolls become delinquent on November 1st they shall be due and payable in the office of the secretary of the district.

When the secretary of such district receives payments, he shall issue a receipt for such payments and shall be accountable on his official bond for the safekeeping of such funds and shall remit the same, along with an itemized statement of receipts, at least once each month to the county treasurer wherein the land is located on which the payment was made.

When the county treasurer receives the monthly statement of receipts from the secretary, he shall enter the payments shown thereon on the assessment roll maintained in his office.

On the fifteenth day of November of each year it shall be the duty of the secretary to transmit to the county treasurer the delinquency list which shall include the names, amounts and such other information as the county treasurer shall require, and thereafter the secretary shall not accept any payment on the delinquent portion of any account. Upon receipt of the list of delinquencies, the county treasurer shall proceed under the provisions of this chapter as though he were the collection agent for such district to the extent of such delinquent accounts. [1982 c 102 § 2; 1967 c 169 § 3.]

**Effective date—1982 c 102:** See note following RCW 87.03.270.

**87.03.275 Medium of payment of assessments.** All assessments and tolls authorized under this act shall be paid in legal tender of the United States except that assessments and tolls levied for the expense fund of the district may be paid with district warrants issued in payment for labor hired by the district, at par without interest drawn on the expense fund in the year in which the assessment to be paid thereby is payable, or in the preceding year, and such warrants shall be so accepted notwithstanding their serial numbers or their order of issue as to then outstanding warrants: **PROVIDED, HOWEVER,** That in no case shall the county treasurer be authorized to pay any cash difference to the holders of any warrant so offered in payment of such assessments and in the event such warrant shall exceed the amount so applied on assessments, the county treasurer shall issue to the holder thereof a certificate directing the county auditor to issue to such holder a district warrant on the same fund, bearing date on which such lieu warrant is issued, for the difference between the face or par amount of the warrant received by the treasurer, without interest, and the amount credited on said assessment. Upon the surrender of such lieu warrant certificate the county auditor shall be authorized to issue and deliver such lieu warrant. [1933 c 43 § 5; 1923 c 138 § 11; RRS § 7442-1. Formerly RCW 87.32.120.]

**87.03.277 Payment by credit cards, charge cards, and other electronic communication.** Irrigation districts that have designated their own treasurers as provided in RCW 87.03.440 may accept credit cards, charge cards, debit cards, smart cards, stored value cards, federal wire, and automatic clearinghouse system transactions, or other electronic

communication, for any payment of any kind including, but not limited to, assessments, fines, interest, penalties, special assessments, fees, rates, tolls and charges, or moneys due irrigation districts. A payer desiring to pay by a credit card, charge card, debit card, smart card, stored value card, federal wire, automatic clearinghouse system, or other electronic communication shall bear the cost of processing the transaction in an amount determined by the treasurer, unless the board of directors finds that it is in the best interests of the district to not charge transaction processing costs for all payment transactions made for a specific category of payments due the district, including, but not limited to, assessments, fines, interest, penalties, special assessments, fees, rates, tolls, and charges. The treasurer's cost determination shall be based upon costs incurred by the treasurer and may not, in any event, exceed the additional direct costs incurred by the district to accept the specific form of payment used by the payer. [2004 c 215 § 2; 2002 c 53 § 1.]

**87.03.280 Cancellation of assessments due United States—Procedure.** Where any district under contract with the United States has levied any assessment for the collection of money payable to the United States under such contract, and the secretary of the interior has by agreement with the board of directors of said district, authorized the extension or cancellation of any payments due to the United States by the cancellation of assessments already levied therefor but remaining unpaid, the board of directors of such district shall certify to the county treasurer of the county in which the land is located, a statement of the year and amounts assessed against each tract for which such cancellation has been authorized, and the county treasurer, upon receipt of such certificate, shall, in all cases where the assessment remains unpaid and the lands have not been sold, endorse upon the district's assessment roll, "Corrected under Certificate of Board of Directors" and shall deduct and cancel from the assessment against each such tract the amount of such assessment so authorized to be canceled; and in all cases where such cancellations have been certified to the county treasurer after such lands assessed have been sold and before the period of redemption shall have expired, the county treasurer shall, in those cases where the tract assessed has been sold to the district, and the district is the owner of the certificate of sale, require the district to surrender its certificate of sale and shall thereupon deduct the amount of such cancellation plus the penalties thereon upon the original assessment roll with an endorsement, "Corrected under Certificate of Board of Directors" and he shall thereupon issue to the district in lieu of the certificate surrendered, a substitute certificate of sale for the corrected amount of such assessment, if any, remaining uncanceled, and shall file a copy thereof in the office of the county auditor as in the case of the original certificate surrendered, and such substitute certificate shall entitle the holder thereof to all rights possessed under the original certificate so corrected as to amount: **PROVIDED, HOWEVER,** That such cancellation shall have the same effect as though the lands had originally not been assessed for the amounts so deducted and shall not operate to bar the district of the right in making subsequent annual assessments to levy and collect against such tracts the amount of any money due the United

States, including the amount of any assessments so canceled. [1925 c 3 § 1; RRS § 7442-2. Formerly RCW 87.32.130.]

*Board's powers and duties (contracts with state and United States): RCW 87.03.140.*

**87.03.285 Segregation of assessment—Authorization.** Whenever in the discretion of the board of directors of any irrigation district of the state as determined by resolution, after an assessment roll has been filed with the county treasurer of the appropriate county in accordance with the laws of the state pertaining thereto, the irrigation district assessments against any tract or parcel of land may be segregated to apply against, and the lien may be divided among, the various parcels of said tract as the same may be hereafter divided, all in accordance herewith. [1951 c 205 § 1. Formerly RCW 87.32.102.]

**87.03.290 Segregation of assessment—Hearing.** When the irrigation district directors shall deem it advisable to make such segregation of assessments they shall by resolution fix the time and place for the hearing of the question concerning the segregation of assessments, which hearing may be at the next regular meeting of the directors of said irrigation district at its principal office. [1951 c 205 § 2. Formerly RCW 87.32.103.]

**87.03.295 Segregation of assessment—Notice of hearing.** Not less than ten days prior to the time and date fixed for said hearing the directors of said irrigation district shall cause notice of the time and place of said hearing to be given by registered mail to every person, firm or corporation having any interest in said property as shown by the county assessor's records or by the record of the irrigation district within which said property is located and to the address shown by said records, authorizing and directing that they appear and be heard at said time and place. [1951 c 205 § 3. Formerly RCW 87.32.104.]

**87.03.300 Segregation of assessment—Order.** In the event said hearing shall result in a determination that in the discretion of the directors of said irrigation district it is advisable that said assessments be segregated and apportioned among the various parcels of said tracts against which the original total assessment was levied, then an order shall be entered on the records of the directors of said irrigation district determining said segregation, and a certified copy thereof shall be filed with the county treasurer of the county in which said assessment roll is filed. [1951 c 205 § 4. Formerly RCW 87.32.105.]

**87.03.305 Segregation of assessment—Amendment of roll—Effect.** Upon the filing of the certified copy of said order the county treasurer shall alter and amend the original assessment roll in accordance with said order and thereafter the assessments will be a lien only as shown by said order of segregation and the amended assessment roll as the same shall affect the property upon which said segregation was ordered. [1951 c 205 § 5. Formerly RCW 87.32.106.]

**87.03.420 Evidence of assessment, what is.** The assessment book or delinquent list, or a copy thereof, certified by the secretary, showing unpaid assessments against any person or property, is prima facie evidence of the assessment of the property assessed, the delinquency, the amount of assessments due and unpaid, and that all the forms of law in relation to the assessment and levy of such assessment have been complied with. [1895 c 165 § 18; 1889-90 p 688 § 31; RRS § 7449. Formerly RCW 87.32.260.]

**87.03.430 Bonds—Interest payments.** Whenever interest payments on bonds are due, the treasurer of the county shall pay the same from the bond fund belonging to the district and deposited with the treasurer. Whenever, after ten years from the issuance of the bonds, the fund shall amount to the sum of ten thousand dollars, the board of directors may direct the treasurer to pay such an amount of the bonds not due as the money in the fund will redeem, at the lowest value at which they may be offered for liquidation, after advertising in a newspaper of general circulation in the county for such period of time not less than four weeks as the board shall order for sealed proposals for the redemption of the bonds. The proposals shall be opened by the board in open meeting, at a time to be named in the notice, and the lowest bid for the bonds must be accepted: PROVIDED, That no bond shall be redeemed under the foregoing provision at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the owners of the bonds shall desire to have the same redeemed, as herein provided for, the money shall be invested by the treasurer of the county, under the direction of the board, in United States bonds, or the bonds of the state, which shall be kept in the bond fund, and may be used to redeem the district bonds whenever the owners thereof may desire. [1985 c 469 § 88; 1983 c 167 § 217; 1921 c 129 § 22; 1895 c 165 § 20; 1889-90 p 688 § 34; RRS § 7451. Formerly RCW 87.16.110.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

*Power as to incurring indebtedness: RCW 87.03.475.*

**87.03.435 Construction work—Notice—Bids—Contracts—Bonds.** (1) Except as provided in subsections (2) and (3) of this section and RCW 87.03.436, whenever in the construction of the district canal or canals, or other works, or the furnishing of materials therefor, the board of directors shall determine to let a contract or contracts for the doing of the work or the furnishing of the materials, a notice calling for sealed proposals shall be published. The notice shall be published in a newspaper in the county in which the office of the board is situated, and in any other newspaper which may be designated by the board, and for such length of time, not less than once each week for two weeks, as may be fixed by the board. At the time and place appointed in the notice for the opening of bids, the sealed proposals shall be opened in public, and as soon as convenient thereafter, the board shall let the work or the contract for the purchase of materials, either in portions or as a whole, to the lowest responsible bidder, or the board may reject any or all bids and readvertise, or may proceed to construct the work under its own superintendence. All work shall be done under the direction and to the satisfaction of the engineer of the district, and be approved by

the board. The board of directors may require bidders submitting bids for the construction or maintenance for any of the works of the district, or for the furnishing of labor or material, to accompany their bids by a deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent of the amount of the bid and a bid shall not be considered unless the deposit is enclosed with it. If the contract is let, then all the bid deposits shall be returned to the unsuccessful bidders. The bid deposit of the successful bidder shall be retained until a contract is entered into for the purchase of the materials or doing of such work, and a bond given to the district in accordance with chapter 39.08 RCW for the performance of the contract. The performance bond shall be conditioned as may be required by law and as may be required by resolution of the board, with good and sufficient sureties satisfactory to the board, payable to the district for its use, for at least twenty-five percent of the contract price. If the successful bidder fails to enter into a contract and furnish the necessary bond within twenty days from the award, exclusive of the day of the award, the bid deposit shall be forfeited to the district and the contract may then be awarded to the second lowest bidder.

(2) The provisions of this section in regard to public bidding shall not apply in cases where the board is authorized to exchange bonds of the district in payment for labor and material.

(3) The provisions of this section do not apply:

(a) In the case of any contract between the district and the United States;

(b) In the case of an emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the board of directors or proclamation of an official designated by the board to act for the board during such emergencies. The resolution or proclamation shall declare the existence of the emergency and recite the facts constituting the emergency; or

(c) To purchases which are clearly and legitimately limited to a single source of supply or to purchases involving special facilities, services, or market conditions, in which instances the purchase price may be best established by direct negotiation. [1997 c 354 § 3; 1990 c 39 § 1; 1984 c 168 § 3; 1915 c 179 § 17; 1913 c 165 § 18; 1895 c 165 § 21; 1889-90 p 689 § 35; RRS § 7452. Formerly RCW 87.08.020.]

*Official paper for publication: RCW 87.03.020.*

*Public contracts—Contractor's bond: Chapter 39.08 RCW.*

**87.03.436 Small works roster.** All contract projects, the estimated cost of which is less than one hundred thousand dollars, may be awarded to a contractor on the small works roster. The small works roster shall be comprised of all responsible contractors who have requested to be on the list. The board of directors shall authorize by resolution a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good-faith effort be made to request quotations from all responsible contractors on the small works roster. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by tele-

phone inquiry. The small works roster shall be revised once a year. [1990 c 39 § 2.]

**87.03.437 Competitive bids—Use of purchase contract process in RCW 39.04.190.** (1) Purchases of any materials, supplies, or equipment by the district shall be based on competitive bids except as provided in RCW 87.03.435 and 39.04.280. A formal sealed bid procedure shall be used as standard procedure for the purchases made by irrigation districts. However, the board may by resolution adopt a policy to waive formal sealed bidding procedures for purchases of any materials, supplies, or equipment for an amount set by the board not to exceed ten thousand dollars for each purchase.

(2) The directors may by resolution adopt a policy to use the process provided in RCW 39.04.190 for purchases of materials, supplies, or equipment when the estimated cost is between the amount established by the board under subsection (1) of this section and a maximum amount set by resolution adopted by the board for purchases up to fifty thousand dollars exclusive of sales tax. [1999 c 234 § 2.]

**87.03.438 "County treasurer," "treasurer of the county," defined.** As used in this chapter, in accordance with RCW 87.03.440, the term "county treasurer" or "treasurer of the county" or other reference to that office means the treasurer of the district, if the district has designated its own treasurer, unless the context clearly requires otherwise. [1979 ex.s. c 185 § 16.]

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**87.03.440 Treasurer—County treasurer as ex officio district treasurer—Designated district treasurer—Duties and powers—Bond—Claims—Preliminary notice requirements when claim for crop damage.** The treasurer of the county in which is located the office of the district shall be ex officio treasurer of the district, and any county treasurer handling district funds shall be liable upon his or her official bond and to criminal prosecution for malfeasance and misfeasance, or failure to perform any duty as county or district treasurer. The treasurer of each county in which lands of the district are located shall collect and receipt for all assessments levied on lands within his or her county. There shall be deposited with the district treasurer all funds of the district. The district treasurer shall pay out such funds upon warrants issued by the county auditor against the proper funds of the district, except the sums to be paid out of the bond fund for interest and principal payments on bonds: PROVIDED, That in those districts which designate their own treasurer, the treasurer may issue the warrants or any checks when the district is authorized to issue checks. All warrants shall be paid in the order of their issuance. The district treasurer shall report, in writing, on the first Monday in each month to the directors, the amount in each fund, the receipts for the month preceding in each fund, and file the report with the secretary of the board. The secretary shall report to the board, in writing, at the regular meeting in each month, the amount of receipts and expenditures during the preceding month, and file the report in the office of the board.

The preceding paragraph of this section notwithstanding, the board of directors or board of control of an irrigation district which lies in more than one county and which had assessments in each of two of the preceding three years equal to at least five hundred thousand dollars, or a board of joint control created under chapter 87.80 RCW, may designate some other person having experience in financial or fiscal matters as treasurer of the district. In addition, the board of directors of an irrigation district which lies entirely within one county may designate some other person having experience in financial or fiscal matters as treasurer of the district if the district had assessments, tolls, and miscellaneous collections in each of two of the preceding three years equal to at least two million dollars or if the board has the approval of the county treasurer to designate some other person. If a board designates a treasurer, it shall require a bond with a surety company authorized to do business in the state of Washington in an amount of two hundred fifty thousand dollars conditioned that he or she will faithfully perform the duties of his or her office as treasurer of the district. The premium on the bond shall be paid by the district. The designated treasurer shall collect and receipt for all irrigation district assessments on lands within the district and shall act with the same powers and duties and be under the same restrictions as provided by law for county treasurers acting in matters pertaining to irrigation districts, except the powers, duties, and restrictions in RCW \*87.56.110 and 87.56.210 which shall continue to be those of county treasurers.

In those districts which have designated their own treasurers, the provisions of law pertaining to irrigation districts which require certain acts to be done and which refer to and involve a county treasurer or the office of a county treasurer or the county officers charged with the collection of irrigation district assessments, except RCW \*87.56.110 and 87.56.210 shall be construed to refer to and involve the designated district treasurer or the office of the designated district treasurer.

Any claim against the district for which it is liable under existing laws shall be presented to the board as provided in RCW 4.96.020 and upon allowance it shall be attached to a voucher and approved by the chairman and signed by the secretary and directed to the proper official for payment: PROVIDED, That in the event claimant's claim is for crop damage, the claimant in addition to filing his or her claim within the applicable period of limitations within which an action must be commenced and in the manner specified in RCW 4.96.020 must file with the secretary of the district, or in the secretary's absence one of the directors, not less than three days prior to the severance of the crop alleged to be damaged, a written preliminary notice pertaining to the crop alleged to be damaged. Such preliminary notice, so far as claimant is able, shall advise the district; that the claimant has filed a claim or intends to file a claim against the district for alleged crop damage; shall give the name and present residence of the claimant; shall state the cause of the damage to the crop alleged to be damaged and the estimated amount of damage; and shall accurately locate and describe where the crop alleged to be damaged is located. Such preliminary notice may be given by claimant or by anyone acting in his or her behalf and need not be verified. No action may be commenced against an irrigation district for crop damages unless claimant has complied with the provisions of RCW 4.96.020

and also with the preliminary notice requirements of this section. [1996 c 320 § 18; 1996 c 214 § 1; 1993 c 449 § 12; 1983 c 167 § 218; 1979 c 83 § 1; 1977 ex.s. c 367 § 1; 1969 c 89 § 1; 1967 c 164 § 15; 1961 c 276 § 2. Prior: 1937 c 216 § 1, part; 1929 c 185 § 3, part; 1923 c 138 § 13, part; 1921 c 129 § 23, part; 1913 c 165 § 19, part; 1895 c 165 § 22, part; 1889-90 p 690 § 36, part; RRS § 7453, part. Formerly RCW 87.08.030.]

**Reviser's note:** \*(1) RCW 87.56.110 was repealed by 2004 c 165 § 47.

(2) This section was amended by 1996 c 214 § 1 and by 1996 c 320 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Purpose—Severability—1993 c 449:** See notes following RCW 4.96.010.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—Severability—1967 c 164:** See notes following RCW 4.96.010.

*"County treasurer," "treasurer of the county," defined: RCW 87.03.438, 87.28.005.*

*Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages, procedure: Chapter 4.96 RCW.*

**87.03.441 Temporary funds.** The directors may provide by resolution that the secretary may deposit the following temporary funds in a local bank in the name of the district: (1) A fund to be known as "general fund" in which shall be deposited all moneys received from the sale of land, except such portion thereof as may be obligated for bond redemption, and all rentals, tolls, and all miscellaneous collections. This fund shall be transmitted to the district treasurer or disbursed in such manner as the directors may designate. (2) A fund to be known as "fiscal fund" in which shall be deposited all collections made by the district as fiscal agent of the United States. (3) A "revolving fund" in such amount as the directors shall by resolution determine, acquired by the issue of coupon or registered warrants or by transfer of funds by warrant drawn upon the expense fund. This fund may be disbursed by check signed by the secretary or such other person as the board may designate, in the payment of such expenditures as the board may deem necessary. This fund shall be reimbursed by submitting copies of approved vouchers and/or copy of payrolls to the county auditor with a claim voucher specifying the fund upon which warrants for such reimbursements shall be drawn. The warrants for such reimbursements shall be made out by the auditor to the "secretary's revolving fund." [1983 c 167 § 219; 1979 c 83 § 2; 1961 c 276 § 3. Prior: 1937 c 216 § 1, part; 1929 c 185 § 3, part; 1923 c 138 § 13, part; 1921 c 129 § 23, part; 1913 c 165 § 19, part; 1895 c 165 § 22, part; 1889-90 p 690 § 36, part; RRS § 7453, part. Formerly RCW 87.08.040.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.03.442 Bonds of secretary and depositaries.** The secretary or other authorized person shall issue receipts for all moneys received for deposit in such funds and he and any other person handling the funds shall furnish a surety bond to be approved by the board and the attorney for the district, in such amount as the board may designate and conditioned for

the safekeeping of such funds and the premium thereon shall be paid by the district.

Upon depositing any district funds the secretary shall demand and the depository bank shall furnish a surety bond, to be approved by the board and the attorney, in an amount equal to the maximum deposit, conditioned for the prompt payment of the deposits upon demand, and the bond shall not be canceled during the time for which it was written. Or the depository may deposit with the secretary or in some bank to the credit of the district in lieu of the bond, securities approved by the board of a market value in an amount not less than the amount of the maximum deposit. All depositories which have qualified for insured deposits under any federal deposit insurance act need not furnish bonds or securities, except for so much of the deposit as is not so insured. [1961 c 276 § 4. Prior: 1937 c 216 § 1, part; 1929 c 185 § 3, part; 1923 c 138 § 13, part; 1921 c 129 § 23, part; 1913 c 165 § 19, part; 1895 c 165 § 22, part; 1889-90 p 690 § 36, part; RRS § 7453, part. Formerly RCW 87.08.050.]

*Conviction of public officer forfeits trust:* RCW 9.92.120.

*Income from sale of electricity:* RCW 87.03.450.

*Misconduct of public officers:* Chapter 42.20 RCW.

*Office to be declared vacant on conviction:* RCW 36.18.180.

*Penalty for*

*failure to pay over fees:* RCW 36.18.170.

*taking illegal fees:* RCW 36.18.160.

*Power as to incurring indebtedness:* RCW 87.03.475.

*Public officers—Forfeiture or impeachment, rights preserved:* RCW 42.04.040.

*Suspension of treasurer:* RCW 36.29.090.

**87.03.443 Upgrading and improvement fund authorized—Deposits—Use of funds.** There may be created for each irrigation district a fund to be known as the upgrading and improvement fund. The board of directors shall determine what portion of the annual revenue of the irrigation district will be placed into its upgrading and improvement fund, including all or any part of the funds received by a district from the sale, delivery, and distribution of electrical energy. Moneys from the upgrading and improvement fund may only be used to modernize, improve, or upgrade the irrigation facilities of the irrigation district or to respond to an emergency affecting such facilities. [2004 c 215 § 3; 1979 ex.s. c 263 § 4.]

**Severability—1979 ex.s. c 263:** See note following RCW 43.83B.300.

**87.03.445 Acquisition, construction and operating funds—Tolls and assessments, alternative methods of—Liens, foreclosure of—Delinquencies by tenants.** (1) The cost and expense of purchasing and acquiring property, and construction, reconstruction, extension, and betterment of the works and improvements herein provided for, and the expenses incidental thereto, and indebtedness to the United States for district lands assumed by the district, and for the carrying out of the purposes of this chapter, may be paid for by the board of directors out of the funds received from bond sales as well as other district funds.

(2) For the purpose of defraying the costs and expenses of the organization of the district, and of the care, operation, management, maintenance, repair, and improvement of the

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district and its irrigation water, domestic water, electric power, drainage, or sewer facilities or of any portion thereof, or for the payment of any indebtedness due the United States or the state of Washington, or for the payment of district bonds, the board may either fix rates or tolls and charges, and collect the same from all persons for whom district service is made available for irrigation water, domestic water, electric power, drainage or sewerage, and other purposes, or it may provide for the payment of said costs and expenses by a levy of assessment therefor, or by both said rates or tolls and charges and assessment.

(3) If the assessment method is utilized, the levy of assessments shall be made on the completion and equalization of the assessment roll each year, and the board shall have the same powers and functions for the purpose of said levy as possessed by it in case of levy to pay bonds of the district. The procedure for the collection of assessments by such levy shall in all respects conform with the provisions of this chapter, relating to the collection of assessments for the payment of principal and interest of bonds herein provided for, and shall be made at the same time.

(4) If the rates or tolls and charges method is adopted in whole or in part, the secretary shall deliver to the board of directors, within the time for filing the assessment roll, a schedule containing the names of the owners or reputed owners, as shown on the rolls of the county treasurer as of the first Tuesday in November of each year such a schedule is filed of the various parcels of land against which rates or tolls and charges are to be levied, the description of each such parcel of land and the amount to be charged against each parcel for irrigation water, domestic water, electric power, drainage, sewerage, and other district costs and expenses. Said schedule of rates or tolls and charges shall be equalized pursuant to the same notice, in the same manner, at the same time and with the same legal effect as in the case of assessments. Such schedule of rates or tolls and charges for a given year shall be filed with the proper county treasurer within the same time as that provided by law for the filing of the annual assessment roll, and the county treasurer shall collect and receipt for the payment of said rates or tolls and charges and credit them to the proper funds of the district. The board may designate the time and manner of making such collections and shall require the same to be paid in advance of delivery of water and other service. All tolls and charges levied shall also at once become and constitute an assessment upon and against the lands for which they are levied, with the same force and effect, and the same manner of enforcement, and with the same rate of interest from date of delinquency, in case of nonpayment, as other district assessments.

(5) As an alternative method of imposing, collecting, and enforcing such rates or tolls and charges, the board may also base such rates or tolls and charges upon the quantity of irrigation water, domestic water, or electric power delivered, or drainage or sewage disposed of, and may fix a minimum rate or toll and charge to be paid by each parcel of land or use within the district for the delivery or disposal of a stated quantity of each such service with a graduated charge for additional quantities of such services delivered or disposed of. If the board elects to utilize this alternative method of imposing, collecting, and enforcing such rates or tolls and charges, there shall be no requirement that the schedule

referred to in the preceding paragraph be prepared, be filed with the board of directors by the secretary, be equalized, or be filed with a county treasurer. The board shall enforce collection of such rates or tolls and charges against property to which and its owners to whom the service is available, such rates or tolls and charges being deemed charges and a lien against the property to which the service is available, until paid in full. Prior to furnishing services, a board may require a deposit to guarantee payment for services. However, failure to require a deposit does not affect the validity of any lien authorized by this section.

(6) The board may provide by resolution that where such rates or tolls and charges are delinquent for any specified period of time, the district shall certify the delinquencies to the treasurer of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon at the rate not to exceed twelve percent per annum fixed by resolution shall be a lien against the property to which the service was available, subject only to the lien for general taxes. The district may, at any time after such rates or tolls and charges and penalties provided for herein are delinquent for a period of one year, bring suit in foreclosure by civil action in the superior court of the county in which the real property is situated.

(7) A board may determine how to apply partial payments on past due accounts.

(8) A board may provide a real property owner or the owner's designee with duplicate bills for service to tenants, or may notify an owner or the owner's designee that a tenant's service account is delinquent. However, if an owner or the owner's designee notifies the board in writing that a property served by the board is a rental property, asks to be notified of a tenant's delinquency, and has provided, in writing, a complete and accurate mailing address, the board shall notify the owner or the owner's designee of a tenant's delinquency at the same time and in the same manner the board notifies the tenant of the tenant's delinquency or by mail. When a district provides a real property owner or the owner's designee with duplicates of tenant utility service bills or notice that a tenant's utility account is delinquent, the district shall notify the tenant that it is providing the duplicate bills or delinquency notice to the owner or the owner's designee. After January 1, 1999, if a board fails to notify the owner of a tenant's delinquency after receiving a written request to do so and after receiving the other information required by this subsection (8), the board shall have no lien against the premises for the tenant's delinquent and unpaid charges.

(9) The court may allow, in addition to the costs and disbursements provided by statute, such attorneys' fees as it may adjudge reasonable. The action shall be in rem against the property, and in addition may be brought in the name of the district against an individual, or against all of those who are delinquent, in one action, and the rules of the court shall control as in other civil actions. The board may in the same year use the assessment method for part of the lands in the district and the rates or tolls and charges method for the remaining lands in the district in such proportion as it may deem advisable for the best interest of the district.

(10) The procedures herein provided for the collection and enforcement of rates, tolls, and charges also shall be applicable and available to the districts board of directors for

the collection and enforcement of charges for water imposed by contract entered into or administered by the district's board of directors. [2001 c 149 § 4; 1998 c 285 § 3; 1979 ex.s. c 185 § 5; 1939 c 171 § 7; 1931 c 60 § 5; 1929 c 185 § 4; 1915 c 179 § 18; 1913 c 165 § 20; 1889-90 p 690 § 37; RRS § 7454. Formerly RCW 87.08.060.]

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

*Assessments, when delinquent—Notice—Collection—Additional fee for delinquency:* RCW 87.03.270.

*Board's powers and duties generally—Condemnation procedure:* RCW 87.03.140.

*Bonds—Election for—Form and contents—Facsimile signatures, when, procedure—Exchange—Cancellation—Sale and issue—Reissue—Election concerning contract with United States—Penalty:* RCW 87.03.200.

*Equalization of assessments:* RCW 87.03.255.

*Levies, amount—Special funds—Failure to make levy, procedure:* RCW 87.03.260.

*Lien of assessments:* RCW 87.03.265.

*Payment of bonds and interest, other indebtedness—Lien, enforcement of—Scope of section:* RCW 87.03.215.

*Property taxes—Listing of property:* Chapter 84.40 RCW.

*Sale or pledge of bonds:* RCW 87.03.210.

**87.03.450 Income from sale of electricity.** All income derived from the sale, delivery and distribution of electrical energy, shall be deposited with the county treasurer of the county in which the office of the board of directors of the district is located, and shall be apportioned to such fund or funds of the district authorized by law, as the board of directors shall deem advisable, including, but not limited to the payment of district bonds or any portion of the same for which such revenues have been pledged and thereafter said income, or such portion thereof so pledged, shall be placed by the county treasurer to the credit of the fund from which said bonds are required to be paid until the same or the portion thereof secured by such pledge are fully paid. [1979 ex.s. c 185 § 6; 1933 c 31 § 2; RRS § 7454-1. Formerly RCW 87.08.070.]

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

*Office of board:* RCW 87.03.115.

**87.03.455 District's right to cross other property.** The board of directors shall have power to construct the \*said works across any stream of water, water course, street, avenue, highway, railway, canal, ditch or flume, which the route of said canal or canals may intersect or cross, in such manner as to afford security for life and property; but said board shall restore the same when so crossed or intersected, to its former state as near as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness; and every company whose railroad shall be intersected or crossed by \*said works, shall unite with said board in forming said intersections and crossings, and grant the privileges aforesaid; and if such railroad company and said board, or the owners and controllers of the said property, thing or franchise so to be crossed, can not agree upon the amount to be paid therefor, or the points or the manner of said crossings or intersections, the same shall be ascertained and determined in all respects as is herein pro-

vided in respect to the taking of land. The right-of-way is hereby given, dedicated and set apart, to locate, construct and maintain said works over and through any of the lands which are now or may be the property of this state; and also there is given, dedicated and set apart, for the uses and purposes aforesaid, all waters and water rights belonging to this state within the district. [1889-90 p 691 § 38; RRS § 7455. Formerly RCW 87.08.160.]

**\*Reviser's note:** The "said works" apparently refers to those specified in RCW 87.03.445.

*Condemnation:* RCW 87.03.140 through 87.03.150.

**87.03.460 Compensation and expenses of directors, officers, employees.** In addition to their reasonable expenses in accordance with chapter 42.24 RCW, the directors shall each receive an amount for attending meetings and while performing other services for the district. The amount shall be fixed by resolution and entered in the minutes of the proceedings of the board. It shall not exceed seventy dollars for each day or portion thereof spent by a director for such attendance or performance. The total amount of such additional compensation received by a director may not exceed six thousand seven hundred twenty dollars in a calendar year. The board shall fix the compensation of the secretary and all other employees.

Any director may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the director's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. [1998 c 121 § 14; 1990 c 38 § 1; 1984 c 168 § 4; 1980 c 23 § 1; 1979 c 83 § 3; 1975 1st ex.s. c 163 § 2; 1965 c 16 § 1; 1951 c 189 § 1; 1919 c 180 § 14; 1917 c 162 § 8; 1895 c 165 § 23; 1889-90 p 692 § 39; RRS § 7456. Formerly RCW 87.08.100.]

**87.03.470 Special assessments—Election—Notes.** (1) The board of directors may, at any time when in their judgment it may be advisable, call a special election and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this chapter including any purpose for which the bonds of the district or the proceeds thereof might be lawfully used. Such election must be called upon the notice prescribed, and the same shall be held and the result thereof determined and declared in all respects in conformity with the provisions of RCW 87.03.200. The notice must specify the amount of money proposed to be raised and the purpose for which it is intended to be used and the number of installments in which it is to be paid. At such election the ballot shall contain the words "Assessment Yes" and "Assessment No." If the majority of the votes cast are "Assessment Yes" the board may immediately or at intervals thereafter incur indebtedness to the amount of said special assessment for any of the purposes for which the proceeds of said assessment may be used, and may provide for the payment of said indebtedness by the issue and sale of notes of the district to an amount equal to said authorized indebtedness, which notes shall be payable in

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such equal installments not exceeding three in number as the board shall direct. Said notes shall be payable by assessments levied at the time of the regular annual levy each year thereafter until fully paid. The amount of the assessments to be levied shall be ascertained by adding fifteen percent for anticipated delinquencies to the whole amount of the indebtedness incurred and interest. Each assessment so levied shall be computed and entered on the assessment roll by the secretary of the board, and collected at the same time and in the same manner as other assessments provided for herein, and when collected shall be paid to the county treasurer of the county to the credit of said district, for the purposes specified in the notice of such special election: PROVIDED, HOWEVER, That the board of directors may at their discretion issue said notes in payment for labor or material, or both, used in connection with the purposes for which such indebtedness was authorized. Notes issued under this section shall bear interest at a rate determined by the board, payable semiannually. Such notes may be in any form, including bearer notes or registered notes as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such notes may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 220; 1981 c 156 § 28; 1921 c 129 § 24; 1915 c 179 § 19; 1895 c 165 § 24; 1889-90 p 692 § 41; RRS § 7458. Formerly RCW 87.32.110.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

*Assessments:* RCW 87.03.240 through 87.03.255, 87.03.265 through 87.03.305.

*Ballots in all elections:* RCW 87.03.075.

*Elections are governed by irrigation district laws:* RCW 87.03.030.

**87.03.475 Power as to incurring indebtedness.** (1) The board shall incur no debt or liability in excess of the express provisions of this title. It may without an election and levy therefor pay the necessary costs and expenses of organizing and may make surveys, do engineering work, and conduct a general investigation to determine the feasibility of the proposed irrigation project, and may incur an indebtedness therefor prior to levy, which indebtedness on account of surveys, engineering and investigations shall not exceed fifty cents an acre, and shall be assessable against the lands within the district. In cases of emergency, making it necessary to incur indebtedness in order to continue the operation of the irrigation system or any part thereof, the board by resolution may incur such indebtedness not exceeding the amount actually necessary to meet the requirements of the emergency. It may incur indebtedness necessary to carry on the ordinary administrative affairs of the district and if the district acquires an irrigation system before making its first regular annual levy, the board may incur such indebtedness necessary to pay the ordinary expenses of operation and maintenance until the regular annual levy is made.

The board may issue warrants for the payment of any indebtedness incurred under this section, which shall bear interest at a rate or rates determined by the board, and it shall include in its next annual levy for the payment of the expenses of operation and maintenance, the amount of all warrants issued by virtue hereof.

The board may issue as a general obligation of the district coupon or registered warrants in denominations not in

excess of five hundred dollars, bearing interest as determined by the board. Such warrants may be registered as provided in RCW 39.46.030. Such warrants shall mature in not more than five years and may be used, or the proceeds thereof, in the purchase of grounds and buildings, machinery, vehicles, tools or other equipment for use in operation, maintenance, betterment, reconstruction or local improvement work, and for creating a revolving fund for carrying on such work as in this title provided. The proceeds of the warrants shall be paid to the district treasurer who shall place them in an appropriate fund and pay them out upon warrants of the district. The maximum indebtedness hereby authorized shall not exceed one dollar per acre of the total irrigable area within the district. No warrant shall be sold for less than par. They shall state on their face that they are a general obligation of the district, the purposes for which they are used, and that they are payable on or before maturity. They shall be retired by assessments levied in accordance with the provisions of this title at the time other assessments are levied.

The board may accumulate by assessment a fund to be designated as the "capital fund" to be used for the purposes for which the above warrants may be used. The total of such fund shall not exceed one dollar per acre of the total irrigable area in the district and shall be accumulated in not less than five annual installments. The fund shall not be permanently depleted or reduced but shall be replaced from year to year by assessments on any lands of the district benefited by the use thereof. The reasonable value of all grounds, buildings, machinery, vehicles, tools or other equipment on hand, purchased with such fund, and the revolving fund, if any, derived from such fund, shall be a part of the capital fund.

(2) Notwithstanding subsection (1) of this section, such warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 221; 1981 c 156 § 29; 1953 c 108 § 1; 1921 c 129 § 25; 1917 c 162 § 9; 1915 c 179 § 20; 1895 c 165 § 25; 1889-90 p 693 § 42; RRS § 7459. Formerly RCW 87.01.220.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.03.480 Local improvement districts—Petition—Bond.** Any desired special construction, reconstruction, betterment or improvement or purchase or acquisition of improvements already constructed, for any authorized district service, including but not limited to the safeguarding of open canals or ditches for the protection of the public therefrom, which are for the special benefit of the lands tributary thereto and within an irrigation district may be constructed or acquired and provision made to meet the cost thereof as follows:

The holders of title or evidence of title to one-quarter of the acreage proposed to be assessed, may file with the district board their petition reciting the nature and general plan of the desired improvement and specifying the lands proposed to be specially assessed therefor. The petition shall be accompanied by a bond in the sum of one hundred dollars with surety to be approved by the board, conditioned that the petitioners will pay the cost of an investigation of the project and of the hearing thereon if it is not established. The board may at any time require a bond in an additional sum. Upon the filing of the petition the board with the assistance of a competent engi-

neer, shall make an investigation of the feasibility, cost, and need of the proposed local improvement together with the ability of the lands to pay the cost, and if it appears feasible, they shall have plans and estimate of the cost prepared. If a protest against the establishment of the proposed improvement signed by a majority of the holders of title in the proposed local district is presented at or before the hearing, or if the proposed improvement should be found not feasible, too expensive, or the lands to be benefited insufficient security for the costs, they shall dismiss the petition at the expense of the petitioners. [1959 c 75 § 9; 1941 c 171 § 1; 1919 c 180 § 15; 1917 c 162 § 10; Rem. Supp. 1941 § 7460. Formerly RCW 87.36.010.]

*Safeguarding open canals or ditches:* RCW 35.43.040, 35.43.045, 35.44.045, 36.88.015, 36.88.350, 36.88.380 through 36.88.400, and 87.03.526.

**87.03.485 Local improvement districts—Notice—Hearing—Initiation by board, procedure.** In the event that the said board shall approve said petition, the board shall fix a time and place for the hearing thereof and shall publish a notice once a week for two consecutive weeks preceding the date of such hearing and the last publication shall not be more than seven days before such date and shall mail such a notice on or before the second publication date by first class mail, postage prepaid, to each owner or reputed owner of real property within the proposed local improvement district, as shown on the rolls of the county treasurer as of a date not more than twenty days immediately prior to the date such notice was mailed. Such notice must be published in a newspaper of general circulation in each county in which any portion of the land proposed to be included in such local improvement district lies. Such notice shall state that the lands within said described boundaries are proposed to be organized as a local improvement district, stating generally the nature of the proposed improvement; that bonds for such local improvement district are proposed to be issued as the bonds of the irrigation district, or that a contract is proposed to be entered into between the district and the United States or the state of Washington, or both, that the lands within said local improvement district are to be assessed for such improvement, that such bonds or contract will be a primary obligation of such local improvement district and a general obligation of the irrigation district and stating a time and place of hearing thereon. At the time and place of hearing named in said notice, all persons interested may appear before the board and show cause for or against the formation of the proposed improvement district and the issuance of bonds or the entering into of a contract as aforesaid. Upon the hearing the board shall determine as to the establishment of the proposed local improvement district. Any landowner whose lands can be served or will be benefited by the proposed improvement, may make application to the board at the time of hearing to include such land and the board of directors in such cases shall, at its discretion, include such lands within such district. The board of directors may exclude any land specified in said notice from said district provided, that in the judgment of the board, the inclusion thereof will not be practicable.

As an alternative plan and subject to all of the provisions of this chapter, the board of directors may initiate the organization of a local improvement district as herein provided. To

so organize a local improvement district the board shall adopt and record in its minutes a resolution specifying the lands proposed to be included in such local improvement district or by describing the exterior boundaries of such proposed district or by both. Said resolution shall state generally the plan, character and extent of the proposed improvements, that the land proposed to be included in such improvement district will be assessed for such improvements; and that local improvement district bonds of the irrigation district will be issued or a contract entered into as hereinabove in this section provided to meet the cost thereof and that such bonds or contract will be a primary obligation of such local improvement district and a general obligation of the irrigation district. Said resolution shall fix a time and place of hearing thereon and shall state that unless a majority of the holders of title or of evidence of title to lands within the proposed local improvement district file their written protest at or before said hearing, consent to the improvement will be implied.

A notice containing a copy of said resolution must be published once a week for two consecutive weeks preceding the date of such hearing and the last publication shall not be more than seven days before such date, and shall be mailed on or before the second publication date by first class mail, postage prepaid, to each owner or reputed owner of real property within the proposed local improvement district, as shown on the rolls of the county treasurer as of a date not more than twenty days immediately prior to the date such notice was mailed, and the hearing thereon shall not be held in less than twenty days from the adoption of such resolution. Such notice must be published in one newspaper, of general circulation, in each county in which any portion of the land proposed to be included in such local improvement district lies. Said hearing shall be held and all subsequent proceedings conducted in accordance with the provisions of this act relating to the organization of local improvement districts initiated upon petition. [1983 c 167 § 222; 1979 ex.s. c 185 § 7; 1970 ex.s. c 70 § 1; 1921 c 129 § 26; 1917 c 162 § 11; RRS § 7461. Formerly RCW 87.36.020 and 87.36.030.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**87.03.486 Local improvement districts—Notice to contain statement that assessments may vary from estimates.** Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 12.]

**87.03.487 Local improvement districts—Sanitary sewer or potable water facilities—Notice to certain property owners.** Whenever it is proposed that a local improvement district finance sanitary sewers or potable water facilities, additional notice of the public hearing on the proposed local improvement district shall be mailed to the owners of any property located outside of the proposed local improvement district that would be required as a condition of federal

housing administration loan qualification, at the time of notice, to be connected to the specific sewer or water facilities installed by the local improvement district. The notice shall include information about this restriction. [1987 c 315 § 7.]

**87.03.490 Local improvement districts—Adoption of plan—Bonds—Form and contents—Facsimile signatures, when, procedure—New lands may be included—Penalty.** (1) If decision shall be rendered in favor of the improvement, the board shall enter an order establishing the boundaries of the improvement district and shall adopt plans for the proposed improvement and determine the number of annual installments not exceeding fifty in which the cost of the improvement shall be paid. The cost of the improvement shall be provided for by the issuance of local improvement district bonds of the district from time to time, therefor, either directly for the payment of the labor and material or for the securing of funds for such purpose, or by the irrigation district entering into a contract with the United States or the state of Washington, or both, to repay the cost of the improvement. The bonds shall bear interest at a rate or rates determined by the board, payable semiannually, and shall state upon their face that they are issued as bonds of the irrigation district; that all lands within the local improvement district shall be primarily liable to assessment for the principal and interest of the bonds and that the bonds are also a general obligation of the district. The bonds may be in such denominations as the board of directors may in its discretion determine, except that bonds other than bond number one of any issue shall be in a denomination that is a multiple of one hundred dollars, and no bond shall be sold for less than par. Any contract entered into for the local improvement by the district with the United States or the state of Washington, or both although all the lands within the local improvement district shall be primarily liable to assessment for the principal and interest thereon, shall be a general obligation of the irrigation district. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) No election shall be necessary to authorize the issuance of such local improvement bonds or the entering into of such a contract. Such bonds, when issued, shall be signed by the president and secretary of the irrigation district with the seal of the district affixed. The printed, engraved, or lithographed facsimile signatures of the president and secretary of the district's board of directors shall be sufficient signatures on the bonds or any coupons: PROVIDED, That such facsimile signatures on the bonds may be used only after the filing, by the officer whose facsimile signature is to be used, with the secretary of state of his or her manual signature certified by him or her under oath, whereupon that officer's facsimile signature has the same legal effect as his or her manual signature: PROVIDED, FURTHER, That either the president of the board of directors' or the secretary's signature on the bonds shall be manually subscribed: AND PROVIDED FURTHER, That whenever such facsimile reproduction of the signature of any officer is used in place of the manual signature of such officer, the district's board of directors shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds or any coupons upon which such facsimile signature is to be printed,

engraved, or lithographed and the manner of numbering the bonds or any coupons upon which such signature shall be placed. Within ninety days after the completion of the printing, engraving, or lithographing of such bonds or any coupons, the plate or plates used for the purpose of affixing the facsimile signature shall be destroyed, and it shall be the duty of the district's board of directors, within ninety days after receipt of the completed bonds or any coupons, to ascertain that such plate or plates have been destroyed. Every printer, engraver, or lithographer who, with the intent to defraud, prints, engraves, or lithographs a facsimile signature upon any bond or coupon without written order of the district's board of directors, or fails to destroy such plate or plates containing the facsimile signature upon direction of such issuing authority, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) The proceeds from the sale of such bonds shall be deposited with the treasurer of the district, who shall place them in a special fund designated "Construction fund of local improvement district number . . . . ."

(4) Whenever such improvement district has been organized, the boundaries thereof may be enlarged to include other lands which can be served or will be benefited by the proposed improvement upon petition of the owners thereof and the consent of the United States or the state of Washington, or both, in the event the irrigation district has contracted with the United States or the state of Washington, or both, to repay the cost of the improvement: PROVIDED, That at such time the lands so included shall pay their equitable proportion upon the basis of benefits of the improvement theretofore made by the local improvement district and shall be liable for the indebtedness of the local improvement district in the same proportion and same manner and subject to assessment as if the lands had been incorporated in the improvement district at the beginning of its organization.

(5) Notwithstanding this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2003 c 53 § 412; 1983 c 167 § 223; 1981 c 156 § 30; 1977 ex.s. c 119 § 2; 1970 ex.s. c 70 § 2; 1921 c 129 § 27; 1919 c 180 § 16; 1917 c 162 § 12; RRS § 7462. Formerly RCW 87.36.040.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.03.495 Local improvement districts—Assessments, how made and collected—Disposal of bonds.** The cost of the improvement and of the operation and maintenance thereof, if any, shall be especially assessed against the lands within such local improvement district in proportion to the benefits accruing thereto, and shall be levied and collected in the manner provided by law for the levy and collection of land assessments or toll assessments or both such form of assessments.

All provisions for the assessment, equalization, levy and collection of assessments for irrigation district purposes shall be applicable to assessments for local improvements except that no election shall be required to authorize said improvement or the expenditures therefor or the bonds issued to meet the cost thereof or the contract authorized in RCW 87.03.485

to repay the cost thereof. Assessments when collected by the county treasurer for the payment for the improvement of any local improvement district shall constitute a special fund to be called "bond redemption or contract repayment fund of local improvement district No. . . . ."

Bonds issued under this chapter shall be eligible for disposal to and purchase by the director of ecology under the provisions of the state reclamation act.

The cost or any unpaid portion thereof, of any such improvement, charged or to be charged or assessed against any tract of land may be paid in one payment under and pursuant to such rules as the board of directors may adopt, and all such amounts shall be paid over to the county treasurer who shall place the same in the appropriate fund. No such payment shall thereby release such tract from liability to assessment for deficiencies or delinquencies of the levies in such improvement district until all of the bonds or the contract, both principal and interest, issued or entered into for such local improvement district have been paid in full. The receipt given for any such payment shall have the foregoing provision printed thereon. The amount so paid shall be included on the annual assessment roll for the current year, provided, such roll has not then been delivered to the treasurer, with an appropriate notation by the secretary that the amount has been paid. If the roll for that year has been delivered to the treasurer then the payment so made shall be added to the next annual assessment roll with appropriate notation that the amount has been paid. [1988 c 127 § 45; 1970 ex.s. c 70 § 3; 1957 c 68 § 1; 1949 c 103 § 2; 1921 c 129 § 28; 1917 c 162 § 13; Rem. Supp. 1949 § 7463. Formerly RCW 87.36.050.]

*Assessment, equalization, levy and collection of assessments for irrigation district purposes: RCW 87.03.240 through 87.03.280.*

**87.03.500 Local improvement districts—Payment of bonds.** In the event of the failure of the lands within the local improvement district to furnish money sufficient for the payment of principal or interest of the bonds or the contract as provided for in RCW 87.03.485 for such local improvement work and there shall be a default in the payment of principal or interest as aforesaid, the amount delinquent shall be paid by the general warrants of the irrigation district at large or, in the event of a contract, by whatever means of payment is called for thereunder, but the lands of the local improvement district shall not thereby become released from liability for special assessment therefor. Such warrants, if issued, shall be redeemed as soon as there shall be available money in the bond redemption fund of the local improvement district. [1970 ex.s. c 70 § 4; 1921 c 129 § 29; 1917 c 162 § 14; RRS § 7464. Formerly RCW 87.36.060.]

**87.03.505 Local improvement districts—L.I.D. unable to pay costs—Survey—Reassessments.** Whenever, by reason of the sale of land within a local improvement district for unpaid taxes or assessments, or for any other reason, it may appear apparent that the remaining lands within any such local improvement district are and will be unable to pay out the cost of such improvement or the bond issue or contract indebtedness therefor, the landowners of the local improvement district may petition the directors of the irrigation district or the directors of the district may upon their own

initiative, and either upon receipt of such petition or the passing of such resolution the directors of the irrigation district shall cause a complete survey to be made of the affairs of the local improvement district pertaining to the payment of the cost of said improvement, and shall determine the amount of property remaining in the hands of private owners that is still subject to assessment for the improvement, the amount of land standing in the name of the district which is subject to assessment for said improvement and the amount of any lands which may have been entirely removed from the liability of any such assessments, and such other and pertinent data as may be necessary, in order to determine the ability of said remaining private property to pay the remaining balance of the cost of said improvement, and if as a result thereof it shall appear that the remaining private property will be unable to pay the said remaining cost of the improvement, the said board of directors shall determine what amount and to what extent the remaining private property will be able to equitably pay on the cost of said improvement which shall include the privately owned property and district owned property and such remaining portion of the cost of said improvement which the directors find said land can equitably pay and in such amounts as in the judgment of the directors shall appear equitable after taking all circumstances into consideration, shall be assessed against the lands within such local improvement district and shall be levied and collected in the manner as in this act provided for the assessment and collection of construction costs and shall be payable over a period of not more than twenty years. Notwithstanding all provisions in this chapter contained for the assessment, equalization, levy and collection of assessments no election shall be required to authorize the issue of bonds or the entering into a contract to cover the cost thereof. Assessments when collected by the county treasurer for the payment shall constitute a special fund to be called "bond redemption or contract repayment fund of local improvement district No. . . . ."

The costs or any unpaid portion thereof, of any such assessment, charged or to be charged or assessed against any tract of land may be paid in one payment by the owner or by any one acting for such owner, under and pursuant to such rules as the board of directors may adopt, and all such amounts shall be paid to the county treasurer who shall place the same in the appropriate fund. Upon the payment in full of the amount charged or to be charged or assessed against any particular tract of land, said tract of land shall be thereupon entirely, fully and finally released of any and all further liability by reason of such improvement and the amount charged or to be charged and assessed against each tract of land as designated by said board shall be the limit of the liability of said tract of land for the costs of said improvement, except insofar as said land may be additionally liable by reason of being within the irrigation district and being liable for its portion of the general obligation of the district. The determination of the amount charged or to be charged or assessed against any tract of land may be appealed by the owner of said tract from the decision of the board of directors to the superior court of the county in which the property is located at any time within twenty days from the date of the passage of a resolution by the board of directors with reference thereto: PROVIDED, HOWEVER, That in the event said irrigation district shall have borrowed or have an application on file for

the borrowing of money from the reconstruction finance corporation, or its successor, or has entered into a contract with the United States or the state of Washington, or both, then in that event before any such reassessment shall be made it shall first receive the approval of said reconstruction finance corporation, or its successor or the United States or the state of Washington, or both, as the case may be. [1970 ex.s. c 70 § 5; 1935 c 128 § 1; RRS § 7464-1. Formerly RCW 87.36.070 and 87.36.080.]

*Assessment, equalization, levy and collection of assessments for irrigation district purposes: RCW 87.03.240 through 87.03.280.*

**87.03.510 Local improvement districts—Irrigation district L.I.D. guarantee fund.** There is hereby established for each irrigation district in this state having local improvement districts therein a fund for the purpose of guaranteeing to the extent of such fund and in the manner herein provided, the payment of its local improvement bonds and warrants issued or contract entered into to pay for the improvements provided for in this act. Such fund shall be designated "local improvement guarantee fund" and for the purpose of maintaining the same, every irrigation district shall hereafter levy from time to time, as other assessments are levied, such sums as may be necessary to meet the financial requirements thereof: PROVIDED, That such sums so assessed in any year shall not be more than sufficient to pay the outstanding warrants or contract indebtedness on said fund and to establish therein a balance which shall not exceed five percent of the outstanding obligations thereby guaranteed. Whenever any bond redemption payment, interest payment, or contract payment of any local improvement district shall become due and there is insufficient funds in the local improvement district fund for the payment thereof, there shall be paid from said local improvement district guarantee fund, by warrant or by such other means as is called for in the contract, a sufficient amount, which together with the balance in the local improvement district fund shall be sufficient to redeem and pay said bond or coupon or contract payment in full. Said warrants against said guarantee fund shall draw interest at a rate determined by the board and said bonds and interest payments shall be paid in their order of presentation or serial order. Whenever there shall be paid out of the guarantee fund any sum on account of principal or interest of a local improvement bond or warrant or contract the irrigation district, as trustee for the fund, shall be subrogated to all of the rights of the owner of the bond or contract amount so paid, and the proceeds thereof, or of the assessment underlying the same shall become part of the guarantee fund. There shall also be paid into such guarantee fund any interest received from bank deposits of the fund, as well as any surplus remaining in any local improvement district fund, after the payment of all of its outstanding bonds or warrants or contract indebtedness which are payable primarily out of such local improvement district fund. [1983 c 167 § 224; 1981 c 156 § 31; 1970 ex.s. c 70 § 6; 1935 c 128 § 2; RRS § 7464-2. Formerly RCW 87.36.090.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

*Levies, amount—Special funds: RCW 87.03.260.*

**87.03.515 Local improvement districts—Refunding bonds.** It shall be lawful for any irrigation district which has issued local improvement district bonds for said improvements, as in this chapter provided, to issue in place thereof an amount of general bonds of the irrigation district not in excess of such issue of local improvement district bonds, and to sell the same, or any part thereof, or exchange the same, or any part thereof, with the owners of such previously issued local improvement district bonds for the purpose of redeeming said bonds: PROVIDED, HOWEVER, That all the provisions of this chapter regarding the authorization and issuing of bonds shall apply, and: PROVIDING, FURTHER, That the issuance of said bonds shall not release the lands of the local improvement district or districts from liability for special assessments for the payment thereof: AND PROVIDED FURTHER, That the lien of any issue of bonds of the district prior in point of time to the issue of bonds or local improvement district bonds herein provided for, shall be deemed a prior lien. [1983 c 167 § 225; 1921 c 129 § 30; 1917 c 162 § 15; RRS § 7465. Formerly RCW 87.36.100.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.03.520 Local improvement districts—Contracts with state or United States for local improvement work.** Any irrigation district may contract with the United States, or the state of Washington, for local improvement work, and for such purpose may form local improvement districts as herein provided.

Authorization of local improvement district bonds or of contract with the United States, or the state of Washington, for local improvement work may be confirmed in the same manner as provided in RCW 87.03.785 to 87.03.805, inclusive. [1921 c 129 § 31; 1917 c 162 § 16; RRS § 7466. Formerly RCW 87.36.110.]

**87.03.522 Irrigation district authorized to finance local improvements with general district funds.** In lieu of the issuance of local improvement district bonds or the entering into a contract with the United States or the state of Washington, or both, to secure the funds for or to repay the cost of any improvement to be charged, in whole or in part, against any local improvement district organized pursuant to this chapter, any irrigation district may finance the cost of said local improvement with any general district funds which may be available for said purpose and provide, in such manner as the district's directors may determine, for the repayment, with or without interest as the district's directors determine, through assessments against the lands in the local improvement district levied in the same manner authorized by this chapter of said general district moneys thus advanced. [1983 c 167 § 226; 1970 ex.s. c 70 § 8.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.03.525 Local improvement districts—Provisions applicable to districts formerly organized.** Any local improvement district heretofore duly organized may avail itself of and be subject to any of the provisions of this chapter increasing the number of annual installments, not to exceed fifty, after the directors of the irrigation district duly adopt a

resolution to that effect, and it shall be the duty of the board of directors to adopt such resolution whenever in the judgment of the board the best interests of the local improvement district will be served thereby, and the interests of the irrigation district will not be jeopardized. [1970 ex.s. c 70 § 7; 1919 c 180 § 17; RRS § 7467. Formerly RCW 87.36.120.]

**87.03.526 Local improvement districts—Safeguarding open canals or ditches—Assessments and benefits.** Whenever a local improvement district is established within an irrigation district for the safeguarding of the public from the dangers of open canals or ditches the rate of assessment per square foot in the local district may be determined by any of the methods provided for assessment of similar improvements in cities or towns in chapter 35.44 RCW, and the lands specially benefited by such improvements shall be the same as provided in chapter 35.43 RCW for similar improvements in cities or towns. [1959 c 75 § 10. Formerly RCW 87.36.130.]

*Safeguarding open canals or ditches:* RCW 35.43.040, 35.43.045, 35.44.045, 36.88.015, 36.88.350, 36.88.380 through 36.88.400, and 87.03.480.

**87.03.527 Local improvement districts—Alternative methods of formation.** Whenever a local improvement district is sought to be established within an irrigation district, in addition to the procedures provided in RCW 87.03.480 through 87.03.525 there may be employed any method authorized by law for the formation of districts or improvement districts so that when formed it will qualify under the provisions of chapter 89.16 RCW. [1959 c 104 § 7. Formerly RCW 87.36.140.]

**87.03.530 Consolidation of irrigation districts—Authorization—Merger of smaller irrigation districts.** (1) Two or more irrigation districts may be consolidated into one district as provided in RCW 87.03.535 through 87.03.551 and may include in such district other lands susceptible of irrigation in the manner provided in this act, and upon the organization of such consolidated district it shall be an organized irrigation district subject to the provisions of this chapter.

(2) A smaller irrigation district may be merged into a larger irrigation district as provided in RCW 87.03.845 through 87.03.855 if the assessed acreage in the smaller district constitutes not more than thirty percent of the combined assessed acreage of the two districts. In such a proceeding, the smaller district is referred to as the "minor" irrigation district and the larger district is referred to as the "major" irrigation district. The district resulting from such a merger shall be an organized district subject to the provisions of this chapter. [1993 c 235 § 1; 1919 c 180 § 18; RRS § 7468. Formerly RCW 87.40.010.]

**87.03.535 Consolidation of irrigation districts—Proceedings for consolidation—Elections.** For the purpose of organizing a consolidated irrigation district a petition signed by fifty or a majority of the holders of title to, or evidence of title to land susceptible of irrigation within the proposed district shall be presented to the board of county commissioners of the county in which the lands or the greater portion thereof

are situated, which petition shall set forth and particularly describe the proposed boundaries of such district, and the name of each existing irrigation district proposed to be included therein, and shall pray that the territory embraced within the boundaries of such proposed district may be organized as a consolidated irrigation district. Such petition shall be accompanied by bond as provided in RCW 87.03.020 and thereupon the same proceedings shall be had for the organization of such consolidated district as is provided in RCW 87.03.020 and 87.03.035 through 87.03.045, and the organization of such consolidated district shall be perfected in the same manner as provided in this chapter for the organization of new districts, except as otherwise provided in this section. The board of directors of each irrigation district proposed to be included in such consolidated district shall be served with a copy of the petition for the organization of such consolidated district together with notice at the time and place of hearing of such petition, at least twenty days prior to such hearing, and the board of county commissioners upon the hearing of such petition shall not grant the same or call an election if it shall appear that the board of directors of any existing irrigation district proposed to be included in such consolidated district have by resolution, regularly passed and entered upon the minutes of the directors meetings of such district, voted against the inclusion of such district into such proposed consolidated district. The board of county commissioners upon the hearing of such petition, shall not modify the boundaries of the proposed district to exclude any of the lands which are contained in any of the existing districts proposed to be included in such consolidated districts, and the order calling an election shall provide an election by the electors of each existing district proposed to be included in such consolidated district, and for an election by the electors of that part of the proposed district not included in any existing district, but no elector may cast more than one vote at such election. Such proposed district shall not be declared organized unless two-thirds of all votes cast in each existing district shall be Irrigation District—Yes, and unless two-thirds of all the votes cast in that part of the proposed district not included in any existing district shall be Irrigation District—Yes. If the organization of such consolidated district is not effected the organization of the district proposed to be included in such consolidated district shall not be affected. [1919 c 180 § 19; RRS § 7469. Formerly RCW 87.40.020.]

**87.03.540 Consolidation of irrigation districts—Directors—Disposition of affairs of included districts.** The board of directors of each included district shall hold office until the board of directors of the consolidated district shall have been elected and shall have qualified, and thereupon the term of office of the directors of such included district shall terminate, and the board of directors of such consolidated district shall have and exercise all the powers and duties in regard to such included district as were vested in the board of directors of such district. Each organized district included in a consolidated district shall either retain its corporate existence so far as necessary for the purpose of carrying out all contracts of such district, and until its indebtedness has been paid in full, or the board of directors of the consolidated district may constitute each such included district a local improvement district for the purpose of carrying out the obli-

gations of, such included district and shall have all the power possessed by the board of directors of such included district to carry out all contracts of such included district to levy, assess and cause to be collected any and all assessments or charges against all of the land within such local improvement district that may be necessary or required to provide for the payment of all the bonds, warrants, and other indebtedness thereof, and to provide for the construction, reconstruction, betterment, improvement, maintenance and operation of all such work as are for the special benefit of the land in such local improvement district. Until such assessments shall have been collected and all indebtedness of the respective included districts paid, separate funds shall be maintained for each such district as were maintained in such included districts prior to the consolidation. A petition shall not be required for the establishment of the lands of such included districts as local improvement districts. [1919 c 180 § 20; RRS § 7470. Formerly RCW 87.40.030.]

*Board's powers and duties generally: RCW 87.03.140.*

**87.03.545 Consolidation of irrigation districts—Obligations of included districts unaffected.** The inclusion of an organized district into a consolidated district shall not affect or impair any bonds or obligations of such included district and the holders of the bonds of any such included district shall be entitled to all remedies for the enforcement of the same as if such district had not been consolidated, and all obligations that shall have been incurred by any district prior to its being included in a consolidated district shall be a prior lien to any obligation that may be incurred against such land under such consolidated district: PROVIDED, HOWEVER, That the board of directors of the consolidated district may when authorized thereto, exchange any bonds of the consolidated district for the bonds of such included districts upon obtaining the consent of such bond holders. If any included district shall prior to the time of its inclusion into a consolidated district have entered into any contract with the United States pursuant to the provisions of this chapter, and the board of directors of such consolidated district propose to enter into a contract with the United States by the consolidated district, said board of directors, when authorized thereto, shall enter into such contract with the United States, and may in such event, with the consent of the United States, cancel any contract previously entered into between any included district and the United States. [1919 c 180 § 21; RRS § 7471. Formerly RCW 87.40.040.]

*Bonds: RCW 87.03.200 through 87.03.235.*

*Powers and duties of board (contracts with the state and United States): RCW 87.03.140.*

**87.03.550 Consolidation of irrigation districts—Property vested in new district—Credit.** The board of directors of an included district shall before the expiration of their term of office cause to be prepared and filed with the board of directors of the consolidated district a statement of all property of such included district, and upon the organization of such consolidated district, the property, of such included district shall, subject to the rights of the holders of the bonds or other obligations of such district, become the property of such consolidated district, and the board of direc-

tors of such consolidated district shall in making assessments for such consolidated district cause equitable credit to be given to the lands of such included district for such property received as is of value and benefit to the consolidated district. [1919 c 180 § 22; RRS § 7472. Formerly RCW 87.40.050.]

**87.03.551 Consolidation of irrigation districts—Procedures supplemental to boundary change provisions.** The procedure herein provided for the consolidation of districts shall not supersede or repeal any provisions of this act providing for changing the boundaries of any irrigation district, but shall be additional and supplemental thereto. [1919 c 180 § 23; RRS § 7473.]

**87.03.553 Consolidated local improvement districts for bond issuance.** For the purpose of issuing bonds only, the governing body of any irrigation district may authorize the establishment of consolidated local improvement districts. The local improvements within such consolidated districts need not be adjoining, vicinal, or neighboring. If the governing body orders the creation of such consolidated local improvement districts, the moneys received from the installment payment of the principal of and interest on assessments levied within original local assessment districts shall be deposited in a consolidated local improvement district bond redemption fund to be used to redeem outstanding consolidated local improvement district bonds. [1991 c 8 § 1.]

**87.03.555 Change of boundaries authorized—Effect.** The boundaries of any irrigation district now or hereafter organized under the provisions of this chapter may be changed in the manner herein prescribed, but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; nor shall it affect, impair or discharge any contract, obligation, lien or charge for or upon which it was or might become liable or chargeable, had such change of its boundaries not been made, except as hereinafter expressly in RCW 87.03.645 prescribed: PROVIDED, That in case contract has been made between the district and the United States, or the state of Washington, as in RCW 87.03.140 provided, no change shall be made in the boundaries of the district, and the board of directors shall make no order changing the boundaries of the district until the secretary of the interior or the director of ecology shall assent thereto in writing and such assent be filed with the board of directors. [1988 c 127 § 46; 1921 c 129 § 32; 1915 c 179 § 21; 1889-90 p 694 § 47; RRS § 7474. Formerly RCW 87.44.010.]

*Consolidation of irrigation districts: RCW 87.03.530 through 87.03.551.*

**87.03.560 Adding lands to district—Petition, contents—Acknowledgment.** The holder or holders of title, or evidence of title, representing one-half or more of any body of lands may file with the board of directors of an irrigation district a petition in writing, praying that the boundaries of the district may be so changed as to include such lands. The petition shall describe the boundaries of the parcel or tract of land, and shall also describe the boundaries of the several parcels owned by the petitioners, if the petitioners be the

owners respectively of distinct parcels, but such descriptions need not be more particular than they are required to be when such lands are entered by the county assessor in the assessment book. Such petition must contain the assent of the petitioners to the inclusion within the district of the parcels or tracts of land described in the petition, and of which the petition alleges they are respectively the owners; and it must be acknowledged in the same manner that conveyances of land are required to be acknowledged. [2001 c 149 § 3; 1889-90 p 694 § 48; RRS § 7475. Formerly RCW 87.44.020, part.]

*Acknowledgments: Chapter 64.08 RCW.*

**87.03.565 Adding lands to district—Notice—Contents—Service.** The secretary of the board of directors shall cause a notice of the filing of such petition to be published in the same manner and for the same time that notice of special elections for the issue of bonds are required by this chapter to be given. The notice shall state the filing of such petition and the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition, and it shall notify all persons interested in or that may be affected by such change of the boundaries of the district to appear at the office of said board at a time named in said notice, and show cause in writing, if any they have, why the change in the boundaries of said district, as proposed in said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioners shall advance to the secretary sufficient money to pay the estimated costs of all proceedings under this chapter. [1963 c 68 § 3; 1921 c 129 § 33; 1889-90 p 695 § 49; RRS § 7476. Formerly RCW 87.44.030.]

*Notice of special elections for the issue of bonds: RCW 87.03.200.*

*Official paper for publication: RCW 87.03.020.*

**87.03.570 Adding lands to district—Hearing—Assent.** The board of directors, at the time and place mentioned in said notice, or at such other time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all the objections thereto presented in writing by any person showing cause, as aforesaid, why said proposed change of the boundaries of the district should not be made. The failure by any person interested in said district, or in the matter of the proposed change of its boundaries, to show cause in writing, as aforesaid, shall be deemed and taken as an assent on his part to a change of the boundaries of the district as prayed for in said petition, or to such a change thereof as will include a part of said lands. And the filing of such petition with said board, as aforesaid, shall be deemed and taken as an assent on the part of each and all of such petitioners to such a change of said boundaries that they may include the whole or any portion of the lands described in said petition. [1889-90 p 695 § 50; RRS § 7477. Formerly RCW 87.44.040.]

**87.03.575 Adding lands to district—Payment for benefits received required.** The board of directors to whom such petition to include other lands in the district is presented, shall require, as a condition precedent to the granting of the

petition, that the petitioners shall severally pay, or give approved security upon such terms as may be prescribed by the board to pay, to such district such respective sums as shall be determined by the board at the hearing above provided for, which sums shall be such equitable amount as such land shall pay having regard to placing said lands on the basis of equality with other lands in the district as to benefits received, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed. [1915 c 179 § 22; 1913 c 165 § 21; 1889-90 p 696 § 51; RRS § 7478. Formerly RCW 87.44.050.]

**87.03.580 Adding lands to district—Order.** The board of directors, if they deem it not for the best interests of the district that a change of its boundaries be so made as to include therein the lands mentioned in the petition, shall order that the petition be rejected. But if they deem it for the best interests of the district that the boundaries of said district be changed, and if no person interested in said district, or the proposed change of its boundaries, shows cause in writing why the proposed change should not be made, or if, having shown cause, withdraws the same, the board may order that the boundaries of the district be so changed as to include therein the lands mentioned in said petition, or some part thereof. The order shall describe the boundaries of lands included, as aforesaid; and for that purpose the board may cause a survey to be made of such portions of such boundary as is deemed necessary and may at its option redefine the boundaries of the district, or so much of the same as it deems advisable. [1947 c 241 § 1; 1889-90 p 696 § 52; Rem. Supp. 1947 § 7479. Formerly RCW 87.44.060, part.]

**87.03.585 Adding lands to district—Resolution.** If any person interested in said district, or the proposed change of its boundaries, shall show cause, as aforesaid, why such boundaries should not be changed and shall not withdraw the same, and if the board of directors deem it for the best interests of the district that the boundaries thereof be so changed as to include therein the lands mentioned in the petition, or some part thereof, the board shall adopt a resolution to that effect. The resolution shall describe the exterior boundaries of the lands which the board are of the opinion should be included within the boundaries of the district when changed. [1889-90 p 696 § 53; RRS § 7480. Formerly RCW 87.44.060, part.]

**87.03.590 Adding lands to district—Election—Notice—How conducted.** Upon the adoption of the resolution mentioned in RCW 87.03.585, the board shall order that an election be held within said district, to determine whether the boundaries of the district shall be changed as mentioned in said resolution; and shall fix the time at which such election shall be held, and shall cause notice thereof to be given and published. Such notice shall be given and published, and such election shall be held and conducted, the returns thereof shall be made and canvassed, and the result of the election ascertained and declared, and all things pertaining thereto conducted, in the manner prescribed by \*this act in case of a special election to determine whether bonds of an irrigation district shall be issued. The ballots cast at said election shall

contain the words "For change of boundary," or "Against change of boundary," or words equivalent thereto. The notice of election shall describe the proposed change of the boundaries in such manner and terms that it can readily be traced. [1889-90 p 697 § 54; RRS § 7481. Formerly RCW 87.44.070.]

*\*Reviser's note:* "This act" appears to refer to 1889-90 p. 697.

*Official paper for publication:* RCW 87.03.020.

*Special election for the issue of bonds:* RCW 87.03.200.

**87.03.595 Adding lands to district—Order changing boundaries—Record.** If at such election a majority of all the votes cast at said election shall be against such change of the boundaries of the district, the board shall order that said petition be denied, and shall proceed no further in the matter. But if a majority of the votes be in favor of such change of the boundaries of the district, the board shall thereupon order that the boundaries of the district be changed in accordance with said resolution adopted by the board. The said order shall describe the entire boundaries of said district, and for that purpose the board may cause a survey of such portions thereof to be made as the board may deem necessary. [1961 c 18 § 2. Prior: 1889-90 p 697 § 55; RRS § 7482. Formerly RCW 87.44.080, part.]

**87.03.600 Adding lands to district—Change of boundaries recorded—Effect.** Upon a change of the boundaries of a district being made, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the offices of county auditor and county assessor of each county within which are situated any of the lands of the district, and thereupon the district shall be and remain an irrigation district, as fully and to every intent and purpose as if the lands which are included in the district by the change of the boundaries as aforesaid had been included therein at the original organization of the district. [1961 c 18 § 3. Prior: 1921 c 129 § 34; 1889-90 p 697 § 56; RRS § 7483. Formerly RCW 87.44.080, part.]

**87.03.605 Adding lands to district—Petition to be recorded—Admissible as evidence.** Upon the filing of the copies of the order, as in RCW 87.03.600 mentioned, the secretary shall record in the minutes of the board the petition aforesaid; and the said minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the petition. [1889-90 p 698 § 57; RRS § 7484. Formerly RCW 87.44.090.]

**87.03.610 Adding lands to district—Guardian, administrator or executor may act.** A guardian, an executor or administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition in this act mentioned, and may show cause, as in this act mentioned, why the boundaries of the district should

not be changed. [1889-90 p 698 § 58; RRS § 7485. Formerly RCW 87.44.020, part.]

**Reviser's note:** (1) "Petition in this act mentioned" apparently refers to the petition provided for in RCW 87.03.560.

(2) "Show cause, as in this act mentioned" apparently refers to the show cause provided for in RCW 87.03.565.

*Guardians, etc., when land excluded from district:* RCW 87.03.690.

**87.03.615 Adding lands to districts of two hundred thousand acres—Petition.** Whenever five or a majority of the holders of title to or evidence of title to any land susceptible of irrigation from the water supply and system of works of any irrigation district in this state, comprising within its boundaries two hundred thousand or more acres of land now existing or hereafter organized, desire to have such land included in said irrigation district, they may file a petition, in writing, with the board of directors thereof praying that such land be included in such district. [1939 c 150 § 1; RRS § 7485-1. Formerly RCW 87.44.100.]

**87.03.620 Adding lands to districts of two hundred thousand acres—Time and place of hearing—Notice.** Upon the filing of the petition, the board shall fix a time and place for the hearing of the same which shall not be less than thirty days and not more than forty-five days from the date of said filing; and the board shall cause a notice of such hearing to be published prior to said hearing in three consecutive weekly issues of the official newspaper of each county in which any of said land prayed to be included is situated. [1939 c 150 § 2; RRS § 7485-2. Formerly RCW 87.44.110.]

*Official paper for publication:* RCW 87.03.020.

**87.03.625 Adding lands to districts of two hundred thousand acres—Contents of notice.** Said notice shall state the filing of the petition, describe generally the lands petitioned to be included within the operation of the district and the prayer of the petition and shall notify all persons interested in or that may be affected by such inclusion to appear at the time and place named in the notice, and show cause in writing, if any they have, why such lands or any part of the same should not be included within operation of the district. Such notice shall have the name of the secretary and of the district either subscribed or subprinted thereto. [1939 c 150 § 3; RRS § 7485-3. Formerly RCW 87.44.120.]

**87.03.630 Adding lands to districts of two hundred thousand acres—Hearing—Order including lands.** The board of directors of the district shall meet at the time and place specified in the notice and shall have full authority to determine all matters pertaining to the petition, including the denial as well as the granting of said petition or any part thereof; and if it appears at said hearing, or at any adjournment thereof which may be had not to exceed in all thirty days, that the land or any portion thereof petitioned to be included within the district, is susceptible of irrigation from the water supply and system of works of the said district and will be benefited by such irrigation; and if at said hearing or at any adjournment thereof as aforesaid, not more than fifty percent of the holders of title or evidence of title to the lands described in the petition and proposed to be included file their objections in writing to the inclusion of such land within the

time and as in \*this act provided, the said board shall make and enter in the records of their proceedings an order including said land, or such portion thereof as in their judgment is susceptible of irrigation and will be benefited as aforesaid, within the operation of said district. [1939 c 150 § 4; RRS § 7485-4. Formerly RCW 87.44.130, part and 87.44.140, part.]

**\*Reviser's note:** "This act" is codified as RCW 87.03.615 through 87.03.640.

**87.03.635 Adding lands to districts of two hundred thousand acres—Denial of petition.** If at said hearing or at any adjournment thereof, the board of directors shall determine that said land is not susceptible of irrigation and will not be benefited as aforesaid by inclusion in the district, or if more than fifty percent of the holders of title to or evidence of title to the land described in the petition file their objections in writing within the time and as aforesaid, then the board of directors shall deny said petition and shall make and enter in the records of their proceedings an order to that effect. [1939 c 150 § 5; RRS § 7485-5. Formerly RCW 87.44.130, part.]

**87.03.640 Adding lands to districts of two hundred thousand acres—Order filed—Effect.** A certified copy of the order of the board of directors including any lands within the operation of the district under the provisions of \*this act shall be filed with the county assessor and with the county auditor of each county in which any part of such included lands is situated, and from and after the date of such filing such land shall be subject to all the obligations and entitled to all the privileges of lands within the operation of the district. [1939 c 150 § 6; RRS § 7485-6. Formerly RCW 87.44.140, part.]

**\*Reviser's note:** "This act," see note following RCW 87.03.630.

**87.03.645 Exclusion of lands from district—Effect.** The boundaries of any irrigation district or consolidated irrigation district, now or hereafter organized under the provisions of this chapter, may be changed, and tracts of land which were included within the boundaries of such district, or former irrigation districts which were included within the boundaries of such consolidated district, at or after its organization under the provisions of this chapter, may be excluded therefrom in the manner herein prescribed; but neither such change of the boundaries of the district or consolidated district, nor such exclusion of lands from the district, nor such exclusion of a former district from a consolidated district, shall impair or affect its organization or the rights of the district in or to property, except that all property of a consolidated district, the title to which was derived from a former district by, and at the time of, the consolidation shall revert to and become the property of such former district when reestablished as herein provided; nor shall it affect, impair or discharge any contract, obligation, lien, or charge for or upon which such district or such consolidated district was or might become liable or chargeable had such change of its boundaries not been made, or had not any such land been excluded from such district, or any such former district been excluded from such consolidated district, unless the holders of such lien, obligation, charge or contract right chargeable against the district, or consolidated district consent to such exclusion

in the manner hereinafter provided in RCW 87.03.670 for the consent of the bondholders. [1921 c 129 § 35; 1915 c 179 § 23; 1889-90 p 698 § 60; RRS § 7486. Formerly RCW 87.44.150.]

**87.03.650 Exclusion of lands from district—Petition to exclude lands—Contents.** The owner or owners in fee of one or more tracts of land which constitute a portion of an irrigation district, or fifty or a majority of the holders of title to lands constituting any portion of an irrigation district, or consolidated district as the case may be, for which lands similar grounds for exclusion may exist, or fifty or a majority of the holders of title to lands which constituted a former irrigation district included with a consolidated district, may file with the board of directors of such district, or of such consolidated district, as the case may be, a petition praying that such tracts, and any other tracts contiguous thereto, or such land which constituted such former district, may be excluded and taken from said district, or consolidated district, as the case may be, and in the latter case that such former district may be reestablished. The petition for the exclusion of tracts of land from a district shall describe the boundaries of the land which the petitioners desire to have excluded from the district, and also describe the land of such of said petitioners which are included within such boundaries; but the description of such lands need not be more particular or certain than is required when the lands are entered in the assessment book by the county assessor. The petition for the exclusion of a former district from a consolidated district shall give the corporate name and number of such former district and shall describe the lands of each of said petitioners by legal subdivision or lot and block numbers and name of city, town or addition of platted lands. Every such petition must be acknowledged in the same manner and form as is required in case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as the acknowledgment of such conveyance. [1921 c 129 § 36; 1889-90 p 699 § 61; RRS § 7487. Formerly RCW 87.44.160, part.]

*Acknowledgments: Chapter 64.08 RCW.*

*Property taxes—Listing of property: Chapter 84.40 RCW.*

**87.03.655 Exclusion of lands from district—Notice—Contents—Service.** The secretary of the board of directors shall cause a notice of the filing of the petition to be published for at least two weeks in a newspaper of general circulation in the county where the office of the board of directors is situated, and if any portion of the territory to be excluded lies within another county or counties, then the notice shall be so published in a newspaper of general circulation within each of the counties. The notice shall state the filing of the petition, the names of the petitioners, a description of the lands, or the name and number of the former district, mentioned in the petition, and the prayer of the petition; and it shall notify all persons interested in or that may be affected by the change of the boundaries of the district to appear at the office of the board at a time named in the notice, and show cause in writing, if any they have, why the change of the boundaries of the district, as proposed in the petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the

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board next after the expiration of the time for the publication of the notice. [1985 c 469 § 89; 1921 c 129 § 37; 1889-90 p 699 § 62; RRS § 7488. Formerly RCW 87.44.170.]

*Official paper for publication: RCW 87.03.020.*

**87.03.660 Exclusion of lands from district—Hearing—Assent.** The board of directors, at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition, and all objections thereto presented in writing, by any person showing cause, as aforesaid, why the prayer of said petition should not be granted. The failure of any person interested in said district or consolidated district to show cause, in writing, why the tract or tracts of land mentioned in said petition should not be excluded from said district, or the former district mentioned should not be excluded from the consolidated district, as the case may be, shall be deemed and taken as an assent by him to such exclusion, and the filing of such petition with such board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to such exclusion. [1921 c 129 § 38; 1889-90 p 700 § 63; RRS § 7489. Formerly RCW 87.44.180.]

**87.03.665 Exclusion of lands from district—Order denying or granting petition.** The board of directors, if they deem it not for the best interest of the district, or consolidated district, as the case may be, that the lands, or the former district, mentioned in the petition, or some portion thereof, should be excluded from said district, or consolidated district, shall order that said petition be denied; but if they deem it for the best interests of the district, or consolidated district, as the case may be, that the lands, or the former district, as the case may be, be excluded from the district, or consolidated district, and if no person interested in the district shows cause, in writing, why the prayer of the petition should not be granted, or if having shown cause withdraws the same, and also, if there be no outstanding bonds of the district, and no contract between the district and the United States, or the state of Washington, then the board may order that the lands mentioned in the petition, or some defined portion thereof, or the former district mentioned in the petition, be excluded from the district, or consolidated district, as the case may be, and the former district be reestablished. [1921 c 129 § 39; 1915 c 179 § 24; 1889-90 p 700 § 64; RRS § 7490. Formerly RCW 87.44.190.]

*Board's powers and duties generally (contracts with state and United States): RCW 87.03.140.*

**87.03.670 Exclusion of lands from district—Assent of bondholders.** If there be outstanding bonds of the district, or consolidated district, as the case may be, or if such district shall have entered into a contract with the United States, or the state of Washington, then the board may adopt a resolution to the effect that the board deems it to the best interest of the district that the lands mentioned in the petition, or some portion thereof, or the former district mentioned in the petition, as the case may be, should be excluded from the district, or consolidated district, and the former district reestablished. The resolution shall describe such lands so that the boundaries can readily be traced, or shall give the corporate name

and number of the former district. The holders of such outstanding bonds may give their assent, in writing, to the effect that they severally consent that the board may make an order by which the lands, or the former district, mentioned in the resolution may be excluded from the district, and in case contract has been made with the United States, or the state of Washington, the secretary of the interior or the director of ecology may assent to such change. The assent must be acknowledged by the several holders of such bonds in the same manner and form as is required in case of a conveyance of land, and the acknowledgment shall have the same force and effect, as evidence, as the acknowledgment of such conveyance. The assent of the secretary of the interior need not be acknowledged. The assent shall be filed with the board, and in the office of the county clerk in each county comprised within the district and must be recorded in the minutes of the board; and said minutes, or certified copy thereof, shall be admissible in evidence with the same effect as the said assent; but if such assent of the bondholders, and in case of contract with the United States, or the state of Washington, such assent of the secretary of the interior or the director of ecology, be not filed, the board shall deny and dismiss said petition. [1988 c 127 § 47; 1921 c 129 § 40; 1915 c 179 § 25; 1889-90 p 701 § 65; RRS § 7491. Formerly RCW 87.44.200.]

*Acknowledgments: Chapter 64.08 RCW.*

*Board's powers and duties generally (contracts with state and United States): RCW 87.03.140.*

*Certificate of acknowledgment—Evidence: RCW 64.08.050.*

**87.03.675 Exclusion of lands from district—Order for election—Notice—Conduct of election.** If the assent aforesaid of the holders of said bonds be filed and entered of record as aforesaid, and if there be objections presented by any person showing cause as aforesaid, which have not been withdrawn, then the board may order an election to be held in each district to determine whether an order shall be made excluding said land from said district, or excluding said former district from said consolidated district, as the case may be, and such former district be reestablished, as mentioned in said resolution. The notice of such election shall describe the boundary of all lands, or shall give the corporate name and number of the former district, which it is proposed to exclude, and such notice shall be published for at least two weeks prior to such election, in a newspaper published within the county where the office of the board of directors is situated; and if any portion of such territory to be excluded lie within another county or counties, then said notice shall be so published in a newspaper published within each of such counties. Such notice shall require the electors to cast ballots, which shall contain the words "For exclusion" and "Against exclusion", or words equivalent thereto. Such election shall be conducted in the manner prescribed in this chapter for the holding of special elections on the issuance of bonds. In every case where the petition is for the exclusion of a former district from a consolidated district the resolution of the board ordering an election shall provide for the holding of such election separately in the territory comprising such former district and in the territory comprising that portion of the consolidated district not included in such former district, and for canvassing and counting of the votes cast at such

election separately. [1921 c 129 § 41; 1915 c 179 § 26; 1889-90 p 701 § 66; RRS § 7492. Formerly RCW 87.44.210.]

*Special elections on the issuance of bonds: RCW 87.03.200.*

**87.03.680 Exclusion of lands from district—Procedure following election—Order of exclusion.** If at any such election a majority of all the votes cast shall be against exclusion the board shall deny and dismiss said petition and proceed no further in said matter; but if in the case of a petition for the exclusion of lands from a district a majority of such votes be in favor of the exclusion of said lands from the district, the board shall thereupon order that the said lands mentioned in said resolution be excluded from the district; if in the case of a petition for the exclusion of a former district from a consolidated district, a majority of the votes cast in such former district shall be against exclusion, or a majority of the votes cast in the remaining portion of the consolidated district shall be against exclusion, the board shall deny and dismiss the petition and proceed no further in the matter; but if in the case of a petition for such exclusion of a former district a majority of the votes cast in such former district and a majority of the votes cast in the remaining portion of the consolidated district shall be in favor of the exclusion of such former district, the board shall thereupon order that the lands comprising such former district be excluded from the consolidated district and that such former district shall be and is reestablished as an irrigation district created and established under the provision of this chapter and that the title to all property formerly belonging to, and all property within the boundaries of said former district, shall be and is vested in such reestablished district, and shall call an election to be held in such reestablished district for the election of a board of directors thereof, and direct the publication of notices of such election in the manner provided in this chapter for the publication of notice of special elections. The board entering such order shall continue to administer the affairs of such reestablished district until the directors elected at such election shall have qualified.

The said order excluding land from a district shall describe the boundaries of the lands excluded, should the exclusion change the boundaries of the district, and in case of the exclusion of a former district from a consolidated district, shall describe the boundaries of the reestablished district and the boundaries of the district remaining; and for that purpose the board may cause a survey to be made of such portions of the boundaries as the board may deem necessary. [1961 c 18 § 4. Prior: 1947 c 241 § 2; 1921 c 129 § 42; 1889-90 p 702 § 67; Rem. Supp. 1947 § 7482 (RRS § 7493). Formerly RCW 87.44.220.]

**87.03.685 Exclusion of lands from district—Orders to be recorded—Effect.** Upon the entry in the minutes of the board of any of the orders hereinbefore mentioned, a copy thereof, certified by the president and the secretary of the board, shall be filed for record in the offices of the county auditor and the county assessor of each county within which are situated any of the lands of the district, and thereupon said district, and said consolidated district and said reestablished district, if any, shall each be and remain an irrigation district as fully, as to every intent and purpose, as it would be had no

change been made in the boundaries thereof, or had the lands excluded therefrom never constituted a portion thereof. [1921 c 129 § 43; 1889-90 p 702 § 68; RRS § 7494. Formerly RCW 87.44.230.]

**87.03.690 Exclusion of lands from district—Guardian, executor or administrator may sign and acknowledge.** A guardian, and executor or an administrator of an estate who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward or the estate which he represents, upon being thereto properly authorized by the proper court, sign and acknowledge the petition in this act mentioned, and may show cause, as in this act provided, why the boundaries of the district should not be changed. [1889-90 p 703 § 71; RRS § 7496. Formerly RCW 87.44.160, part.]

**Reviser's note:** (1) "Petition in this act mentioned" apparently refers to the petition provided for in RCW 87.03.650.

(2) "Show cause, as in this act provided" apparently refers to the show cause provided for in RCW 87.03.655.

*Guardians, etc., when land added to district:* RCW 87.03.610.

**87.03.695 Exclusion of lands from district—Refunds—Cancellation of assessments.** In case of the exclusion of any lands under the provisions of this act, the board of directors shall determine what refund, if any, shall be made to any person or persons who have paid any assessments to such district on any lands so excluded, but such refund, if any, shall be on a basis equitable alike to lands remaining in the district and lands excluded therefrom. Such payment shall be made in the manner as other claims against the district, and from such fund or funds as the board of directors may designate, and which may be legally applied to such payments. The board may, in its discretion, determine what portion, if any, of the assessments remaining unpaid shall be canceled. Said cancellation, if any, shall be accomplished by an order entered upon the minutes of the board and certified to the office of the county treasurer. Upon the filing of such certified order, said assessments, or any portion thereof, canceled by said order shall be marked "Canceled" upon the treasurer's records. The lien of such portion of said assessments, if any, as the board shall refuse to cancel, shall continue against the lands excluded, and the district shall retain all of its rights to such assessments or portions thereof as if said lands had not been excluded. [1921 c 129 § 44; 1913 c 165 § 22; 1889-90 p 703 § 72; RRS § 7497. Formerly RCW 87.44.240.]

**87.03.700 Connecting system to lower drainage district—Procedure.** When an irrigation district desires to connect its system of drainage with that of a lower drainage district or districts, it shall make the lower district or districts a party to the proceedings to construct its system, and allege in its petition that the connection is needed to afford a proper outlet and that the outlet is sufficient for both districts. If the lower system or systems must be improved to support the additional burden, the petition shall be accompanied by plans and specifications therefor. The owners of all lands in the lower district or districts affected thereby and also persons

having an interest therein shall be made parties to the action and assessment for damages shall be the same as is provided by law for the establishment of the drainage system in the irrigation district. [1955 c 367 § 2. Formerly RCW 87.08.250.]

**87.03.705 Connecting system to lower drainage district—Negative finding by jury or court.** The jury, or the court if jury be waived, shall first determine whether the lower drainage system or systems when so improved will afford a sufficient drainage and outlet for both the drainage district and irrigation district, and if it finds that it will not, the finding shall terminate the proceedings so far as the connecting with the lower drainage district or districts is concerned and the costs shall be paid as in other suits: PROVIDED, That the irrigation district may maintain said suit for the purpose of acquiring the necessary rights of way from the lower drainage district or districts and the landowners in said lower district or districts that will not interfere with the operation and maintenance of the drainage system in the lower district or districts. [1955 c 367 § 3. Formerly RCW 87.08.260.]

**87.03.710 Connecting system to lower drainage district—Affirmative finding by jury or court—Assessments.** If the jury, or the court if jury be waived, finds the outlet and drainage sufficient it shall assess the damages sustained by the lands in the lower drainage district or districts by reason of the improvement, together with awards for damaging and taking lands for rights of way required, which shall be paid by the irrigation district in the same manner as such payments are made in establishing the system in the irrigation district, and the cost of improving the lower system or systems to the extent the improvement benefits lands in the irrigation district shall be assessed to the lands in the irrigation district as other costs of drainage improvement are assessed. [1955 c 367 § 4. Formerly RCW 87.08.270.]

**87.03.715 Connecting system to lower drainage district—Increased maintenance costs.** The lower district or districts may require the jury or court to determine any increased cost to it in annual maintenance of its system as improved, and judgment shall be rendered against the irrigation district in favor of the lower drainage district or districts for any amount so found, and it shall be paid annually as the cost of construction is paid, and the amount so paid shall be used by the lower drainage district or districts for maintenance. [1955 c 367 § 5. Formerly RCW 87.08.280.]

**87.03.720 Merger of district with drainage, joint drainage, consolidated drainage improvement, or water-sewer district—Power to assent.** The board of directors of an irrigation district shall, after being notified by the legislative authority of the county or counties within which the irrigation district lies of the filing of the petition therefor, have the power to assent to the proposed merger with the irrigation district of that portion of a drainage improvement district, joint drainage improvement district, consolidated drainage improvement district, or water-sewer district within its boundaries at a hearing duly called by the board to consider the proposed merger if sufficient objections thereto have not

been presented, as hereinafter provided. [1999 c 153 § 75; 1977 ex.s. c 208 § 1; 1957 c 94 § 10. Formerly RCW 87.01.240.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

*Merger of drainage improvement district with irrigation district: RCW 85.08.830 through 85.08.890.*

**87.03.725 Merger of district with drainage, joint drainage, consolidated drainage improvement, or water-sewer district—Notice—Contents—Publication—Show cause against merger.** The secretary of the board of directors shall cause a notice of the proposed merger to be posted and published in the same manner and for the same time as notice of a special election for the issue of bonds. The notice shall state that a petition has been filed with the legislative authority of the county or counties within which the irrigation districts lies by the board of supervisors of the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district or by the board of commissioners of a water-sewer district requesting that the drainage improvement district, joint drainage improvement district, consolidated drainage improvement district, or water-sewer district be merged with the irrigation district or irrigation districts, the names of the petitioners and the prayer thereof, and it shall notify all persons interested in the irrigation district to appear at the office of the board at the time named in the notice, and show cause in writing why the proposed merger should not take place. The time to show cause shall be the regular meeting of the board of directors of the irrigation district next after the expiration of the time for the publication of the notice. [1999 c 153 § 76; 1977 ex.s. c 208 § 2; 1957 c 94 § 11. Formerly RCW 87.01.250.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

*Official paper for publication: RCW 87.03.020.*

**87.03.730 Merger of district with drainage, joint drainage, or consolidated drainage improvement district—Hearing—Failure to show cause deemed assent.** At the time of hearing, or at such other time to which the hearing may be adjourned, the board of directors of the irrigation district shall hear the proposal of merger and any objections thereto. Failure to show cause shall be deemed as assent to the proposed merger. [1957 c 94 § 12. Formerly RCW 87.01.260.]

**87.03.735 Merger of district with drainage, joint drainage, or consolidated drainage improvement district—Assent, refusal to assent—Effect of show cause against merger.** The board of directors of the irrigation district, if it deems it not for the best interest of the irrigation district that the proposed merger take place, shall enter an order refusing to assent to the merger. But, if it deems it to be to the best interest of the irrigation district that the merger take place and, if twenty-five or more persons interested in the irrigation district have not shown cause in writing why the proposed merger should not take place, or, if having shown cause, withdraw the same, the board of directors of the irrigation district may enter an order assenting to the proposed merger.

If twenty-five or more persons interested in the irrigation district shall show cause, as aforesaid, why the proposed merger should not take place and shall not withdraw the same, and if the irrigation district board nevertheless deems it for the best interest of the irrigation district that the proposed merger take place, the board shall adopt a resolution to that effect. [1957 c 94 § 13. Formerly RCW 87.01.270.]

**87.03.740 Merger of district with drainage, joint drainage, or consolidated drainage improvement district—Election.** Upon the adoption of the resolution, the board shall order an election held within the irrigation district on the question of the proposed merger and shall fix the time thereof and cause notice to be published. The notice shall be given and the election conducted in the manner as for special elections on a bond issue of the district. The ballots shall contain the words "Merger, Yes" and "Merger, No" or words equivalent thereto. [1957 c 94 § 14. Formerly RCW 87.01.280.]

*Bonds—Election: RCW 87.03.200.*

**87.03.745 Merger of district with drainage, joint drainage, or consolidated drainage improvement district—Order of assent or refusal—Filing.** If a majority of the votes cast at the election are against the merger, the irrigation district board shall enter an order refusing to assent to the merger. If a majority of the votes cast favor the merger, the board shall enter an order assenting to the proposed merger. A copy of the order certified by the president and secretary of the board shall be filed with the board of county commissioners or, in case the merger involves a joint drainage improvement district, with the boards of county commissioners of the counties in which the joint drainage improvement district is situated. [1957 c 94 § 15. Formerly RCW 87.01.290.]

**87.03.750 Exclusion of nonirrigable land when state holds all outstanding bonds—Resolution.** Whenever any irrigation district organized and existing under the laws of this state, shall have entered into a contract, or contracts, with the department of ecology, for the sale to and purchase by the department of an entire authorized issue of the bonds of the district, for the purpose of procuring funds for district purposes, including the construction of an irrigation system for the district, and the department of ecology has advanced, under such contract, or contracts, funds for such purposes, and such funds have been expended for the purposes advanced, and there are no outstanding bonds of the district other than those which the district has contracted to sell the department of ecology, and it shall appear to the satisfaction of the board of directors of the district that the irrigation system, for the construction of which such funds were advanced and expended, will not furnish sufficient water for the successful irrigation of all of the lands within the district and that the district as constituted will be unable by assessments upon the lands of the district, as provided by law, to collect sufficient funds to meet the interest payments upon and pay the bonds at maturity, the board of directors of the district shall have the power by unanimous resolution to adopt a comprehensive proposed plan for reducing the boundaries of the dis-

tract, excluding therefrom such portions of the lands of the district as in the judgment of the board cannot be furnished with sufficient water for successful irrigation, and refunding to the owners of such excluded lands, respectively, any moneys paid for assessments levied by the district upon the lands excluded, and to release any such excluded lands from all unpaid assessments levied by the district, which resolution shall give the boundaries to which it is proposed to reduce the district and the description of the lands it is proposed to exclude from the district by government subdivisions, or metes and bounds. [1988 c 127 § 48; 1925 ex.s. c 138 § 1; RRS § 7505-1. Formerly RCW 87.44.250.]

**87.03.755 Exclusion of nonirrigable land when state holds all outstanding bonds—Notice of hearing—Contents.** Upon the adoption of the resolution as provided in RCW 87.03.750, the board of directors of the district shall cause to be served upon the director of the department of ecology, and to be published once a week for four successive weeks in a newspaper of general circulation in the county in which the district is situated a notice that at the time and place fixed in the notice, the board will hold a public hearing for the further consideration of the plan proposed, which notice shall set forth a copy of the resolution adopted by the board, and state that at the hearing the board will receive and consider any objections to the proposed plan and/or suggestions for modification thereof, of any person interested, and at the conclusion of the hearing, or the final adjournment thereof, the board will proceed by resolution to adopt the plan proposed, or the modification of the plan as may be determined by the board, and reduce the boundaries of the district and exclude therefrom such lands as cannot be furnished with sufficient water for successful irrigation, and provide for the repayment to the owners of the excluded lands of any assessments paid thereon, and the cancellation of all unpaid assessments against excluded lands. [1985 c 469 § 90; 1925 ex.s. c 138 § 2; RRS § 7505-2. Formerly RCW 87.44.260.]

**87.03.760 Exclusion of nonirrigable land when state holds all outstanding bonds—Adoption of resolution—Appellate review.** At the conclusion, or final adjournment, of the hearing provided for in RCW 87.03.755, the board of directors of the district shall have the power, by unanimous resolution to adopt the proposed plan, or such modification thereof as may be determined by the board, and reduce the boundaries of the district to such area as, in the judgment of the board, can be furnished with sufficient water for successful irrigation by the irrigation system of the district, and to exclude from the district all lands lying outside of such reduced boundaries, and provide for the repayment to the owners of any such excluded lands, respectively, of any sums paid for assessments levied by the district, and to cancel all unpaid assessments levied by the district against the lands excluded and release such lands from further liability therefor. Any person interested and feeling himself aggrieved by the adoption of such final resolution reducing the boundaries of the district and excluding lands therefrom, shall have a right of appeal from the action of the board to the superior court of the county in which the district is situated, which appeal may be taken in the manner provided by law for

appeals from justices' courts, and if upon the hearing of such appeal it shall be determined by the court that the irrigation system of the district will not furnish sufficient water for the successful irrigation of the lands included within the reduced boundaries of the district, or that any lands have been excluded from the district unnecessarily, arbitrarily, capriciously or fraudulently or without substantial reason for such exclusion, the court shall enter a decree canceling and setting aside the proceedings of the board of directors, otherwise the court shall enter a decree confirming the action of the board. Any party to the proceedings on appeal in the superior court, feeling himself aggrieved by the decree of the superior court confirming the action of the board of directors of the district reducing the boundaries of the district and excluding lands therefrom, may seek appellate review within thirty days after the entry of the decree of the superior court in the manner provided by law. If, at the expiration of thirty days from the entry of the final resolution of the board of directors of the district reducing the boundaries of the district and excluding lands therefrom, no appeal has been taken to the superior court of the county in which the district is situated, or if, after hearing upon appeal the superior court shall confirm the action of the district, and at the expiration of thirty days from the entry of such decree, no appellate review is sought, the boundaries of the district shall thereafter be in accordance with the resolution of the board reducing the boundaries, and all lands excluded from the district by such resolution shall be relieved from all further liability for any indebtedness of the district or any unpaid assessments theretofore levied against such lands, and the owners of excluded lands, upon which assessments have been paid, shall be entitled to warrants of the district for all sums paid by reason of such assessments, payable from a special fund created for that purpose, for which levies shall be made upon the lands remaining in the district, as the board of directors may provide. [1988 c 202 § 86; 1971 c 81 § 171; 1925 ex.s. c 138 § 3; RRS § 7505-3. Formerly RCW 87.44.270.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

*District courts—Civil procedure—Appeals: Chapter 12.36 RCW.*

**87.03.765 Exclusion of nonirrigable land when state holds all outstanding bonds—Indebtedness may be reduced.** Whenever it shall appear, to the satisfaction of the director of ecology, that the irrigation system of any irrigation district, to which the department of ecology of the state of Washington under a contract with the district for the purchase of its bonds, has advanced funds for the purpose of constructing an irrigation system for the district, has been found incapable of furnishing sufficient water for the successful irrigation of all of the lands of such district, and that the board of directors of such district has reduced the boundaries thereof and excluded from the district, as provided in RCW 87.03.750 through 87.03.760, sufficient lands to render such irrigation system adequate for the successful irrigation of the lands of the district, and that more than thirty days have elapsed since the adoption of the resolution by the board of directors reducing the boundaries of the district and excluding lands therefrom, and no appeal has been taken from the action of the board, or that the action of the board has been confirmed by the superior court of the county in which the

district is situated and no appeal has been taken to the supreme court or the court of appeals, or that upon review by the supreme court or the court of appeals the action of the board of directors of the district has been confirmed, the director of ecology shall be and he is hereby authorized to cancel and reduce the obligation of the district to the department of ecology, for the repayment of moneys advanced for the construction of an irrigation system for the district, to such amount as, in his judgment, the district will be able to pay from revenues derived from assessments upon the remaining lands of the district, and to accept, in payment of the balance of the obligation of the district, the authorized bonds of the district, in numerical order beginning with the lowest number, on the basis of the percentage of the face value thereof fixed in contracts between the district and the department of ecology, in an amount equal to said balance of the obligation of the district, in full and complete satisfaction of all claims of the department of ecology against the district. [1988 c 202 § 87; 1971 c 81 § 172; 1925 ex.s. c 138 § 4; RRS § 7505-4. Formerly RCW 87.44.280.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**87.03.770 Exclusion of nonirrigable land when state holds all outstanding bonds—Reconveyance of excluded land formerly foreclosed to district.** Whenever the boundaries of any irrigation district have been reduced and lands excluded from such district, as provided in \*this act, the directors of such district shall be authorized and directed to execute and deliver to the owners, respectively, of any lands excluded from the district, which have been deeded to the district for the nonpayment of assessments theretofore levied, deeds of reconveyance and quit claim of all right, title and interest of the district in such lands, respectively. [1925 ex.s. c 138 § 5; RRS § 7505-5. Formerly RCW 87.44.290.]

\***Reviser's note:** "This act" is codified as RCW 87.03.750 through 87.03.770.

**87.03.775 Map of district.** Said board of directors shall cause a map to be made of the irrigation districts showing each forty acres, subdivision or fraction thereof, and place the same on file in their office. [1895 c 165 § 28; RRS § 7495. Formerly RCW 87.08.120.]

*Surveys, maps and plans to be prepared:* RCW 87.03.165 through 87.03.170.

**87.03.780 Proceedings for judicial confirmation—Authorization.** The board of directors of an irrigation district, now or hereafter organized under the provisions of this chapter, may commence a special proceeding in and by which the proceedings for organizing such district or the proceedings of said board and of said district, providing for and authorizing the issue and sale of the bonds or refunding bonds of said district whether said bonds or refunding bonds or any of them have or have not then been sold or any contract entered or proposed to be entered into by the district, or any contract made or entered into, or to be made or entered into, for the payment of moneys to the United States or the state of Washington in connection with which bonds be not deposited with the United States or the state of Washington as provided in RCW 87.03.140, may be judicially examined, approved and confirmed.

There may be combined with the proceeding for the confirmation of the organization and formation of said district, either of the other confirmation proceedings above mentioned. [1931 c 60 § 6; 1921 c 129 § 45; 1917 c 162 § 17; 1915 c 179 § 27; 1889-90 p 703 § 73; RRS § 7499. Formerly RCW 87.08.190.]

*Refunding bonds, 1929 act—Judicial confirmation:* RCW 87.22.280.

**87.03.785 Proceedings for judicial confirmation—Petition—Contents.** The board of directors of the irrigation district shall file in the superior court of the county in which the lands of the district, or some portion thereof, are situated, a petition praying in effect, that the proceedings aforesaid may be examined, approved, and confirmed by the court. The petition shall state the facts, showing the proceedings had for the organization of said district or the proceedings had for the issue and sale of said bonds or for the issue and sale of said refunding bonds, or for the authorization of contract with the United States, or other contract described in said petition; and shall state generally that the irrigation district was duly organized, and that the first board of directors was duly elected; but the petition need not state the facts showing such organization of the district, or the election of said first board of directors. [1931 c 60 § 7; 1917 c 162 § 18; 1915 c 179 § 28; 1889-90 p 703 § 74; RRS § 7500. Formerly RCW 87.08.200.]

**87.03.790 Proceedings for judicial confirmation—Notice of hearing.** The court shall fix the time for the hearing of said petition, and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall be given and published in the same manner and for the same length of time that a notice of a special election provided for by this chapter to determine whether the bonds of said district shall be issued is required to be given and published. The notice shall state the time and place fixed for the hearing of the petition, and the prayer of the petition, and that any person interested in the organization of said district or in the proceedings for the issue or sale of said bonds or refunding bonds or for the authorization of contract with the United States, or the state of Washington, or any other contract, may, on or before the day fixed for the hearing of said petition, demur to or answer said petition. The petition may be referred to and described in said notice as the petition of the board of directors of irrigation district (giving its name) praying that the proceedings for the organization of said district or the proceedings for the issue and sale of the bonds of said district or for the authorization of contract with the United States, or the state of Washington, or other contracts, may be examined, approved, and confirmed by said court. [1931 c 60 § 8; 1921 c 129 § 46; 1917 c 162 § 19; 1915 c 179 § 29; 1889-90 p 704 § 75; RRS § 7501. Formerly RCW 87.08.210.]

*Notice of a special election on bonds:* RCW 87.03.200.

*Official paper for publication:* RCW 87.03.020.

**87.03.795 Proceedings for judicial confirmation—Demurrer or answer—Procedure.** Any person interested in said district or in the issue or sale of said bonds in the issue or sale of refunding bonds or in the making of a contract with the United States or any contract referred to in said petition may demur to or answer said petition. The statutes of this

state respecting the demurrer, and the answer to a verified complaint, shall be applicable to a demurrer and answer to said petition. The person so demurring to or answering said petition shall be the defendant to said special proceeding, and the board of directors shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer must, for the purposes of said special proceeding, be taken as true, and each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by the statutes of this state, which are not inconsistent with the provisions of this chapter, are applicable to the special proceeding herein provided for. A motion for a new trial must be made upon the minutes of the court. The order granting a new trial must specify the issue to be reexamined on such new trial, and the findings of the court upon the other issues shall not be affected by such order granting a new trial. [1931 c 60 § 9; 1915 c 179 § 30; 1889-90 p 704 § 76; RRS § 7502. Formerly RCW 87.08.220.]

**Rules of court:** Cf. *Superior Court Civil Rules*.

*Civil procedure:* Title 4 RCW.

**87.03.800 Proceedings for judicial confirmation—Jurisdiction of court—Order—Costs.** Upon the hearing of such special proceedings, the court shall have full power and jurisdiction to examine and determine the legality and validity of and approve and confirm each and all of the proceedings for the organization of said district under the provisions of this chapter from and including the petition for the organization of the district, and all other proceedings which may affect the legality of the formation of said district or the legality or validity of said bonds, or refunding bonds, and the order for the sale, and the sale thereof, and all proceedings which may affect the authorization or validity of the contract with the United States, or the state of Washington, or other contract. The court, in inquiring into the regularity, legality or correctness of said proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings, and it may approve and confirm such proceedings, in part, and disapprove and declare illegal or invalid other or subsequent parts of the proceedings. The court shall find and determine whether the notice of the filing of said petition has been duly given and published for the time and in the manner in this chapter prescribed. The costs of the special proceedings may be allowed and apportioned between all of the parties, in the discretion of the court. [1931 c 60 § 10; 1921 c 129 § 47; 1917 c 162 § 20; 1915 c 179 § 31; 1889-90 p 705 § 77; RRS § 7503. Formerly RCW 87.08.230.]

*Notice of special election on bonds:* RCW 87.03.200.

**87.03.805 Proceedings for judicial confirmation—Appeal.** An appeal from an order granting or refusing a new trial, or from the judgment, must be taken by the party aggrieved within thirty days after the entry of said order or said judgment. [1915 c 179 § 32; 1889-90 p 705 § 78; RRS § 7504. Formerly RCW 87.08.240.]

**87.03.810 Lump sum payment to district for irrigable lands acquired for highway purposes.** Whenever lands

situated in an irrigation district are acquired by the department of transportation, and the lands, at the time of their acquisition by the department of transportation, were irrigable and were being served or were capable of being served by facilities of the district to the same extent and in the same manner as lands of like character held under private ownership were served, the department of transportation, as part of the cost and expense of the acquisition of rights of way and with funds available for the acquisition and at the time of the acquisition, shall make a lump sum payment to the irrigation district in an amount that is:

(1) Sufficient to pay the pro rata share of the district's bonded indebtedness, if any, and the pro rata share of the district's contract indebtedness to the United States or to the state of Washington, if any, allocable to the lands, plus interest on the pro rata share if the indebtedness is not callable in advance of maturity; and

(2) Further, sufficient to pay any deferred installments of local improvement district assessments against the lands, if any; and

(3) Further, sufficient to produce, if invested at an annual rate of interest equivalent to that set forth in current tables issued by the state insurance commissioner, a sum of money equal to the annual increase in operation and maintenance costs against remaining lands in the district resulting from the severance from the district of the lands thus acquired by the department of transportation. For the purposes of determining the amount of the lump sum payment, the annual maintenance and operation assessment of the district shall be considered to be the average for the ten years, or so many years as the district has assessment experience if less than ten years, preceding the date of acquisition. [1984 c 7 § 380; 1959 c 303 § 1. Formerly RCW 87.01.300.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**87.03.815 Lump sum payment to district for irrigable lands acquired for highway purposes—Order relieving further district assessments.** Upon the department of transportation making the lump sum payment to the district under RCW 87.03.810, the district shall make and enter an order relieving the lands from further district assessments for the delivery of water to the lands. [1984 c 7 § 381; 1959 c 303 § 2. Formerly RCW 87.01.310.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**87.03.820 Disposal of real property—Right of adjacent owners.** Whenever as the result of abandonment of an irrigation district right of way real property held by an irrigation district is to be sold or otherwise disposed of, notice shall be given to the owners of lands adjoining that real property and such owners shall have a right of first refusal to purchase at the appraised price all or any part of the real property to be sold or otherwise disposed of which adjoins or is adjacent to their land.

Real property to be sold or otherwise disposed of under this section shall have been first appraised by the county assessor or by a person designated by him.

Notice under this section shall be sufficient if sent by registered mail to the owner, and at the address, as shown in the tax records of the county in which the land is situated.

Notice under this section shall be in addition to any other notice required by law.

After sixty days from the date of sending of notice, if no applications for purchase have been received by the irrigation district or other person or entity sending notice, the rights of first refusal of owners of adjoining lands shall be deemed to have been waived, and the real property may be sold or otherwise disposed of.

If two or more owners of adjoining lands apply to purchase the same real property, or apply to purchase overlapping parts of the real property, the respective rights of the applicants may be determined in the superior court of the county in which the real property is situated; and the court may divide the real property in question between some or all of the applicants or award the whole to one applicant, as justice may require.

Any sale or other disposal of real property pursuant to chapters 87.52, 87.53, and 87.56 RCW shall be made in accordance with the requirements of this section. [1973 c 150 § 1; 1971 ex.s. c 125 § 2.]

**87.03.825 Hydroelectric resources—Development—Legislative findings.** The legislature finds that a significant potential exists for the development of cost-effective renewable hydroelectric resources by irrigation districts, cities, towns, and public utility districts and further finds that it is in the best interests of the state and its citizens for such entities to develop that hydroelectric generating resource cooperatively whenever possible through the use of separate legal authorities. The legislature also finds that the development of such hydroelectric resources will be beneficial in meeting the present and future energy needs of the citizens of the state, will further a state purpose and policy, and will be in the public interest. [1983 c 47 § 1.]

**Severability—1983 c 47:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 47 § 7.]

**87.03.828 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts—Powers.** One or more irrigation districts and any combination of cities, towns, or public utility districts may create a separate legal authority to construct, finance, acquire, own, operate, and maintain hydroelectric facilities including, but not limited to, dams, canals, plants, transmission lines, other power equipment and the necessary property and property rights therefor, located within or outside the boundaries of the entities creating the authority, for the purpose of utilizing for the generation of electricity water power made available by and as a part of the irrigation water storage, conveyance, and distribution facilities, wasteways, and drainage water facilities which serve or may in the future serve irrigation districts, and to sell by contract on such terms and conditions as deemed appropriate by the legislative body of the authority the electric power and energy created by or generated at such hydroelectric facilities to municipal or quasi municipal corporations or cooperatives authorized to engage in the business of distributing electricity, electrical companies subject to the jurisdiction of the utilities and transportation commission, or irrigation districts.

Any authority so created shall have the same powers and only those powers granted to irrigation districts by chapter 185, Laws of 1979 ex. sess. and has such additional powers relating to its organization, right to contract in its own name, and general ability to exist and function as a separate legal authority as deemed appropriate by the entities creating it. The authority shall be created and organized by contract in the manner described in chapter 39.34 RCW and shall be a separate legal entity capable of exercising in its own name the powers granted it. No provision of chapter 39.34 RCW or any other provision of law may be interpreted to require the entities creating the authority to submit the contract creating the authority to any state, county, or municipal officer, entity, agency, or board for approval or disapproval. [1983 c 47 § 2.]

**Severability—1983 c 47:** See note following RCW 87.03.825.

**87.03.831 Hydroelectric resources—Separate legal authority—Procedures for membership and for construction and acquisition of facilities.** Cities, towns, and public utility districts not engaged in the generation, transmission, or distribution of electricity on April 19, 1983, may be members of a separate legal authority created under the provisions of RCW 87.03.828 without the necessity of obtaining prior approval of their voters. However, no such city, town, or public utility district member of such a separate legal authority may construct or acquire facilities for the generation, transmission, or distribution of electricity independently of the separate legal authority without complying with the election requirements applicable to each individual entity. [1983 c 47 § 4.]

**Severability—1983 c 47:** See note following RCW 87.03.825.

**87.03.834 Hydroelectric resources—Separate legal authority—Voter ratification of actions.** After demand made by a majority of the authority's members, the actions of an authority shall become subject to ratification and approval by the voters of its members in accordance with procedures agreed to by its members. Every contract establishing an authority shall provide appropriate procedures for ratification and approval of actions taken by the authority by the voters of its members. [1983 c 47 § 5.]

**Severability—1983 c 47:** See note following RCW 87.03.825.

**87.03.837 Hydroelectric resources—Separate legal authority—Repayment of indebtedness—Powers.** A separate legal authority shall only have power to incur indebtedness that is repayable from rates, tolls, charges, or contract payments for services or electricity provided by the authority and to pledge such revenues for the payment and retirement of indebtedness issued for the construction or acquisition of hydroelectric facilities. An authority shall not have power to levy taxes or to impose assessments for the payment of obligations of the authority. Every bond or other evidence of indebtedness issued by an authority shall provide (1) that repayment shall be limited solely to the revenues of the authority, and (2) that no member of the authority shall be obligated to repay directly or indirectly any obligation of the authority except to the extent of fair value for services actually received from the authority. No member may pledge its

revenues to support the issuance of revenue bonds or other indebtedness of an authority. This section shall not be construed to prohibit members of an authority from paying the necessary expenses of organizing and administering the authority and of studies performed, applications prepared, and consultants retained with regard to projects the authority is studying, developing, constructing, or operating. [1983 c 47 § 6.]

**Severability—1983 c 47:** See note following RCW 87.03.825.

**87.03.840 Chapter supplementary—When.** This chapter supplements and neither restricts nor limits any powers which a city, town, public utility district, or irrigation district might otherwise have under any laws of this state, except that no such authority created by RCW 87.03.828 and no city, town, or public utility district member of an authority may condemn for the benefit of the authority any plant, works, dam, facility, right, or property owned by any city, town, irrigation district, public utility district, or electrical company subject to the jurisdiction of the utilities and transportation commission. [1983 c 47 § 3.]

**Severability—1983 c 47:** See note following RCW 87.03.825.

**87.03.845 Merger of minor irrigation district into major irrigation district—Proceedings to initiate—Notice—Hearing.** This section and RCW 87.03.847 through 87.03.855 provide the procedures by which a minor irrigation district may be merged into a major irrigation district as authorized by RCW 87.03.530(2).

To institute proceedings for such a merger, the board of directors of the minor district shall adopt a resolution requesting the board of directors of the major district to consider the merger, or proceedings for such a merger may be instituted by a petition requesting the board of directors of the major district to consider the merger, signed by ten owners of land within the minor district or five percent of the total number of landowners within the minor district, whichever is greater. However, if there are fewer than twenty owners of land within the minor irrigation district, the petition shall be signed by a majority of the landowners and filed with the board of directors of the major irrigation district.

For the purpose of determining the number of landowners required to initiate merger proceedings under this section, a husband and wife owning property as community property shall be considered a single landowner; two or more persons or entities holding title to property as tenants in common, joint tenants, tenants in partnership, or other form of joint ownership shall be considered a single landowner; and the petition requesting the merger shall be considered by the board of directors of the major irrigation district may be [if the petition is] signed by either the husband or wife and by any one of the co-owners of jointly owned property.

The board of directors of the major irrigation district shall consider the request at the next regularly scheduled meeting of the board of directors of the major district following its receipt of the minor district's request or at a special meeting called for the purpose of considering the request. If the board of the major district denies the request of the minor district, no further action on the request shall be taken.

If the board of the major district does not deny the request, it shall conduct a public hearing on the request and shall give notice regarding the hearing. The notice shall describe the proposed merger and shall be published once a week for two consecutive weeks preceding the date of the hearing and the last publication shall be not more than seven days before the date of the hearing. The notice shall contain a statement that unless the holders of title or evidence of title to at least twenty percent of the assessed lands within the major district file a protest opposing the merger with the board of the major district at or before the hearing, the board is free to approve the request for the merger without an election being conducted in the major district on the request. If the board of the major district is considering requests from more than one minor district, the hearing shall be conducted on all such requests. [2001 c 149 § 1; 1998 c 84 § 1; 1993 c 235 § 2.]

**87.03.847 Merger of minor irrigation district into major irrigation district—Denial or adoption of request for merger—Notice—Elections—Notification of merger.**

(1) If, following the public hearing conducted under RCW 87.03.845, the board of directors of the major irrigation district denies the request for a merger, no further action shall be taken on the request. If, following the public hearing, the board adopts a resolution approving the merger, the merger is approved by the major irrigation district and no election shall be held in the major district to approve the merger. However, if the holders of title or evidence of title to at least twenty percent of the assessed lands within the major district file a protest opposing the merger with the board of the major district at or before the public hearing, the board shall call a special election and submit to the voters of the major district the question of whether the merger should or should not be approved. Votes shall be cast as "Merger - Yes" or "Merger - No." If such a special election must be conducted and a majority of all votes cast in the district approve the merger, the merger is approved by the major district. Such an approval is effective on the date the returns of the election are canvassed under RCW 87.03.105.

(2) The board of directors of the minor irrigation district shall, within thirty days of the date the merger is approved by the major district or of the date the board of the major district issues its call for a special election on the merger, call a special election within the minor district and submit to the voters of the minor district the question of whether the merger should or should not be approved. If special elections must be conducted in both districts, both elections shall be conducted on the date set by the board of the major district. If only the minor district must conduct such a special election, the election shall be held not later than sixty days after the date the merger has been approved by the board of the major district. Votes on the question shall be cast as "Merger - Yes" or "Merger - No." If a majority of all votes cast in the district are cast for "Merger - Yes," the merger is approved by the minor irrigation district. Such an approval is effective on the date the returns of the election are canvassed under RCW 87.03.105.

(3) Notice of election in each district on the merger question shall conform to the requirements of notices for elections in the major district. Elections and voting in each district shall be consistent with RCW 87.03.045, 87.03.051, and

87.03.071. If the majority of all votes cast in a special election in either the major or a minor district are cast for "Merger - No," the merger is not approved.

(4) If the merger is approved by the major irrigation district and by the minor irrigation district as provided by this section, the minor irrigation district is merged into the major irrigation district. If two or more minor districts are merging with a major district in one process as authorized by RCW 87.03.855 and if the merger is approved by the major irrigation district and by at least one of the minor irrigation districts as provided by this section, each minor irrigation district so approving is merged into the major irrigation district. The effective date of the merger is the date by which approval of the merger has been secured in both districts or, under RCW 87.03.855, in the major and minor district or districts. The board or boards of county commissioners of the county or counties containing territory of the merged districts and the director of the department of ecology shall be notified that the districts have merged. [1993 c 235 § 3.]

**87.03.849 Merger of minor irrigation district into major irrigation district—Board of directors—Transfer of property and assets.** The members of the board of directors of the major irrigation district shall hold office as directors of the district formed by the merger until the end of their terms of office. If the major district is divided into director divisions, the board of the major district shall propose a plan for redividing the district into divisions that reflect the boundaries of the district created by the merger and this requirement regarding the directors of the major district. If the major district is considering a merger with more than one minor district, the board shall submit plans for the various possible mergers. The proposal or proposals shall be filed with the county legislative authority before the merger is approved in the major district or the minor district or districts. Following the merger, the county legislative authority shall approve the plan submitted for the districts that actually merged.

On the effective date of the merger, the directors of the minor district shall transfer the property and other assets of the district as required in RCW 87.03.853. Following the transfer of the property and other assets, the minor irrigation district and the office of director of the minor district shall cease to exist.

The board of directors of the district formed by the merger shall have all the powers and obligations of the boards of the major and minor districts that were merged to form the district including, but not limited to, such boards' powers and obligations for any local improvement districts created in the minor or major district under this chapter. [1993 c 235 § 4.]

**87.03.851 Merger of minor irrigation district into major irrigation district—Bonds or obligations not impaired—Enforcement of assessments and obligations—Establishment of local improvement district to carry out obligations.** (1) The merger of irrigation districts shall not affect or impair any bonds or obligations of the merged districts and the holders of the bonds of any merged district shall be entitled to all remedies for their enforcement as if the district had not been merged. All obligations

incurred by the district prior to its merger shall be a prior lien to any obligation that may be incurred against the district created by the merger. However, the board of directors of the merged district may, when authorized under RCW 87.03.200 and with the consent of the bondholders, exchange the bonds of the district created by the merger for the bonds of the districts that merged. If the major or minor district entered, prior to the merger, into a contract with the United States under this chapter and the board of directors of the district created by the merger proposes that the merged district enter into a contract with the United States, the board may do so when authorized under RCW 87.03.200 and may, with the consent of the United States, cancel any contract previously entered into between the major or minor district and the United States.

(2) The district created by the merger shall be entitled to all remedies for the enforcement of the irrigation district assessments and other obligations of lands to the districts that merged as if the districts had not merged. All obligations incurred for irrigation district or local improvement district purposes by the lands within the major or minor district prior to its merger shall be a prior lien to any obligation that may be incurred against those lands after the merger.

(3) Until premerger assessments have been collected and all of the premerger indebtedness of the major and minor districts that merged have been paid, separate funds shall be maintained for each district as were maintained in each prior to the merger. The board of directors of the irrigation district created by the merger may establish a local improvement district for each district included in the merger to carry out the obligations of each such district. This board shall have all the powers possessed by the boards of directors of the districts included in the merger to carry out all contracts of the included districts and to levy, assess, and cause to be collected any and all assessments or charges against the lands of each of the included districts. A petition shall not be required for the formation of a local improvement district created for this purpose. [1993 c 235 § 5.]

**87.03.853 Merger of minor irrigation district into major irrigation district—Statement of property and assets of minor district.** Prior to or on the effective date of a merger of a minor irrigation district and a major irrigation district, the board of directors of the minor district shall cause to be prepared a statement of all property and other assets of the minor district. The statement shall be filed with the board of directors of the district created by the merger and on the effective date of the merger. The statement shall also be filed with the county auditor of the county containing the majority of the territory of the district after the merger. Upon the filing with the board, the property and other assets of the minor district shall, subject to the rights of the holders of bonds or other obligations of the minor district, become the property and other assets of the district created by the merger. [1993 c 235 § 6.]

**87.03.855 Merger of minor irrigation district into major irrigation district—Merger of more than two districts.** More than two irrigation districts may merge under RCW 87.03.530(2) and 87.03.845 through 87.03.853 in one merger process. However, only one of the districts may be a

"major" irrigation district and the assessed acreage in all of the other districts merging in the process, when taken collectively, shall not constitute more than thirty percent of the combined assessed acreage of all of the merging districts. In such a case, each of these other, nonmajor districts is considered to be a "minor" irrigation district under RCW 87.03.530(2) and 87.03.845 through 87.03.853. [1993 c 235 § 7.]

**87.03.857 Merger of minor irrigation district into major irrigation district—Existing water rights not impaired.** Nothing in RCW 87.03.530(2) and 87.03.845 through 87.03.855 shall authorize the impairment or operate to impair any existing water rights. [1993 c 235 § 8.]

**87.03.860 Assumption of substandard water system—Limited immunity from liability.** An irrigation district assuming responsibility for a water system that is not in compliance with state or federal requirements for public drinking water systems, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements for public drinking water systems, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the irrigation district has submitted and is complying with a plan and schedule of improvements approved by the department of health. This immunity shall expire on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith. [1994 c 292 § 11.]

**Findings—Intent—1994 c 292:** See note following RCW 57.04.050.

**87.03.870 Mutual aid agreements for emergency interdistrict assistance—Authority—Liability.** (1) Under the interlocal cooperation act, chapter 39.34 RCW, an irrigation district may enter into a mutual aid agreement with any other irrigation district to provide emergency interdistrict assistance to respond to a breach or other failure of an irrigation water conveyance system when the required response exceeds the existing resources available to the district requesting assistance. Assistance may be provided without compensation.

(2) Whenever the employees of an irrigation district are rendering outside aid pursuant to the authority contained in this section, the employees have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the irrigation district in which they are normally employed. Supervision of the employees may be temporarily delegated as provided by the mutual aid agreement.

(3) The irrigation district in which any equipment is used pursuant to this section is liable for any loss or damage caused to the equipment and shall pay any ordinary expense incurred in the daily operation and maintenance of the equipment. No claim for loss, damage, or expense may be allowed unless, within sixty days after the loss, damage, or expense is sustained or incurred, an itemized notice of the claim under oath is served by mail or otherwise upon the secretary of the irrigation district where the equipment was used. [1996 c 214 § 3.]

(2006 Ed.)

**87.03.880 Tariff for irrigation pumping service—Authority to buy back electricity.** The board may approve a tariff for irrigation pumping service that allows the irrigation district to buy back electricity from customers to reduce electricity usage by those customers during the irrigation district's particular irrigation season. [2001 c 122 § 6.]

**Effective date—2001 c 122:** See note following RCW 80.28.310.

**87.03.900 Construction—1913 c 165.** All irrigation districts in the state of Washington, and all proceedings had for the organization of any irrigation district, and all proceedings now pending in or relating to any irrigation district, shall be governed and controlled by the terms of this act, and this act shall not be construed as abridging or abrogating any of the rights or privileges of any irrigation district now organized, or being organized, and any contract, obligation, lien or charge, or bonds of any district, which may have been made, incurred, authorized or issued, prior to the taking effect of this act shall not be abridged or impaired by the terms of this act, but this act shall be construed as being a continuation of, and in aid of the previously existing laws relating to irrigation districts, except as to the sections specially repealed; and if in any instance relating to an existing district or any of its proceedings, the term of this amendatory act shall not be legally applicable, the district may proceed, and any contract, obligation, lien or charge against it may be enforced, under the terms and provisions of the law relating to irrigation districts in force and in effect prior to the taking effect of this act. [1913 c 165 § 23.]

**87.03.905 Severability—1921 c 129.** If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof not adjudged to be invalid or unconstitutional. [1921 c 129 § 49.]

**87.03.910 Severability—1923 c 138.** If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional. [1923 c 138 § 14.]

**87.03.915 Severability—1935 c 128.** In case any part or portion of this act shall be held unconstitutional, such holding shall not affect the validity of this act as a whole or any other part or portion of this act not adjudged unconstitutional. [1935 c 128 § 3.]

## Chapter 87.04 RCW DIRECTOR DIVISIONS

### Sections

87.04.010	Divisions of certain districts required—Number—Directors—Who are electors.
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**87.04.010 Divisions of certain districts required—Number—Directors—Who are electors.** An irrigation district comprising two hundred thousand or more acres, or irrigation districts comprising less than two hundred thousand acres which have followed the optional procedure specified in \*this amendatory act, shall be divided into divisions of as nearly equal area as practical, consistent with being fair and equitable to the electors of the district. The number of divisions shall be the same as the number of directors, which shall be numbered first, second, third, etc. One director, who shall be an elector of the division, shall be elected for each division of the district by the electors of his division. A district elector shall be considered an elector of the division in which he holds title to or evidence of title to land. An elector holding title to or evidence of title to land in more than one division shall be considered an elector of the division nearest his place of residence. [1961 c 192 § 1; 1939 c 13 § 1; RRS § 7505-5a.]

**\*Reviser's note:** The language "this amendatory act" refers to 1961 c 192 codified as RCW 87.04.010 through 87.04.900, 87.03.045, 87.03.080, 87.03.081, and 87.03.082.

*Directors—Election, terms, etc.:* RCW 87.03.080 through 87.03.082.

*Organization of board, meetings, etc.:* RCW 87.03.115.

*Qualifications of voters and directors:* RCW 87.03.045.

**87.04.020 Director vacancies, how filled.** Vacancies in the representation of director divisions on the board of directors of the irrigation district shall be filled by appointment of an elector of the division concerned, in the same manner and for the same time as provided by law for the filling of vacancies on the board of directors of irrigation districts generally. [1961 c 192 § 2; 1939 c 13 § 2; RRS § 7505-5b.]

*Directors—Vacancies, how filled:* RCW 87.03.081.

**87.04.030 New district to be divided by county commissioners—Objections, denial, election.** When a new irrigation district comprising more than two hundred thousand acres has been authorized, pursuant to law, the board of county commissioners shall, within thirty days from the canvassing of the returns, divide the district into director divisions equal to the number of directors, and in the resolution organizing the district, they shall include an order designating the director divisions and describing the boundaries thereof. When a petition for the formation of a new irrigation district comprising less than two hundred thousand acres has been filed pursuant to law and said petition includes a request that the district be divided into director divisions, the board of county commissioners shall divide the district into director

divisions as provided in this section unless objections to director divisions are made at the hearing held pursuant to RCW 87.03.020; and in the event objections to director divisions are made and not withdrawn, the board of county commissioners may deny the request for director divisions or if it determines that it is to the best interests of the district that director divisions be established, it may, in its order calling an election for organization of the district, include a separate proposition on the question of director divisions; and if a majority of the votes cast on said proposition are in favor of director divisions, then the resolution organizing the district shall include an order designating the director divisions and describing the boundaries thereof. [1961 c 192 § 3; 1939 c 13 § 3; RRS § 7505-5c.]

**87.04.040 Petition to divide or redivide.** Proceedings to divide or redivide a district comprising less than two hundred thousand acres into director divisions, or to redivide the director divisions heretofore established for districts comprising more than two hundred thousand acres, may be initiated by a petition filed with the county commissioners of the county in which the principal office of the district is situated. The petition shall designate the name of the district and pray that it be divided into director divisions, or that existing director divisions be redivided, and shall be signed by at least two-thirds of the directors of the district or in lieu thereof by at least twenty electors of the district. A petition to divide or redivide a district shall not be filed more than once in each five-year period except for redivisions necessitated by reason of a change in the total number of directors of the district. [1961 c 192 § 4; 1939 c 13 § 4; RRS § 7505-5d.]

**87.04.050 Redivision when number of directors changed or new lands included.** If the number of directors is changed for a district which is divided into director divisions or new lands outside of existing director divisions are included into a district but cannot be added to director divisions as provided in RCW 87.04.055 due to geographic limitations, a petition for redivision or addition shall be filed with the board of county commissioners by the directors of the district and all proceedings thereon shall be conducted in the manner as provided in RCW 87.04.060 and 87.04.070: PROVIDED, That even if objections are filed at the hearing on said petition, no election shall be held but the board of county commissioners shall make such division or addition that they determine to be fair and equitable to the electors of the district. [1967 c 205 § 1; 1961 c 192 § 5; 1939 c 13 § 7; RRS § 7505-5g.]

**87.04.055 Procedure for adding land to director divisions when new land included in district.** When land located outside existing director divisions is included in an irrigation district such land shall thereby be added to the nearest director division, except that where added lands are adjacent to two or more director divisions, the common boundary lines between the divisions shall be extended in a straight line so as to include the new lands in such divisions: PROVIDED, That where the provisions of this section cannot be applied due to geographic limitations, the procedures provided for in RCW 87.04.050 shall apply. [1967 c 205 § 2.]

**87.04.058 Application of RCW 87.04.030 through 87.04.055 following merger of minor irrigation district into major irrigation district.** RCW 87.04.030 through 87.04.055 do not apply to redividing a district immediately following a merger as provided in RCW 87.03.849. [1993 c 235 § 9.]

**87.04.060 Time for hearing on petition—Notice, contents.** Upon the filing of the petition the board of county commissioners shall fix a time and place for hearing thereon, which shall be not less than thirty days nor more than forty-five days from the date of filing, and shall cause notice thereof, stating the time, place, and general purpose of the hearing, to be published in a newspaper of general circulation in each county in which any of the lands of the district are situated, in at least three consecutive weekly issues; if there is no such newspaper published in a county, then in a newspaper of general circulation therein, designated by the county commissioner. The notice shall state the filing of the petition and its prayer, but need not describe with particularity the boundaries of the divisions recommended in the petition, and shall notify all electors of the district to appear at the time and place named in the notice to show cause, if any they have, why the district should not be divided or redivided into director divisions. [1961 c 192 § 6; 1939 c 13 § 5; RRS § 7505-5e.]

*Official paper for publication: RCW 87.03.020.*

**87.04.070 Hearing—Order of denial or rejection—Election to divide or redivide.** At the hearing or adjournments thereof, which shall not be for more than sixty days in all, the board of county commissioners shall consider the petition and shall hear electors of the district for or against the division or redivision of director divisions and recommendations for the manner in which division should be made. If the board deems it against the best interests of the district to divide the district into director divisions or to redivide existing divisions, it shall order the petition rejected, but if it deems it for the best interests of the district that the petition be granted, and if no elector of the district files cause in writing at said hearing why the petition should not be granted, or if having filed said cause in writing withdraws the same, the board shall enter an order dividing or redividing the district into the same number of director divisions as there are directors of the district, and designating the divisions and describing the boundaries thereof. The division to be made shall be such as the commissioners consider fair and equitable to the electors of the district. A copy of the commissioners' order shall be filed for record, without charge, with the auditor of each county in which any part of the district is situated, and thereafter the directors shall be elected or appointed as provided in this chapter. If any elector shall appear in person at said hearing and shall file cause in writing as aforesaid why the petition should not be granted and shall not withdraw the same, and if the board nevertheless deems it for the best interests of the district that the petition be granted, the board shall adopt a resolution to that effect and shall order an election held within the district on whether the district should be divided into director divisions or its existing director divisions be redivided, and shall fix the time thereof and cause notice to be published. The notice shall be given and the elec-

tion conducted in the manner as for special elections on a bond issue of the district. The notice shall state the general plan of division or redivision but need not describe with particularity the boundaries of the proposed division or redivision. Such boundaries shall be described on the ballot. If the majority of votes cast at the election are in favor of dividing or redividing the district into director divisions, the board of county commissioners shall enter an order dividing or redividing the district into the same number of director divisions as there are directors of the district, and designating the divisions and designating the boundaries thereof. If a majority of the votes cast are against division or redivision into director districts, the board shall order the petition denied. [1961 c 192 § 7; 1939 c 13 § 6; RRS § 7505-5f.]

**87.04.080 Election of directors—Terms.** At the next general election of directors of a district which has been divided into director divisions, the electors of the first division shall select the director then to be elected on the board, and if more than one director is to be selected, the second division shall select one, and so on in numerical order, until, as the terms of incumbent directors expire, all the divisions are represented on the board, and thereafter directors shall be elected from the divisions in rotation, as their respective terms of office expire: PROVIDED, That if following the numerical order of director divisions will result in any year in one division having more than one director and one division having no director, then the numerical order of the divisions shall not be followed for the year or years in question but the electors of the next highest numbered division without representation on the board of directors shall select the director then to be elected on the board. If such a district is organized but has not yet held an annual election of officers, it shall, at its next annual election, select directors for three, two and one-year terms respectively, and if the district is managed by a board of three directors, the first division shall select a director for the three-year term, the second division shall select one for the two-year term, and the third division shall select one for the one-year term, and thereafter their successors shall be elected for three-year terms, respectively. If the district has five directors, the first and second divisions shall each select a director for the three-year term, the third and fourth divisions shall each select one for the two-year term, and the fifth division shall select one for the one-year term, and thereafter their successors shall be elected for three-year terms respectively. If the district has seven directors, the first, second and third divisions shall each select a director for the three-year term, the fourth and fifth divisions shall each select a director for the two-year term, and the sixth and seventh divisions shall each select a director for the one-year term, and thereafter their successors shall be elected for three-year terms respectively. [1961 c 192 § 8; 1939 c 13 § 8; RRS § 7505-5h.]

*Ballots, declaration of candidacy, nominating petitions: RCW 87.03.075.*

*Elections are governed by irrigation district laws: RCW 87.03.030.*

**87.04.090 Levy limitation until water received when federal works or contracts involved—Exception.** Lands in a district so divided into director divisions, which are to receive water from a system of works to be constructed by the

federal government or under a contract between the district and the federal government shall not be assessed more than five cents an acre in any one calendar year until the secretary of the interior announces that water is ready for delivery to the land: PROVIDED, That this section shall not be applicable to districts comprising less than two hundred thousand acres. [1969 ex.s. c 93 § 1; 1961 c 192 § 9; 1939 c 13 § 9; RRS § 7505-5i.]

*Assessment: RCW 87.03.240 through 87.03.305.*

*Board's powers and duties (contracts with state or United States): RCW 87.03.140.*

**87.04.100 Certain excess lands under federal contracts, assessment limitation—Exception.** Lands in such a district, which are designated as excess lands under the act of congress of May 27, 1937, and which have been subscribed by the owner thereof to the excess land contract, shall not be assessed more than above specified until after the date fixed in the contract for the sale of such excess lands, unless they have been sooner sold or the owner has sooner called for water thereon: PROVIDED, That this section shall not be applicable to districts comprising less than two hundred thousand acres. [1961 c 192 § 10; 1939 c 13 § 10; RRS § 7505-5j.]

*Assessments: RCW 87.03.240 through 87.03.305.*

**87.04.900 Chapter supplemental to other laws—General repealer.** This chapter is intended, and shall be construed, to be supplemental to and shall become a part of the law relating to irrigation districts, and any act or part of the same inconsistent or in conflict with the provisions of this act or any part thereof are hereby repealed. [1961 c 192 § 11; 1939 c 13 § 11; RRS § 7505-5k.]

**87.04.910 Severability—1939 c 13.** Each section and provision of this chapter shall be considered separable from every other section and provision of the chapter, and should any section or provision thereof be held unconstitutional, the unconstitutionality of such section or provision shall not affect or impair the validity of the remainder of the chapter but in that event the unconstitutional section or provision shall be eliminated and the remainder of the chapter remain in full force and effect. [1939 c 13 § 12; RRS § 7505-5l.]

## Chapter 87.06 RCW

### DELINQUENT ASSESSMENTS

#### Sections

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87.06.050	Payment on certificate of delinquency before foreclosure.
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stricken from tax rolls—Subsequent purchasers to pay assessments.

87.06.110	Combined foreclosure for district and county assessments.
87.06.120	Application of chapter to properties with assessments delinquent three or more years or acquired by the district under possibly legally defective proceedings.

*Lien of assessment: RCW 87.03.265.*

**87.06.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Date of delinquency" means the date when the assessment first became delinquent under chapter 87.03 RCW.

(2) "Description of property" means a legal description, the parcel number, tax number, or other description that sufficiently describes the property or specific parcel of land.

(3) "Minimum bid sheet" means the informational sheet which is prepared by the treasurer for use at the treasurer's sale and which contains a description of the various properties and the minimum bid required for each.

(4) "Party in interest" means an occupant of the property, the owner of record, and any other person having a financial interest of record in the property.

(5) "Treasurer" means the irrigation district treasurer. However, if the county treasurer acts as ex officio district treasurer in accordance with RCW 87.03.440, then "treasurer" means the county treasurer. [1988 c 134 § 1.]

**87.06.020 Certificates of delinquency—Posting of certificates.** (1) After thirty-six calendar months from the month of the date of delinquency, the treasurer shall prepare certificates of delinquency on the property for the unpaid irrigation district assessments, and for costs and interest. An individual certificate of delinquency may be prepared for each property or the individual certificates may be compiled and issued in one general certificate including all delinquent properties. Each certificate shall contain the following information:

- Description of the property assessed;
- Street address of property, if available;
- Years for which assessed;
- Amount of delinquent assessments, costs, and interest;
- Name appearing on the treasurer's most current assessment roll for the property; and

(f) A statement that interest will be charged on the amount listed in (d) of this subsection at a rate of twelve percent per year, computed monthly and without compounding, from the date of the issuance of the certificate and that additional costs, incurred as a result of the delinquency, will be imposed, including the costs of a title search;

(2) The treasurer may provide for the posting of the certificates or other measures designed to advertise the certificates and encourage the payment of the amounts due. [1988 c 134 § 2.]

**87.06.030 Title search to verify legal description of property—Determination not to foreclose.** The treasurer shall order a title search of the property for which a certificate of delinquency has been prepared to determine or verify the legal description of the property to be sold and parties in

interest. In districts with two hundred thousand acres or more, the board of directors, upon receiving the certificates of delinquency may, after reviewing the amount of delinquent assessment compared to the costs of foreclosure, including but not limited to title search, court filing fees, costs of service, and attorneys' fees, determine that it is not in the best interest of the district to commence legal action to foreclose the delinquent assessment liens. [2004 c 215 § 4; 1988 c 134 § 3.]

**87.06.040 Commencement of action to foreclose assessment liens—Notice and summons—Recording of notice of lis pendens.** (1) After the completion of the title searches, the treasurer, in the name of the irrigation district, shall commence legal action to foreclose on the assessment liens. The treasurer shall give notice of application for judgment foreclosing assessment liens and summons to all parties in interest as disclosed by the title search. The treasurer may include in any notice any number of separate properties. Such notice and summons shall contain:

(a) A statement that the irrigation district is applying to superior court of the county in which the property is located for a judgment foreclosing the lien against the property for delinquent assessments, costs, and interest;

(b) The full name of the superior court in which the district is applying for the judgment; and for each property: The description of the property, the local street address (if any), and the name of each party in interest;

(c) A description of the lien amount due, which shall include the amount listed in RCW 87.06.020(1)(d), plus any costs and interest accruing since the date of preparation of the certificate of delinquency;

(d) A direction to each party in interest summoning the party to appear within sixty days after service of the notice and summons, exclusive of the day of the service, and defend the action or pay the lien amount due; and when service is made by publication, a direction summoning each party to appear within sixty days after the date of the first publication of the notice and summons, exclusive of the day of first publication, and defend the action or pay the amount due;

(e) A notice that, in case of failure to defend or pay the amount due, judgment will be rendered foreclosing the lien of the assessments, costs, and interest against the property; and

(f) The date, time, and place of the foreclosure sale as specified in the application for judgment.

(2) The treasurer shall record in the office of the auditor of the county in which the property is located a notice of lis pendens before commencing the service of the notice and summons.

(3) The notice and summons shall be served in a manner reasonably calculated to inform each party in interest of the foreclosure action. At a minimum, service shall be accomplished by either (a) personal service upon a party in interest, or (b) publication once in a newspaper of general circulation that is circulated in the area in which the property is located and mailing of notice by certified mail to the party in interest.

(4) It shall be the duty of the treasurer to mail a copy of the notice and summons, within fifteen days after the first publication or service thereof, to the treasurer of each county, city, or town within which any property involved in an assessment foreclosure is situated, but the treasurer's failure

to do so shall not affect the jurisdiction of the court nor the priority of any assessment lien sought to be foreclosed. [1988 c 134 § 4.]

**87.06.050 Payment on certificate of delinquency before foreclosure.** (1) Any party in interest of property for which a certificate of delinquency has been prepared, but against which a foreclosure judgment has not been entered, may pay to the treasurer, in person or by agent, the total amount of the assessment lien, as listed under RCW 87.06.020(1)(d), plus any additional costs and interest, including any title search costs. If a foreclosure judgment has been entered, then any party in interest may pay to the treasurer, in person or by agent, the lien amount for which the judgment has been rendered, so long as payment is received by the treasurer during regular business hours before the day of the foreclosure sale. The treasurer shall give a receipt for each payment received under this subsection.

(2) Upon receipt of payment under this section, the district shall abandon any foreclosure proceedings commenced against the property. If a notice of lis pendens has been filed with the county auditor, the treasurer shall record a release of lis pendens with the auditor. [1988 c 134 § 5.]

**87.06.060 Combining foreclosure proceedings—Irregularities or informalities in assessment role not illegal—Correction—Interested party may file written answer—Court's proceedings.** (1) The proceedings to foreclose the liens against all properties on a general certificate of delinquency or on more than one individual certificate may be brought in one action.

(2) No assessment, costs, or interest may be considered illegal because of any irregularity in the assessment roll or because the assessment roll has not been made, completed, or returned within the time required by law, or because the property has been charged or listed in the assessment roll without name, or in any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with the assessment may invalidate or in any other manner affect the assessment thereof. Any irregularities or informality in the assessment roll or in any of the proceedings connected with the assessment or any omission or defective act of any officer or officers connected with the assessment may be, at the discretion of the court corrected, supplied, and made to conform to the law by the court. This subsection does not apply if the court finds that the failure to conform to the law unfairly prejudices a party with an interest in the property.

(3) A party with an interest in real property subject to foreclosure within the district may file a written answer within the time permitted by RCW 87.06.040(1)(d) asserting an objection or defense to the entry of a foreclosure judgment against the property. However, defenses or objections shall be limited to: (a) The form of pleading; (b) manner of service; (c) invalidity of the assessments claimed delinquent; (d) payment of the assessments claimed delinquent; or (e) that the real property against which foreclosure is sought is not subject to district assessment. No counterclaim shall be permitted. The court shall liberally permit amendment or sup-

plementation of the district’s challenged pleading or procedure to cure the claimed defect.

(4) The court shall determine timely objections or defenses to the district’s foreclosure in a summary proceeding based only on the district’s pleading and the interested party’s answer and shall promptly pronounce judgment granting or denying the foreclosure; or the court may, in its discretion, to provide substantial justice to the parties, continue the case to a later time to hear evidence on the issues raised by the answer. Hearings under this section shall be limited to affidavits or declarations, and shall be expedited. [2004 c 215 § 5; 1988 c 134 § 6.]

**87.06.070 Sale of foreclosed property.** (1) If the court renders a judgment of foreclosure, the court shall direct the treasurer to proceed with the sale of the property and shall specify the minimum sale price below which the property is not to be sold.

(2) The treasurer shall sell the property to the highest and best bidder. All sales shall be made on Friday between the hours of nine a.m. and five p.m. at a location designated by the treasurer. However, sales not concluded on Friday shall be continued from day to day, Saturdays, Sundays, and holidays excluded, during the same hours until all properties are sold. [1988 c 134 § 7.]

**87.06.080 Notice of foreclosure sale—Conduct of sale—Remittal of excess moneys.** (1) The treasurer shall post notice of the foreclosure sale, at least ten days before the sale, at the following locations: At the courthouse of the county in which the property is located, at the district office, and at a public place in the district. The treasurer shall also publish, at least once and not fewer than ten days before the sale, the notice in any daily or weekly legal newspaper of general circulation in the district.

(2) The notice shall be in substantially the following form:

**IRRIGATION ASSESSMENT JUDGMENT SALE**

Public notice is hereby given that pursuant to judgment, rendered on . . . . ., of the superior court of the county of . . . . . in the state of Washington, that I shall sell the property described below, at a foreclosure sale beginning at . . . . . (time), on . . . . . (date), at . . . . . (location), in the city of . . . . ., and county of . . . . ., state of Washington. This sale is made in order to pay for delinquent assessments, costs, and interest owed to . . . . . The property will be sold to the highest and best bidder but bids will not be accepted for less than the minimum sale price set by the superior court. The minimum sale price is listed on the bid sheet, a copy of which is provided at the treasurer’s office. Payment must be made at time of sale and must be by cash, bank cashier’s check, or a negotiable instrument of equivalent security.

Description of property: . . . . .

Interested parties and members of the public are invited to participate in this sale. This sale will not take place if by . . . . . (time), on . . . . . (date), the amount due . . . . . is paid in the manner specified by law.

.....  
Treasurer for .....  
Irrigation District  
Date signed: .....

(3) The treasurer shall conduct the sale in conformance with the notice and this chapter. If the sale is conducted by the county treasurer, no county or district officer or employee may directly or indirectly be a purchaser. If the irrigation district treasurer conducts the sale, no officer or employee of the district may directly or indirectly be a purchaser.

(4) If the bid amount paid for the property is in excess of the lien amount for which the judgment has been rendered, plus any additional assessments, costs, and interest which have become due after the date of preparation of the certificate of delinquency and before the date of sale, then the excess shall be remitted, on application therefor, to the owner of the property. If no claim for the excess is received by the treasurer within three years after the date of the sale, the treasurer, at expiration of the three-year period, shall deposit the excess in the current expense fund of the district. [1988 c 134 § 8.]

**87.06.090 Treasurer’s deed—Title free from certain encumbrances.** (1) The treasurer shall execute a treasurer’s deed to any person who purchases property at the foreclosure sale. The deed shall vest title to the property therein described, without further acknowledgment or evidence of such conveyance, in the grantee or his or her heirs and assigns. The treasurer’s deed shall be substantially in the following form:

**TREASURER’S DEED**

State of Washington  
County of . . . . .

This indenture, made this . . . . . day of . . . . ., . . . . ., between . . . . ., as treasurer of . . . . . irrigation district, state of Washington, party of the first part, and . . . . ., party of the second part:

Witnesseth, that whereas, at the public sale of real property held on the . . . . . day of . . . . ., . . . . ., pursuant to an irrigation assessment judgment entered in the superior court in the county of . . . . . on the . . . . . day of . . . . ., . . . . ., in proceedings to foreclose assessment liens upon real property and an order of sale duly issued by the court, . . . . . duly purchased in compliance with the laws of the state of Washington, for and in consideration of the sum of . . . . . dollars the following described real property, to wit: (Here place description of real property conveyed) and that . . . . . has complied with the laws of the state of Washington necessary to entitle (him, her, or them) to a deed for the real property.

Now, therefore know ye, that, I . . . . ., treasurer of said irrigation district of . . . . ., state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases provided, do hereby grant and convey unto . . . . ., his or her heirs and assigns, forever, the real property hereinbefore described, as fully and completely as said party of the first part can by virtue of the premises convey the same.

Given under my hand and seal of office this . . . . . day of . . . . ., A.D. . . . .

.....  
 Treasurer for .....  
 Irrigation District

(2) The title shall be free from all encumbrances except for the following taxes and assessments if they are not due at the time of the foreclosure sale: Property taxes, drainage or diking district assessments, drainage or diking improvement district assessments, mosquito district assessments, and irrigation district assessments. [1994 c 24 § 1; 1988 c 134 § 9.]

**87.06.100 Required payments before acquisition at foreclosure sale—Acquisition by irrigation district—District’s property stricken from tax rolls—Subsequent purchasers to pay assessments.** (1) Prior to the treasurer executing and conveying the deed, all persons or entities acquiring property at the foreclosure sale shall be required to pay the full amount of all assessments, costs, and interest for which judgment is rendered; and the full amount of the following if due at the time of the foreclosure sale: Property taxes, drainage or diking district assessments, drainage or diking district improvement assessments, irrigation district assessments, and costs and interests relating to such taxes or assessments. This subsection does not apply to the irrigation district’s acquisition of property.

(2) At all sales of property, if no other bids are received, title to the property shall vest in the irrigation district and the district shall pay to the county any costs that may have been incurred by the county under this chapter for the foreclosure action. The district’s acquisition of the title shall be as absolute as if the property had been purchased by an individual under the provisions of this chapter. The deed provided for in RCW 87.06.090 shall be conveyed to the irrigation district.

(3) All property deeded to the district under the provisions of this chapter shall be stricken from the tax rolls as district property and exempt from taxation and shall not be taxed while property of the district.

(4) If the irrigation district sells any property it has acquired under this chapter, then it shall not provide a deed to the purchaser until the purchaser pays all drainage or diking district assessments, drainage or diking improvement district assessments, irrigation district assessments, property taxes, costs, and interest that were due at the time the irrigation district acquired title to the property. [1988 c 134 § 10.]

**87.06.110 Combined foreclosure for district and county assessments.** The board of directors of the irrigation district and the county treasurer may through the interlocal cooperation agreement act, chapter 39.34 RCW, choose to have one of the treasurers proceed with a combined foreclosure for all property taxes, irrigation assessments, and all costs and interest owing to both entities. Any such agreement shall include a specific statement as to which entity shall assume title if no bids are received equal to or greater than the amount listed on the minimum bid sheet. The agreement shall also clearly specify how any unclaimed excess funds from the sale will be divided between the county and the irrigation district.

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With a combined foreclosure for all property taxes, all irrigation district assessments, and all costs and interest owing to both entities, the county treasurer may use the foreclosure procedure under chapter 84.64 RCW or the irrigation district treasurer may use the foreclosure procedure under this chapter. When acting as the treasurer for the irrigation district, the county treasurer may use the foreclosure procedure under chapter 84.64 RCW. [2004 c 215 § 6; 1988 c 134 § 11.]

**87.06.120 Application of chapter to properties with assessments delinquent three or more years or acquired by the district under possibly legally defective proceedings.** (1) Except as provided in subsection (2) of this section, certificates of delinquency shall also be issued, and foreclosure proceedings instituted under this chapter, for properties for which assessments have been delinquent for a period of three or more years, if all or part of such period occurred before June 9, 1988. If foreclosure actions have been commenced but not completed under the law as it existed prior to June 9, 1988, the district shall abandon such actions and proceed against such properties under this chapter.

(2) Certificates of delinquency shall not be issued under this chapter for properties that have been sold (other than to the irrigation district) under foreclosure proceedings which occurred prior to June 9, 1988. This section does not apply to any foreclosure sale declared to be invalid by a court of competent jurisdiction or if district assessments again become delinquent after the date of sale.

(3) A certificate of delinquency may be issued, and foreclosure proceedings instituted, under this chapter for property acquired by an irrigation district under foreclosure proceedings which occurred prior to June 9, 1988, and which the district believes might be legally defective. "Acquired" as used in this subsection also includes the district’s obtaining a certificate of sale under such foreclosure proceedings. [1988 c 134 § 12.]

**Chapter 87.19 RCW**

**REFUNDING BONDS—1923 ACT**

Sections

- 87.19.005 Method not exclusive.
- 87.19.010 Refunding bonds authorized—Election.
- 87.19.020 Notice and conduct of election.
- 87.19.030 Form of bonds, interest, maturity, etc.
- 87.19.040 Bonds to be refunded in series.
- 87.19.050 Refunding bonds may be exchanged or sold—Record.

**87.19.005 Method not exclusive.** In addition to any other method of refunding irrigation district bonds authorized by law, bonds heretofore or hereafter issued by any irrigation district in this state may be refunded in whole or in part in the manner hereinafter provided. [1933 ex.s. c 11 § 1; 1923 c 161 § 1; RRS § 7434-1. Formerly RCW 87.19.060.]

**Validation—1933 ex.s. c 11:** "Any and all proceedings heretofore had and any and all bonds heretofore authorized and issued to redeem or to refund unmatured bonds under the provisions of chapter 161, Laws of 1923, as amended by chapter 259, Laws of 1927, but without the unanimous consent of the holders of unmatured bonds to be refunded, are hereby validated and confirmed." [1933 ex.s. c 11 § 4.]

**87.19.010 Refunding bonds authorized—Election.**

Whenever the board of directors of any irrigation district shall deem it for the best interest of said district that any or all outstanding bonds of said district be refunded, they shall so declare by resolution duly adopted and recorded in the minutes of said board and shall, with the written approval of the state director of the department of ecology, submit the question to the legally qualified electors of said district at a general election or at a special election called for that purpose and if a majority of said electors voting at said election vote in favor thereof the directors of said district shall issue and exchange said bonds for those outstanding, or sell said bonds and retire said outstanding bonds. The bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 227; 1923 c 161 § 2; RRS § 7434-2.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.19.020 Notice and conduct of election.** The notice of election provided for in this chapter shall be given and the election held in all respects in accordance with RCW 87.03.200, except in each county with a population of one hundred twenty-five thousand or more, where the notice and election shall be held in the manner provided by law for such counties. [1991 c 363 § 160; 1923 c 161 § 6; RRS § 7434-6.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

*Elections by lesser constituencies—Special elections:* RCW 29A.04.330.

*Times for holding elections and primaries:* RCW 29A.04.311 through 29A.04.330.

**87.19.030 Form of bonds, interest, maturity, etc. (1)**

Said bonds shall be issued in series and in denominations of not less than one hundred dollars nor more than one thousand dollars. The first series shall mature not later than ten years and the last series not later than forty years. Each series shall be numbered from one, up consecutively, shall bear the date of their issue, and shall bear interest at any rate or rates as authorized by the board of directors of said district, payable semiannually on the first day of January and July of each year, and the principal and interest may be made payable at the office of the county treasurer of the county in which the office of the board of directors is situated, or at any fiscal agency of the state of Washington. Said bonds shall be negotiable in form and the bonds shall be signed by the president and secretary of the board of directors of said district and the seal of said district, affixed. The signatures of the president and secretary may, however, appear by lithographic facsimile. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 228; 1970 ex.s. c 56 § 96; 1969 ex.s. c 232 § 55; 1923 c 161 § 3; RRS § 7434-3.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

*Facsimile signatures:* RCW 39.44.100.

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**87.19.040 Bonds to be refunded in series.** Where the bonds to be refunded are serial bonds and not subject to call, the refunding bonds or any part of the same may be issued in such series as the board of directors of the district shall deem necessary to take up the series or any part thereof to be refunded, and shall be dated as of the maturity of the series or any part of the same to be refunded. The election aforesaid shall be sufficient authority for the directors to issue sufficient bonds to retire the entire outstanding issue of bonds to be refunded, but none of said refunding bonds shall be signed before the date of their issue, and until signed shall be deposited and kept in the office of the county treasurer; with the consent of the holders of all or any portion of the outstanding bonds of any issue the directors may retire all or any portion of such bonds before their maturity and may issue refunding bonds for that purpose. [1933 ex.s. c 11 § 3; 1927 c 259 § 2; 1923 c 161 § 5; RRS § 7434-5.]

**87.19.050 Refunding bonds may be exchanged or sold—Record.** Bonds issued under and by virtue of this chapter may be exchanged for outstanding bonds at not less than the par value of the bonds refunded or may be sold at not less than ninety percent of their par value, and all money derived from the sale of such bonds shall be applied to the redemption of any or all of the outstanding bonds of said district to be refunded and any such outstanding bonds so refunded shall be endorsed in red ink "Refunded Bonds" and filed and preserved for one year and then destroyed by the county treasurer in the presence of witnesses: and the secretary of said district and the county treasurer of said county shall keep a record of such bonds so refunded and shall note the date of the refunding and the date of the destruction of the refunded bonds and in whose presence they were destroyed. [1933 ex.s. c 11 § 2; 1923 c 161 § 4; RRS § 7434-4.]

**Chapter 87.22 RCW****REFUNDING BONDS—1929 ACT**

## Sections

87.22.010	Refunding authorized.
87.22.020	When proceedings may be instituted.
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87.22.040	Schedule of maximum benefits.
87.22.050	Hearing, time and place of.
87.22.060	Notice—Service.
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87.22.085	Irrigable acreage, how determined.
87.22.090	Appellate review.
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87.22.105	Final judgment conclusive—Exception.
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87.22.120	Election—Question to electors.
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87.22.280	Judicial confirmation.
87.22.900	Severability—1929 c 120.
87.22.910	Construction—Chapter additional method.

**87.22.010 Refunding authorized.** Any or all bonds heretofore issued by any irrigation district in this state may be refunded as hereinafter provided. [1929 c 120 § 1; RRS § 7530-1. FORMER PART OF SECTION: 1929 c 120 § 40; RRS § 7530-40, now codified as RCW 87.22.910.]

**87.22.020 When proceedings may be instituted.** Before any proposition for the issuance of limited liability refunding bonds, as provided for in this chapter, of an irrigation district in this state shall be submitted to the electors thereof, the board of directors of said district shall at their option have authority, upon the written consent of the owners of at least fifty-one percent of the face value of the bonds proposed to be refunded, and upon the written approval of the state department of ecology, and of the owners of fifty-one percent of the acreage of the land within the district, to institute proceedings in the superior court of the proper county to determine the irrigable acreage of the lands which shall be subject to assessment for the payment of said refunding bonds and the interest thereon, and to determine the maximum benefits to be received by said lands from said proposed refunding bonds, in the manner herein provided. [1983 c 167 § 229; 1929 c 120 § 2; RRS § 7530-2.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.22.030 Petition—Contents.** The said board of directors shall institute such proceedings by filing a petition in the superior court of the county in which the greater part of the lands in the district are situated. Said petition shall give the name of the district, shall set out the nature of its water rights and the general character of its irrigation works and distribution system, shall state the amount, maturity schedule of minimum annual installments of principal and maximum interest rate of the proposed refunding bonds, shall state the approximate irrigable acreage in the district and the probable approximate aggregate annual income therefrom during the life of the proposed refunding bonds, shall recite that the required consent of the owners of the bonds to be refunded has been obtained and shall state such other matter, if any, the said board of directors may deem pertinent to the proceedings, shall pray for the determination of the irrigable acreage and of the maximum benefits aforesaid and shall be signed and verified by the president of the said board of directors. [1983 c 167 § 230; 1929 c 120 § 3; RRS § 7530-3.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.22.040 Schedule of maximum benefits.** There shall accompany said petition as an exhibit thereto a schedule of maximum benefits and of irrigable acreage for all the respective lands in the district. Such schedule shall contain in

appropriate columns the name of the person to whom such tract of real property was assessed and the description of said property according to the district assessment roll last equalized, in a third column with appropriate heading shall be specified after each said description of land the maximum benefit to be received from the proposed refunding bond issue with the maximum benefits segregated into its three component parts—(1) the amount required to pay the lands' proportional part of the principal of the bonds; (2) the amount required to pay the lands' proportional part of the interest over the term of the bonds; (3) the amount of benefits in excess of the lands' proportional part of the principal of the bonds and the interest over the term of the bonds; and in another appropriately specified column shall be stated after each tract the irrigable acreage thereof which will be assessed for payment of the proposed refunding bonds. Said schedule shall be signed by the secretary of the district. [1931 c 42 § 1; 1929 c 120 § 4; RRS § 7530-4.]

**87.22.050 Hearing, time and place of.** Upon the filing of said petition with the schedule of irrigable acreage and maximum benefits, the court shall fix a time and place for hearing the same and shall order the secretary of the district to give and publish a notice of said hearing. Said hearing may be held at the place fixed in the order and may be adjourned to a place certain in any county in which any lands within the district are situated, and may be continued from time to time and adjourned from county to county for the convenience of landowners and other interested persons. [1929 c 120 § 5; RRS § 7530-5.]

*Official paper for publication: RCW 87.03.020.*

**87.22.060 Notice—Service.** The notice of said hearing shall be given and published in the same manner, except as herein otherwise provided, and for the same length of time that a notice of a special election to determine whether the bonds of the district shall be issued is required to be given and published. [1929 c 120 § 6; RRS § 7530-6. FORMER PART OF SECTION: 1929 c 120 § 7; RRS § 7530-7, now codified as RCW 87.22.065.]

*Bonds, election for, etc. (notice): RCW 87.03.200.*

**87.22.065 Notice—Contents.** Said notice shall state that the district (naming it) proposes to issue and dispose of a refunding bond issue specifying the amount; that proceedings have been instituted in the superior court of the state of Washington in and for the specified county to determine the maximum benefits to be received by the lands within the operation of said district from the issuance and disposal of said proposed bond issue, and further to determine the irrigable acreage which will be assessed for the payment of said bonds, shall state that a schedule of the lands involved together with a statement of the amount of maximum benefits received by the amount of irrigable acreage in each respectively, is on file in said proceedings and may be inspected by any interested person, shall state the time and place fixed for the hearing of the petition and shall state that any person interested in such proceedings may on or before the day fixed for said hearing file his written objections thereto with the clerk of said court, or he will be forever bound by such orders

as the court shall make in such proceedings. [1929 c 120 § 7; RRS § 7530-7. Formerly RCW 87.22.060, part.]

**87.22.070 Hearing—Decree.** At the time and place stated in the notice of said hearing, the court shall consider said petition and shall receive such pertinent evidence as may be offered in support thereof or against the same, shall enter a decree fully determining the maximum benefits received by and the irrigable acreage in, the several tracts of land involved as shown by the schedule and as prayed for in said petition. Said action shall be an equitable one in rem and the court shall have full authority to make and issue any and all necessary orders and to do any and all things proper or incidental to the exercise of its jurisdiction in this connection. At said hearing the matters set forth in said petition and accompanying schedule shall be presumed to be true and correct in the absence of sufficient evidence to the contrary. [1929 c 120 § 8; RRS § 7530-8.]

*Refunding bonds—Form—Manner of payment—Interest rate (decree may determine):* RCW 87.22.150.

**87.22.080 Benefits, how determined—Dismissal—Continuance—Waiver.** The maximum benefits accruing to the several tracts of land in the district from the proposed refunding bond issue shall be considered as new and independent of that accruing from the bonds to be refunded and in determining the maximum benefits as prayed for in said petition, the court shall not be limited to a consideration of the enhancement of market value of the lands involved arising immediately from the issuance and disposal of the proposed refunding bonds but shall have authority to consider such benefits as shall accrue to said lands from the plan of financing provided by the proposed bonds and from the continued operation of the irrigation system under the administration of the district during the life of said refunding bonds and any other benefits that may accrue. If the court finds that the aggregate amount of said maximum benefits shall not equal at least double the amount of the principal of the proposed refunding bonds, to which shall be added the interest computed at the rate specified in the refunding bonds, it shall enter a decree dismissing the proceedings and the district shall have no authority to issue the proposed refunding bonds until a satisfactory decree has been obtained under the provisions of this chapter: PROVIDED, That nothing herein contained shall be construed to prevent the district from continuing the hearing for the purpose of modifying the proposed refunding bond plan or for the purpose of otherwise meeting the objection of the court, nor shall the dismissal of the proceeding be in anywise prejudicial to the institution of a subsequent action for the same purpose; AND PROVIDED FURTHER, That nothing herein contained shall be construed to prevent the court from entering a decree upon stipulation of the holders of the bonds to be refunded to waive their right to part of the indebtedness represented by the bonds to be refunded, so that the proposed refunding bond issue comes within the statutory requirements as to maximum benefits, or to accept refunding bonds based on a lesser aggregate maximum benefit than that required by the statute. [1931 c 42 § 2; 1929 c 120 § 9; RRS § 7530-9. FORMER PART OF SECTION: 1929 c 120 § 10; RRS § 7530-10, now codified as RCW 87.22.085.]

**87.22.085 Irrigable acreage, how determined.** In determining the irrigable acreage as provided herein, the court shall consider all lands included in the district capable of being used for agricultural purposes, provided that no lands shall be found to be irrigable which are not irrigable from the plan of the irrigation works of the district; and provided that nothing herein contained shall be construed to prevent a reconsideration of the irrigability of lands found nonirrigable upon the modification or enlargement of the irrigation system whereby said lands at first found nonirrigable may be irrigated by the district system. [1929 c 120 § 10; RRS § 7530-10. Formerly RCW 87.22.080, part.]

**87.22.090 Appellate review.** Appellate review of the judgment entered in said proceedings may be sought in the same manner as in other cases in equity. [1988 c 202 § 88; 1971 c 81 § 173; 1929 c 120 § 11; RRS § 7530-11.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**87.22.100 Final judgment conclusive.** The judgment of the court determining maximum benefits and the irrigable acreage in such proceedings, unless appealed from within the time prescribed by law, and upon final judgment on appeal, shall be conclusive, except as herein otherwise provided, upon and against each and every owner of said bonds issued as proposed and upon and against every tract of land in the district, upon and against those owning the same or having any interest therein, including minors, insane persons, those convicted of crime as well as those free from disability, and upon and against those who may have appeared in said proceedings. [1929 c 120 § 12; RRS § 7530-12. FORMER PART OF SECTION: 1929 c 120 § 13; RRS § 7530-13, now codified in RCW 87.22.105.]

**87.22.105 Final judgment conclusive—Exception.** Said judgment shall be final and conclusive upon and against all lands in the district on appeal as aforesaid, except as to the particular tract or tracts involved in the appeal. [1929 c 120 § 13; RRS § 7530-13. Formerly RCW 87.22.100, part.]

**87.22.110 Transcript to other counties.** A transcript of so much of the judgment in said proceedings as pertain to the lands situated in each county other than the one in which the proceedings were instituted shall be certified by the clerk of the court and mailed to the county clerk of each of said other counties respectively for record among the recorded judgments therein. [1929 c 120 § 14; RRS § 7530-14.]

**87.22.120 Election—Question to electors.** Upon final determination of maximum benefits and irrigable acreage aforesaid, the board of directors of the district shall submit to the electors of the district possessing the qualifications prescribed by the irrigation district law the question whether refunding bonds of the district in amount and of the maturity proposed by said board shall be issued and exchanged for outstanding bonds as herein provided. [1929 c 120 § 15; RRS § 7530-15. FORMER PART OF SECTION: 1929 c 120 § 16; RRS § 7530-16, now codified as RCW 87.22.125.]

*Qualification of voters and directors:* RCW 87.03.045.

**87.22.125 Election—Procedure.** Except as herein otherwise specifically provided said election shall be called, noticed, conducted and the results thereof determined in the same manner and by the same officials as that provided by law for the calling, noticing, conducting and canvassing of original bond elections in irrigated districts. [1929 c 120 § 16; RRS § 7530-16. Formerly RCW 87.22.120, part.]

*Bond elections: RCW 87.03.200.*

**87.22.130 Election—Notice, contents.** The notice of said election shall specify the time and place of the election, the amount of the proposed refunding bonds, the maturity, the schedule of the minimum annual payments of the principal thereof and the maximum annual rate of interest said bonds shall bear, as approved by the court in the decree determining maximum benefits and irrigable acreage. [1929 c 120 § 17; RRS § 7530-17.]

**87.22.140 Election—Majority vote affirmative, procedure.** If a majority of the votes cast at said election are in favor of the proposed refunding issue the board of directors shall thereupon have authority to cause refunding bonds of the district in the amount and on the basis of the plan of payment and rate of interest proposed, to be issued and exchanged as herein provided. [1929 c 120 § 18; RRS § 7530-18. FORMER PART OF SECTION: 1929 c 120 § 19; RRS § 7530-19, now codified in RCW 87.22.145.]

**87.22.145 Exchange of bonds.** Refunding bonds provided for under this chapter may be exchanged for any or all of the bonds to be refunded on such basis as may be agreed upon between the board of directors of the district and the bond owners: PROVIDED, That said refunding bonds shall not be issued in a greater sum than the total aggregate face value of the bonds to be refunded. [1983 c 167 § 231; 1929 c 120 § 19; RRS § 7530-19. Formerly RCW 87.22.140, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.22.150 Form of bonds—Manner of payment—Interest rate.** (1) Said refunding bonds shall be issued in such denominations as the board shall determine, but in the same denominations so far as practicable as the bonds to be refunded and shall mature at the date specified in the notice of election but not in any event later than thirty years from the date thereof, and shall be payable in minimum annual installments specified on a percentage basis and amortized to provide for full payment of the bonds with interest at maturity: PROVIDED, That in lieu of the annual payments of principal and semiannual payments of interest as provided in this chapter, the court may prescribe the form, manner of payment, and interest rate or rates of the refunding bonds, in the decree determining maximum benefits and irrigable acreage; and said decree may grant the district the right to pay at the date of any annual or semiannual payment, one or more next accruing annual or semiannual installments less the interest on that part of the principal thus paid in advance: AND PROVIDED, In all cases in which the court determines the form, manner of payment, and interest rate of the refunding bonds in the decree determining maximum benefits, all notices pro-

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vided in this chapter and any other provision thereof, shall be given and construed in conformity with the terms and conditions of said bond prescribed in said decree. Such bonds may be in any registered form as provided for in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued in any registered form and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 232; 1970 ex.s. c 56 § 97; 1969 ex.s. c 232 § 56; 1931 c 42 § 3; 1929 c 120 § 20; RRS § 7530-20.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

*Hearing—Decree: RCW 87.22.070.*

**87.22.160 Interest on unpaid bond installments—When payable.** All unpaid installments on account of the principal of said refunding bonds shall bear interest from the date of the bonds at a rate or rates as authorized by the board of directors of the district. Different installments of the principal of said bonds may bear different rates of interest if it is so provided in the bond plan. Interest shall be payable semi-annually on the first day of January and July of each year. [1970 ex.s. c 56 § 98; 1969 ex.s. c 232 § 57; 1929 c 120 § 21; RRS 7530-21. FORMER PART OF SECTION: 1929 c 120 § 22; RRS § 7530-22, now codified as RCW 87.22.165.]

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**87.22.165 Bond payments, where payable.** Both principal and interest shall be made payable at the office of the county treasurer of the county in which the office of the board of directors of the district is situated. [1929 c 120 § 22; RRS § 7530-22. Formerly RCW 87.22.160, part.]

**87.22.170 Bond contents—Transferability—Priority.** Said bonds shall express upon their face that they were issued by authority of this chapter, stating its title and date of approval, that the district reserves the right to pay on account of the principal thereof annual installments at a greater rate than the minimum rate stated in the bonds, that said bonds are transferable only on the registration book of the county treasurer's office at which said bonds are payable; that any attempted transfer of said bonds not recorded in said registration book shall be void so far as the rights of the district are concerned and that said bonds are of equal priority, payable with interest on a pro rata basis from revenues derived from annual assessments levied against the irrigable benefited lands within the district. [1929 c 120 § 23; RRS § 7530-23. FORMER PART OF SECTION: 1929 c 120 § 24; RRS § 7530-24, now codified as RCW 87.22.175.]

**87.22.175 Bonds—Signature—Registration book.** Said bonds shall be signed by the president of the board and secretary of the district and the seal of the district shall be impressed thereon. The term "registration book" as used in chapter 87.22 RCW shall constitute the method of registration adopted in conformance with RCW 39.46.030. [1983 c

167 § 233; 1929 c 120 § 24; RRS § 7530-24. Formerly RCW 87.22.170, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.22.190 Transfer on registration book required.**

Said bonds shall be transferable only on the registration book and any attempted transfer of said bonds not recorded in said registration book shall be void so far as the rights of the district are concerned. [1983 c 167 § 234; 1929 c 120 § 26; RRS § 7530-26. FORMER PART OF SECTION: 1929 c 120 § 27; RRS § 7530-27, now codified as RCW 87.22.195.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.22.200 Bonds of equal priority.** Said bonds shall be of equal priority and shall be paid on a pro rata basis, in proportion to their respective face values, PROVIDED, That for purposes of identification only said bonds may be numbered consecutively. [1929 c 120 § 28; RRS § 7530-28.]

**87.22.210 Payment to record owner.** Payment by the said county treasurer of any installment of or interest on said bonds, or any of the same, to the recorded owner thereof as shown on said registration book shall constitute a valid payment, without surrender of said bonds or any of the same, provided that final payment on account of any bond shall not be made until and unless the same is surrendered. [1929 c 120 § 29; RRS § 7530-29. FORMER PART OF SECTION: 1929 c 120 § 30; RRS § 7530-30, now codified as RCW 87.22.215.]

**87.22.215 Payment to agent.** Any bondholder or group of bondholders shall have the right to request said county treasurer in writing to pay the interest and installments of principal of his or their bond or bonds to such agent as may be designated in said request and payment to said agent shall constitute a valid payment to the record owner or owners of said bond or bonds within the provisions of this chapter. [1929 c 120 § 30; RRS § 7530-30. Formerly RCW 87.22.210, part.]

**87.22.230 Assessments—Limitations.** No tract of land shall be assessed by the district during the life of the proposed bonds when issued for the purpose of paying the principal of or interest on said bonds in an aggregate amount in excess of double the amount determined in the decree fixing maximum benefits under subdivision (1) of RCW 87.22.040, together with the interest on the principal computed at the rates specified in the bond, and any assessment in excess thereof shall be void. In addition to its regular normal assessment for the principal or interest of said bonds, no tract of land shall be assessed in any one year to make up past or anticipated delinquencies of assessments or both levied or to be levied against the lands in the district for said purposes, in excess of fifty percent of its regular normal assessment for said bonds. [1931 c 42 § 4; 1929 c 120 § 31; RRS § 7530-31.]

**87.22.240 Assessments—Methods of payment.** The owner of any land within said irrigation district which shall

be liable for payment of said refunding bonds shall have the right to pay the same in said annual or semiannual installments or to make payment at any time when installments are due as in this section provided: (1) To pay an amount equal to the amount fixed in said decree determining the maximum benefits under subdivisions (1) and (2) of RCW 87.22.040 or the amount of the unpaid balance of said sums if such payment is not made until one or more installments have been paid, together with the amount fixed by said decree under subdivision (1) of RCW 87.22.040, and thereafter no further assessment shall be levied against such tract of land; (2) to pay the amount of benefits fixed in the decree determining the maximum benefits under subdivision (1) of RCW 87.22.040 or the unpaid balance thereof if such payment is made after one or more installments shall have been paid, with interest on the amount paid to the time of making payment, and thereafter such lands shall not be subject to assessments except to meet delinquencies of principal and/or interest on said bonds, for which purpose additional assessments shall be levied against said tract of land to an amount not exceeding the amount found in the decree fixing the maximum benefits under subdivision (1) of RCW 87.22.040; or (3) to pay any additional installments of the principal with interest accrued on the amount so paid at the time of the payment, and thereafter, in levying assessments against said tracts of land, said owner shall be given credit for such advance payment. The treasurer of the proper county shall have authority to receive for the benefit of the refunding bond fund of the district the payments herein authorized to be made. [1931 c 42 § 5; 1929 c 120 § 32; RRS § 7530-32. FORMER PART OF SECTION: 1931 c 42 § 6; 1929 c 120 § 33; RRS § 7530-33, now codified as RCW 87.22.245.]

**87.22.245 Assessments—Receipts.** In case the owner of any land within an irrigation district shall make payment in accordance with the second provision in RCW 87.22.240, the county treasurer shall issue to such landowner a receipt stating that such payments have been made and that such lands shall thereafter be subject only to the assessments provided for in accordance with such provisions; and, in case any landowner within such irrigation district shall make any payments in accordance with the third provision of RCW 87.22.240, the county treasurer shall issue to such landowner a receipt showing the payment of such installment or installments and stating that credit therefor is thereby given to such landowner as to apply to future installments. [1931 c 42 § 6; 1929 c 120 § 33; RRS § 7530-33. Formerly RCW 87.22.240, part.]

**87.22.250 Assessments—Payment in money only.** Full payment of the decreed maximum benefits accruing to any tract of land aforesaid can be made by the payment of money only and no sale of any tract of land on account of delinquent district assessments shall be construed as a satisfaction chargeable against the amount of maximum benefits decreed as accruing to said tract by reason of said refunding bonds. [1929 c 120 § 34; RRS § 7530-34.]

**87.22.260 Sale or lease of foreclosed land—Disposition of proceeds.** In any instance where an irrigation district having outstanding refunding bonds issued under the provi-

sion of this chapter, sells or rents a tract of land previously acquired by sale on account of delinquent district assessments, the proceeds of said sale or lease shall be distributed to the expense fund and the refunding bond fund of the district in proportion to the respective amounts of the district exactions made against said tract of land for the benefit of these two funds payable in the year in which the district assessment for which said tract was sold, became delinquent. [1929 c 120 § 35; RRS § 7530-35.]

**87.22.270 Excess in bond fund—Apportionment.**

When the money in the refunding bond fund reaches an excess of ten percent of the amount necessary to meet the total aggregate minimum annual installment of the principal of said bonds and interest next payable, it shall be the duty of said treasurer to apportion said excess to the several bondholders on a pro rata basis in proportion to the par value of their respective bonds and include the same with the payments of the next annual installment of the principal of said bonds. [1929 c 120 § 36; RRS § 7530-36.]

**87.22.275 Rights of bond owners—Lien of bonds—**

**Manner of payment.** Except as herein otherwise specifically provided, refunding bonds, authorized, issued and disposed of under the provisions of this chapter shall entitle the owners thereof to the same rights and privileges, shall constitute a lien on the same property and shall be paid in the same manner as the original bonds refunded by said bond issue, and said refunding bonds shall be retired by the exaction of annual assessments levied against all the lands in the district: PROVIDED, HOWEVER, That any lands in the district against which no benefits are determined by the decree determining maximum benefits may be excluded from the district in the same manner in which lands may now be excluded from the districts against which there are no bond issues, and said lands so excluded shall be forever free of the liens of said refunding bonds; AND PROVIDED FURTHER, That no assessments against any tract of land shall exceed the amount specified under RCW 87.22.230. [1983 c 167 § 235; 1931 c 42 § 7; 1929 c 120 § 37; RRS § 7530-37. Formerly RCW 87.22.220.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.22.280 Judicial confirmation.**

Proceedings had for the authorization, issuance and disposal of refunding bonds provided for herein may be considered, confirmed and approved by the court in proceedings authorized by the irrigation district act in the same manner and with the same effect, as proceedings had for authorization, issuance and disposal of other irrigation district bonds provided for by law, are considered, confirmed and approved. [1929 c 120 § 38; RRS § 7530-38.]

*Proceedings for judicial confirmation: RCW 87.03.780 through 87.03.805.*

**87.22.900 Severability—1929 c 120.**

If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part

thereof not adjudged to be invalid or unconstitutional. [1929 c 120 § 39; RRS § 7530-39.]

**87.22.910 Construction—Chapter additional method.** Nothing in this chapter contained shall be deemed or construed as abridging, enlarging or modifying any existing statute relating to refunding bonds of irrigation districts. This chapter is intended as an independent act providing an additional method for the issuance of refunding bonds of such districts. [1929 c 120 § 40; RRS § 7530-40. Formerly RCW 87.22.010, part.]

**Chapter 87.25 RCW**

**CERTIFICATION OF BONDS**

Sections

- 87.25.010 Resolution to certify—Investigation.
- 87.25.020 Request for information—Compliance.
- 87.25.030 Transcript to attorney general—Report filed with secretary of state.
- 87.25.040 Contents of director's report.
- 87.25.050 Certificates to be attached to reports.
- 87.25.060 Supplemental report.
- 87.25.070 Form of secretary of state's certificate.
- 87.25.090 Expense to be paid by district.
- 87.25.100 Expenditures of bond proceeds—Employment and payment of attorneys.
- 87.25.120 Inspection of work as it progresses.
- 87.25.125 Certification in installments.
- 87.25.130 Forms prescribed.
- 87.25.140 Expenditures for construction—Approval—Budget.
- 87.25.900 Severability—1923 c 51.

**87.25.010 Resolution to certify—Investigation.**

Whenever the board of directors of any irrigation district, organized and existing under and pursuant to the laws of the state of Washington, shall by resolution declare that it deems it desirable that any contemplated or outstanding bonds of such district, including any of its bonds authorized but not sold, be certified under the provisions of this chapter, such board of directors shall thereupon file a certified copy of such resolution with the director of ecology. Such director on receipt of a certified copy of such resolution shall, without delay, make or cause to be made a full investigation of the affairs of the district. [1988 c 127 § 49; 1923 c 51 § 1; RRS § 7432-1.]

**87.25.020 Request for information—Compliance.**

In connection with the investigation and report provided for in this chapter, the director of ecology is authorized and directed to make written request upon any state officer, institution or department for information, opinion or advice relative to any features of such investigation pertinent to the work of such officer or department. Upon receipt of such written request from said director, such officer or department shall, without delay, make such investigation as may be necessary and shall then furnish the said director with a report in writing giving the information, opinion or advice required by said director. [1988 c 127 § 50; 1923 c 51 § 2; RRS § 7432-2.]

**87.25.030 Transcript to attorney general—Report filed with secretary of state.**

If, after the investigation herein provided for, the director finds that the project of the district is feasible, that the bond issue proposed to be certified

is necessary and in sufficient amount to complete the improvement contemplated and that the district shows a clear probability of successful operation, he shall submit a complete transcript, to be furnished and certified by the district, of the proceedings relating to the organization and establishment of the district and relating to or affecting the validity of the bond issue involved, to the attorney general, for his written opinion as to the legality of the same. If the attorney general finds that any of the matters submitted in the transcript are not legally sufficient he shall so state in his opinion to the director of ecology. The district shall then be given an opportunity, if possible, to correct the proceeding or thing complained of to the satisfaction of the attorney general. If the attorney general finds that all the matters submitted in the transcript as originally submitted or as subsequently corrected are legally sufficient said director shall thereupon file his report with the secretary of state and forward a copy to the secretary of the district, to be kept among the records of the district. [1988 c 127 § 51; 1923 c 51 § 3; RRS § 7432-3.]

**87.25.040 Contents of director's report.** Said report filed with the secretary of state shall contain conclusions upon the following points:

- (1) The supply of water available for the project and the right of the district to so much water as may be needed.
- (2) The nature of the soil as to its fertility and susceptibility to irrigation, the probable amount of water needed for its irrigation and the probable need of drainage.
- (3) The feasibility of the district's irrigation system and of the specific unit for which the bonds under consideration are desired, whether such system and unit be constructed, projected or partially completed; and the sufficiency of the amount of the proposed bond issue to complete the improvement contemplated.
- (4) The reasonable market value of the water, water rights, canals, reservoirs, reservoir sites and irrigation works owned by such district or to be acquired or constructed by it with the proceeds of any such bonds.
- (5) The reasonable market value of the lands included within the district.
- (6) The plan of operation and maintenance used or contemplated by the district.
- (7) The method of accounting employed or proposed to be employed by the district.
- (8) Any other matter material to the investigation. [1923 c 51 § 4; RRS § 7432-4.]

**87.25.050 Certificates to be attached to reports.** Attached to said report of said director shall be the following:

- (1) A certificate signed by the director of ecology certifying to the amount and sufficiency of water rights available for the project.
- (2) A certificate signed by a soil expert of the Washington State University, certifying as to the character of the soil and the classification of the lands in the district.
- (3) A certificate signed by the director of ecology approving the general feasibility of the system of irrigation.
- (4) A certificate signed by the attorney general of the state of Washington approving the legality of the organization and establishment of the district and the legality of the

bond issue offered for certification. [1988 c 127 § 52; 1977 ex.s. c 169 § 112; 1923 c 51 § 5; RRS § 7432-5.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**87.25.060 Supplemental report.** When the proposed bond issue has been finally approved by the director, he shall file a supplemental report with the secretary of state giving the numbers, date or dates of issue and denominations of said bonds which shall then be entitled to certification as herein provided. [1923 c 51 § 6; RRS § 7432-6.]

**87.25.070 Form of secretary of state's certificate.** All bonds issued by any eligible district availing itself of the provisions of this chapter shall, before sale by the district, have attached thereto the certificate of the secretary of state, essentially in the following form:

Olympia, Washington, . . . (Insert date). . . .

I, . . . . ., secretary of state of the state of Washington, do hereby certify that the above named district has been investigated and its project approved by the department of ecology of the state of Washington; that the legality of the bond issue of which this bond is one has been approved by the attorney general of the state of Washington, and that the carrying out of the purposes for which this bond was issued is under the supervision of said department, as provided by law.

[Seal]

Secretary of State.

[1988 c 127 § 53; 1923 c 51 § 7; RRS § 7432-7.]

**87.25.090 Expense to be paid by district.** All necessary expenses incurred in making the investigation, examination, opinions and reports in this chapter provided for shall be paid at such times and in such manner as the director of ecology shall require, by the irrigation district, the affairs of which have been investigated and reported on by the said director: PROVIDED, That the benefit of any service that may have been performed and any data that may have been obtained in pursuance of the requirements of any law other than this chapter, shall be available for the use of the director without charge to said district. [1988 c 127 § 54; 1923 c 51 § 8; RRS § 7432-8.]

**87.25.100 Expenditures of bond proceeds—Employment and payment of attorneys.** Whenever the bonds of any irrigation district have been certified, as provided in this chapter, no expenditures shall be made from the proceeds of such bonds, nor shall any liability chargeable against such proceeds be incurred, until there shall have been filed with and approved by the director of ecology a schedule of proposed expenditures in such form as said director shall prescribe, and no expenditures from the proceeds of said bonds shall be made for any purpose in excess of the amount allowed therefor in such schedule without the written consent of said director: PROVIDED, FURTHER, That, if it shall be necessary, the attorney general may employ competent attorneys to assist him in the performance of his duties under this chapter, said attorneys to be paid by the irrigation district for which services are rendered from any of the funds of said dis-

tract at such time and in such manner as the attorney general shall require. [1988 c 127 § 55; 1923 c 51 § 9; RRS § 7432-9.]

**87.25.120 Inspection of work as it progresses.** During the progress of any work to be paid for from the proceeds of any bond issue certified as in this chapter provided, the director of ecology shall make or cause to be made, from time to time, at the expense of the district, such inspection of the work as may be necessary to enable the said department to know that the plans approved by the director are being carried out without material modification, unless such modification has been approved by the director. [1988 c 127 § 56; 1923 c 51 § 10; RRS § 7432-10.]

**87.25.125 Certification in installments.** Whenever the survey, examinations, drawings, and plans of an irrigation district, and the estimate of cost based thereon, shall provide that the works necessary for a completed project shall be constructed progressively over a period of years in accordance with a plan or schedule adopted by resolution of the board of directors of the district, it shall not be necessary for the secretary of state to certify at one time all of the bonds that have been voted for the said completed project; but such bonds may be certified from time to time, when approved by the director of ecology, as needed by the district. If the secretary of state shall certify all of the bonds necessary for the said completed project, even if said project is to be constructed progressively over a period of years in accordance with the aforesaid resolution of the board of directors, the bonds so voted and certified shall only be sold after prior written approval of said director. [1988 c 127 § 57; 1923 c 51 § 11; RRS § 7432-11. Formerly RCW 87.25.080.]

**87.25.130 Forms prescribed.** Districts coming within the provisions of this chapter shall prepare and maintain all records of their operation and proceedings upon forms prescribed by the director of ecology. [1988 c 127 § 58; 1923 c 51 § 12; RRS § 7432-12.]

**87.25.140 Expenditures for construction—Approval—Budget.** When the bonds of any district have been certified as provided herein, it shall be unlawful for the district, during the life of said bonds to expend any money or incur any obligation for construction purposes without the written approval of the director of ecology, nor shall such district issue and sell any bonds not certified as herein provided, and the district shall annually at such time as said director shall prescribe, prepare and file with the director, on forms furnished by that officer, a budget of its contemplated expenditures for maintenance and operation during the ensuing year. [1988 c 127 § 59; 1923 c 51 § 13; RRS § 7432-13. Formerly RCW 87.25.110.]

**87.25.900 Severability—1923 c 51.** If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional. [1923 c 51 § 14; RRS § 7432-14.]

(2006 Ed.)

## Chapter 87.28 RCW REVENUE BONDS FOR WATER, POWER, DRAINS, ETC.

### Sections

87.28.005	"County treasurer," "treasurer of the county," defined.
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**87.28.005 "County treasurer," "treasurer of the county," defined.** As used in this chapter, in accordance with RCW 87.03.440, the term "county treasurer" or "treasurer of the county" or other reference to that office means the treasurer of the district, if the district has designated its own treasurer, unless the context clearly requires otherwise. [1979 ex.s. c 185 § 17.]

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**87.28.010 Revenue bonds authorized.** The board of directors of any irrigation district in this state which is furnishing or may furnish irrigation water, domestic water, electric power, drainage or sewerage services for which rates or tolls and charges are imposed or contract payments made, or any combination of such services, shall have authority to issue and sell bonds of the district payable from revenues derived from district rates or tolls and charges or contract payments for such service or services, and to pledge such revenues from one or more of such services for the payment and retirement of bonds issued for irrigation water, domestic water, electric power, and drainage or sewer improvements: PROVIDED, That nothing in this section shall authorize a district which is not on March 8, 1973, engaged in providing electrical service permission to pledge revenue from water and sewer service to support the issuance of revenue bonds for the acquisition or construction of electrical power facilities other than those authorized by RCW 87.03.015(1), as now or hereafter amended. [1979 ex.s. c 185 § 8; 1973 c 74 § 1; 1949 c 57 § 1; Rem. Supp. 1949 § 7434-10.]

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**87.28.015 Interest bearing warrants authorized—Form, covenants, issuance and sale.** Irrigation districts may also issue interest bearing warrants to provide interim financing pending the issuance of district revenue bonds. The items, form and content, and the manner of the issuance and

sale of such interest bearing warrants as well as any covenants for the redemption of such warrants shall be established by resolution of the district's board of directors. Such warrants may be in any form, including bearer warrants or registered warrants as provided in RCW 39.46.030. Such warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 236; 1979 ex.s. c 185 § 18.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**87.28.020 Form and terms of bonds.** (1) Said bonds shall be in such form as the board of directors shall determine; shall be in bearer form or registered as to principal or interest or both as provided in RCW 39.46.030, and may provide for conversion between registered and coupon bonds; shall be in such denominations, shall be numbered, shall bear such date and shall be payable at such time or times up to a maximum of not to exceed forty years as shall be determined by the board of directors; shall bear interest at such rate or rates, payable at such time or times as authorized by the board of directors; shall be payable at the office of the county treasurer of the county in which the principal office of the district is located or at such other place as the board of directors shall provide and specify in the bonds; shall be executed by the president of the board of directors and attested and sealed by the secretary thereof and may have facsimile signatures of the president and secretary imprinted on any interest coupons in lieu of original signatures and the facsimile seal of the district and the facsimile signature of either the president or the secretary on the bonds in lieu of a manual signature. Said bonds may provide that the same or any part thereof at the option of the board of directors may be redeemed in advance of maturity on any interest payment date upon the terms and conditions established by the board, may include in the amount of the issue funds for the purpose of paying interest on the bonds during the period of construction of the facility being financed by the proceeds of the bonds, and may include in the amount of the issue funds for the purpose of establishing, maintaining, or increasing reserves in the manner, for the purposes, and subject to the restrictions set forth in RCW 39.44.140.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 237; 1979 ex.s. c 185 § 9; 1973 c 74 § 2; 1970 ex.s. c 56 § 99; 1969 ex.s. c 232 § 58; 1949 c 57 § 2; Rem. Supp. 1949 § 7434-11.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

*Facsimile signatures:* RCW 39.44.100.

**87.28.030 Bonds payable only from special funds—Lien on revenues.** The board of directors of the issuing district shall have authority and is required to create a special fund or funds to be carried in said county treasurer's office

for the account of the district for the sole purpose of paying the interest and principal of such bonds. The board of directors of the issuing district shall obligate and bind the district to set aside and pay into such special fund or funds a fixed proportion, or any fixed amount of and not exceeding a fixed proportion of, or a fixed amount or amounts without regard to any fixed proportion of the gross revenues from the charges made by the district for the irrigation water, domestic water, the electric power, drainage, or sewer service, or any combination of such services as the case may be, for which the bonds are issued, and such bonds and the interest thereon shall be payable only out of such special fund or funds but shall be a lien and charge against all revenues received for the service or services the revenues of which are pledged to such fund or funds and payments received from any utility local improvement district or districts pledged to secure such bonds, subject only to operating and maintenance expenses of such service. [1979 ex.s. c 185 § 10; 1973 c 74 § 3; 1949 c 57 § 3; Rem. Supp. 1949 § 7434-12.]

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**87.28.035 Determining amount payable into special funds.** In creating such special fund or funds the board of directors of the district shall have due regard for the cost of the operation and maintenance of the district system required by the district to furnish said irrigation water, domestic water, electric power, drainage, or sewer service, as the case may be, and shall not set aside into such special fund a greater amount or proportion of the revenue of such service or services, than, in its judgment, will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the revenue previously pledged to such special fund or funds. [1979 ex.s. c 185 § 11; 1949 c 57 § 4; Rem. Supp. 1949 § 7434-13. Formerly RCW 87.28.080.]

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**87.28.040 Bonds do not constitute general debt of district.** Any such bonds, and interest thereon, issued against a special fund as herein provided shall be a valid claim of the owner thereof only as against said special fund or funds and its fixed proportion or amount of the revenue pledged to such fund or funds and shall not constitute a general indebtedness against the issuing irrigation district. Each such bond shall state upon its face that it is payable from a special fund or funds only, naming the special fund or funds and the resolution creating the fund or funds. [1983 c 167 § 238; 1979 ex.s. c 185 § 12; 1949 c 57 § 5; Rem. Supp. 1949 § 7434-13a.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**87.28.070 Sale of bonds.** (1) Such revenue bonds shall be sold in such manner as the board of directors shall deem for the best interests of the irrigation district, either at public or at private sale and at any price and at any rate or rates of interest, but if the board of directors shall dispose of said bonds in exchange for construction of improvements or for

materials, such bonds shall not be disposed of for less than par for value received by the district.

(2) Notwithstanding subsection (1) of this section, such bonds may be sold in accordance with chapter 39.46 RCW. [1983 c 167 § 239; 1970 ex.s. c 56 § 100; 1969 ex.s. c 232 § 59; 1949 c 57 § 6; Rem. Supp. 1949 § 7434-14.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**87.28.090 Board to set rates to provide necessary revenues.** The board of directors of any irrigation district issuing such revenue bonds shall provide for revenues by fixing rates and charges for furnishing the service involved as the board shall deem necessary, in the manner provided by law and as fixed by resolution, the total revenues to be so estimated and determined as to be sufficient to take care of costs of maintenance, operation interest and principal amortization requirements and other charges involved. [1949 c 57 § 7; Rem. Supp. 1949 § 7434-15.]

*Assessments and levies: RCW 87.03.240 through 87.03.305.*

**87.28.100 Fixed share of revenues must be paid into special fund.** When a special fund has been created and bonds have been issued as herein provided, the fixed proportion or amount of the revenues pledged to the payment of the bonds and interest shall be set aside and paid into the special fund monthly as collected, as provided in the resolution creating the fund, and in case any irrigation district shall fail thus to set aside and pay said fixed proportion or amount as aforesaid, the owner of any bond against the special fund may bring appropriate court action against the district and compel such setting aside and payment. [1983 c 167 § 240; 1979 ex.s. c 185 § 13; 1949 c 57 § 8; Rem. Supp. 1949 § 7434-16.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**87.28.103 Election on proposed bond issue—Exception—Consent of state.** When the directors of the district have decided to issue revenue bonds as herein provided, they shall call a special election in the irrigation district at which election shall be submitted to the electors thereof possessing the qualifications prescribed by law the question whether revenue bonds of the district in the amount and payable according to the plan of payment adopted by the board and for the purposes therein stated shall be issued. Said election shall be called, noticed, conducted and canvassed in the same manner as provided by law for irrigation district elections to authorize an original issue of bonds payable from revenues derived from annual assessments upon the real property in the district: PROVIDED, That the board of directors shall have full authority to issue revenue bonds as herein provided payable within a maximum period of forty years without a special election: AND PROVIDED, FURTHER, That any irrigation district indebted to the state of Washington shall get the written consent of the director of the department of ecology prior to the issuance of said revenue bonds. [1979 ex.s. c 185 § 14;

1949 c 57 § 9; Rem. Supp. 1949 § 7434-17. Formerly RCW 87.28.050.]

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

*Bonds, election for, etc.: RCW 87.03.200.*

*Qualification of voters: RCW 87.03.045.*

**87.28.108 Payment of bonds—Covenants for securing authorized—Scope.** The board of directors may make such covenants as it may deem necessary to secure and guarantee the payment of the principal of and interest on revenue bonds of the district, including but not being limited to covenants for: The establishment and maintenance of adequate reserves to secure or guarantee the payment of such principal and interest; the protection and disposition of the proceeds of sale of such bonds; the use and disposition of the gross revenues of the service or services of the district providing revenues for the payment of such bonds and any additions or betterments thereto or extensions thereof; the use and disposition of any utility local improvement district assessments; the creation and maintenance of funds for renewals and replacements of the service or services providing revenues for the payment of such bonds; the establishment and maintenance of rates and charges adequate to pay principal and interest of such bonds and to maintain adequate coverage over debt service; the maintenance, operation, and management of the service or services providing revenues for the payment of such bonds and the accounting, insuring, and auditing of the business in connection therewith; the terms upon which such bonds or any of them may be redeemed at the election of the district; limitations upon the right of the district to dispose of its service or services providing revenues for the payment of such bonds or any part thereof; the appointment of trustees, depositaries, and paying agents to receive, hold, disburse, invest, and reinvest all or any part of the income, revenue, and receipts of the district; and the board of directors may make such other covenants as it may deem necessary to accomplish the most advantageous sale of such bonds. The board of directors may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with any revenue bonds being issued and sold. [1979 ex.s. c 185 § 21.]

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**87.28.110 Payment of bonds.** Said county treasurer shall have authority to pay said bonds and any appurtenant coupons in accordance with their terms from any moneys on hand in said special fund and when said bonds with interest have been fully paid, any moneys remaining in the fund shall be transferred to the expense fund of the district and the special fund closed. [1983 c 167 § 241; 1949 c 57 § 11; Rem. Supp. 1949 § 7434-19.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.28.120 Objects executed by resolution—Determining legality of proceedings.** The board of directors of the issuing district shall have full authority by resolution to carry out the objects of this chapter in accordance with the provisions hereof and the same shall be liberally construed.

The court shall have full jurisdiction under the irrigation district law to examine and determine the legality of the proceedings held to authorize and dispose of such revenue bonds, in the same manner and with the same legal effect as that provided in the case of other bonds of the district. [1949 c 57 § 12; Rem. Supp. 1949 § 7434-20. Formerly RCW 87.28.120 and 87.28.130.]

*Bonds: RCW 87.03.200 through 87.03.235.*

**87.28.150 Refunding revenue bonds authorized—Revenue bond redemption fund established—Use.** The board of directors of any irrigation district may, by resolution, without submitting the matter to the voters of the district, provide for the issuance of refunding revenue bonds to refund one or more of the following: Outstanding assessment bonds, revenue bonds, contracts with the United States or state of Washington, or any part thereof, and all outstanding local improvement district bonds, at maturity thereof, or before maturity thereof if they are subject to call for prior redemption or if all of the owners thereof consent thereto. The refunding bonds shall be issued in the manner and for the purposes set forth in chapter 39.53 RCW.

Whenever district bonds or contracts payable in whole or part from assessments have been refunded pursuant to this section, all assessments remaining unpaid shall thereafter when collected be paid into the revenue bond redemption fund established for payment of the refunding revenue bonds, and the cash balances, if any, in the reserve or guaranty funds for such refunded bonds and the proceeds received from any other assets owned by such funds shall be used in whole or in part as a reserve or guaranty fund for the refunding revenue bonds or be transferred in whole or in part to any other funds of the district as the board of directors may determine. In the event that any warrants are outstanding against the local improvement guaranty fund of the district at the time of the issuance of such refunding revenue bonds, said bonds shall be issued in an amount sufficient also to fund and pay such outstanding warrants. [1983 c 167 § 242; 1979 ex.s. c 185 § 22.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**87.28.200 Utility local improvement districts—Authorized—Special assessments—Limitations.** Any irrigation district shall have the power to establish utility local improvement districts within its territory and to levy special assessments within such utility local improvement districts in the same manner as provided for irrigation district local improvement districts: PROVIDED, That it must be specified in any petition for the establishment of a utility local improvement district that the sole purpose of the assessments levied against the real property located within the utility local improvement district shall be the payment of the proceeds of those assessments into the revenue bond fund for the payment of revenue bonds, that no warrants or bonds shall be issued in any such utility local improvement district, and that the collection of interest and principal on all assessments in such utility local improvement district, when collected, shall be paid into the revenue bond fund. [1979 ex.s. c 185 § 19.]

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

**87.28.210 Utility local improvement districts—Conversion of local improvement districts to.** The board of directors of any irrigation district may by resolution convert any then existing local improvement district into a utility local improvement district at any time prior to the adoption of a resolution approving and confirming the initial assessment roll of such local improvement district. The resolution so converting the local improvement district shall provide for the payment of the special assessments levied in that district into the special fund established or to be established for the payment of revenue bonds issued to defray the cost of the local improvement district. [1979 ex.s. c 185 § 20.]

**Effective date—Severability—1979 ex.s. c 185:** See notes following RCW 87.03.013.

## Chapter 87.48 RCW

### INDEMNITY TO STATE ON LAND SETTLEMENT CONTRACTS

#### Sections

- 87.48.010 Contracts for indemnity authorized.
- 87.48.020 Approval of contract—Execution—State obligation to enter into land settlement contract with federal government.
- 87.48.030 Assessments—Indemnity fund—Transfer to maintenance fund, when.
- 87.48.040 Estimate of expenses and losses—Payment.

**87.48.010 Contracts for indemnity authorized.** Any irrigation district by and through its board of directors is hereby authorized and shall have the power to enter into a contract with the state of Washington whereby it shall agree to repay to the state of Washington any expenses incurred by the state of Washington and to indemnify the state of Washington against any and all losses and damages which the state of Washington may suffer, under any contract between the state of Washington and the United States relating to land settlement in said district. This chapter shall apply to all irrigation districts and shall not be otherwise construed. [1925 ex.s. c 34 § 1; RRS § 7525-1.]

**87.48.020 Approval of contract—Execution—State obligation to enter into land settlement contract with federal government.** When any such irrigation district shall have duly executed and tendered to the state of Washington the contract of indemnity as it is herein empowered to do, the director of ecology is hereby authorized, empowered and required to sign and execute such contract on behalf of the state of Washington. After having received any such contract of indemnity from any such irrigation district the said director of ecology is hereby authorized, empowered and required to enter into a contract on behalf of the state of Washington with the United States relating to the land settlement in such district if such contract shall be presented, or tendered by the United States, which contract, if entered into on or before June 30, 1926, shall have the same terms and provisions of that certain contract submitted to the state of Washington under authority of the act of congress approved March 3rd, 1925, entitled "An Act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1926,

and for other purposes." PROVIDED, That the liability of the state of Washington to the United States under such contract, if entered into on or before June 30, 1926, shall be limited to three hundred thousand dollars and be subject to appropriation therefor being made by the legislature. PROVIDED, FURTHER, That the said director of ecology or any other officer of the state of Washington shall not enter into any such contract with the United States after June 30, 1926, unless and until any such contract shall have been presented to the legislature by the governor through the director of ecology and approved by a joint resolution of the legislature, which resolution shall be passed by a constitutional majority of both branches of the legislature by roll call. [1988 c 127 § 60; 1925 ex.s. c 34 § 2; RRS § 7525-2.]

**87.48.030 Assessments—Indemnity fund—Transfer to maintenance fund, when.** Any such irrigation district which shall have entered into any such contract of indemnity with the state of Washington is hereby empowered and shall annually be required to levy assessments against all the property within said district from time to time in such amounts as shall enable it to reasonably anticipate and promptly comply with its said contract with the state of Washington. Such assessments shall be levied and be payable at the time and in the manner that its regular assessments are made and shall have the same validity, force and effect as assessments for any other purposes. Such assessments shall be levied for and shall be paid into a fund to be known as "The Indemnity Fund" and such fund shall not be used for any purpose other than to fulfill its obligations under its indemnity contract with the state of Washington. PROVIDED, That when all expenses, losses or damages for which the district may become liable to the state of Washington under RCW 87.48.010 shall have been paid to the state of Washington any money then remaining in "The Indemnity Fund" shall be transferred to the maintenance fund of said district. [1925 ex.s. c 34 § 3; RRS § 7525-3.]

**87.48.040 Estimate of expenses and losses—Payment.** When the state of Washington shall be required to make any payment or expend any money in the performance of any such contract entered into with the United States, an estimate of the amount of expenses likely to be incurred in such performance, together with an estimate of future losses or damages that may occur under such contract shall be made by the director of ecology, who shall thereupon return a statement thereof to such district, and the board of directors of such district shall from time to time as required by the director of ecology levy against all the property within said district such assessments as may be necessary to repay to the state of Washington such estimated expenses, losses and damages. PROVIDED, If such district has no money in the "The Indemnity Fund" to repay such expenses when the same shall be incurred or to pay such losses and damages as the same shall accrue it shall be the duty of the board of directors to cause warrants of the district to be issued in payment of such indebtedness, which warrants shall bear interest at a rate determined by the board and be paid from moneys paid into the indemnity fund by assessments levied as hereinbefore

provided. [1988 c 127 § 61; 1981 c 156 § 32; 1925 ex.s. c 34 § 4; RRS § 7525-4.]

**Chapter 87.52 RCW**

**DISSOLUTION OF DISTRICTS WITHOUT BONDS**

Sections

- 87.52.001 Actions subject to review by boundary review board.  
1897 ACT
- 87.52.010 Dissolution authorized.
- 87.52.015 Petition.
- 87.52.030 Election—Ballots—Qualified electors.
- 87.52.040 Vote required—Petition to court—Notice and publication of hearing—Court order.
- 87.52.060 Board of directors as trustees—Duties—Records to be delivered to clerk.  
1939 ACT
- 87.52.070 Dissolution when not brought under irrigation for twenty years.
- 87.52.080 Petition.
- 87.52.090 Election—Procedure when three-fifths vote for disorganization.
- 87.52.150 Disposal of real property—Right of adjacent owners.

*Dissolution of inactive special purpose districts: Chapter 36.96 RCW.*

**87.52.001 Actions subject to review by boundary review board.** Actions taken under chapter 87.52 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 67.]

1897 ACT

**87.52.010 Dissolution authorized.** Any irrigation district, organized and existing by virtue of laws of this state, which has no bonded indebtedness outstanding, may be disorganized and its business and affairs liquidated and wound up in the manner hereinafter provided. [1897 c 79 § 1; RRS § 7526. FORMER PART OF SECTION: 1897 c 79 § 2; RRS § 7527, now codified as RCW 87.52.015.]

**87.52.015 Petition.** A petition signed by one-third or more holders of title or evidence of title to lands within said district who shall be qualified electors thereof, reciting the fact that said district has no bonded indebtedness and praying that said district be disorganized under the provisions of RCW 87.52.010 through 87.52.060, shall be delivered to the secretary of the board of directors of said district or to one of the directors thereof. [1897 c 79 § 2; RRS § 7527. Formerly RCW 87.52.010, part.]

**87.52.030 Election—Ballots—Qualified electors.** Upon the delivery of said petition the board of directors of said irrigation district shall, at their next succeeding regular monthly meeting, order an election, the date of which election shall be within twenty days from the date of said meeting of the board of directors and which election shall be conducted as other elections of irrigation districts are conducted. At said election the qualified electors of said irrigation district shall cast ballots which shall contain the words "Disorganize, Yes," or "Disorganize, No." No person shall be entitled to vote at any election held under the provisions of RCW 87.52.010 through 87.52.060 unless he is a qualified voter

under the election laws of the state, and holds title or evidence of title to land in said district. [1897 c 79 § 3; RRS § 7528. FORMER PART OF SECTION: 1939 c 149 § 3, part; RRS § 7527-3, part, now codified in RCW 87.52.090.]

*Irrigation district elections:* RCW 87.03.030 through 87.03.110.

*Voter registration:* Chapter 29A.08 RCW.

**87.52.040 Vote required—Petition to court—Notice and publication of hearing—Court order.** If three-fifths of the votes cast at any election under the provisions of RCW 87.52.010 through 87.52.060 shall contain the words "Disorganize, Yes," then the board of directors shall present to the superior judge of the county in which said irrigation district is located an application for an order of said superior court that such irrigation district be declared disorganized and dissolved, and that its affairs be liquidated and wound up, as provided for in RCW 87.52.010 through 87.52.060, and reciting that at an election of such irrigation district, held as provided in RCW 87.52.010 through 87.52.060, three-fifths of the votes cast contained the words "Disorganize, Yes," and such petition shall be certified to by the directors of said district. They shall also file with said superior court a statement, sworn to by the directors of said irrigation district, showing all outstanding indebtedness of said irrigation district, or if there be no such indebtedness, then the directors shall make oath to that effect. Notice of said application shall be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in a newspaper of the county printed and published nearest to said irrigation district, once each week for four weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the state. At the time and place appointed in the notice, or at any other time to which it may be postponed by the judge, he shall proceed to consider the application, and if satisfied that the provisions of RCW 87.52.010 through 87.52.060 have been complied with he shall enter an order declaring said irrigation district dissolved and disorganized. [1897 c 79 § 4; RRS § 7529. Formerly RCW 87.52.040 and 87.52.050. FORMER PART OF SECTION: 1939 c 149 § 3, part; RRS § 7527-3, part, now codified in RCW 87.52.090.]

**87.52.060 Board of directors as trustees—Duties—Records to be delivered to clerk.** Upon the disorganization of any irrigation district under the provisions of RCW 87.52.010 through 87.52.060, the board of directors at the time of the disorganization shall be trustees of the creditors and of the property holders of said district for the purpose of collecting and paying all indebtedness of said district, in which actual construction work has been done, and shall have the power to sue and be sued. It shall be the duty of said board of directors, and they shall have the power and authority, to levy and collect a tax sufficient to pay all such indebtedness, which tax shall be levied and collected in the manner prescribed by law for the levying and collection of taxes of irrigation districts. Any balance of moneys of said district remaining over after all outstanding indebtedness and the cost of the proceedings under RCW 87.52.010 through 87.52.060 have been paid shall be divided and refunded to the assessment payers in said irrigation district, to each in pro-

portion to the amount contributed by him to the total amount of assessments collected by said district. Said board of directors shall report to the court from time to time as the court may direct, and upon a showing to the court that all indebtedness has been paid, an order shall be entered discharging said board of directors. Upon the entry of such order said board of directors and all the officers of said district shall deliver over to the clerk of said court all books, papers, records and documents belonging to said district, or under their control as officers thereof: PROVIDED, That nothing herein contained shall be construed to validate or authorize the payment of any indebtedness of said district exceeding the legal limitation of indebtedness specified by law for irrigation districts; or any indebtedness contracted by such irrigation district or its officers without lawful authority. [1897 c 79 § 5; RRS § 7530.]

*Assessments, levy and collection of taxes:* RCW 87.03.240 through 87.03.305.

*Powers as to incurring indebtedness:* RCW 87.03.475.

## 1939 ACT

**87.52.070 Dissolution when not brought under irrigation for twenty years.** Any irrigation district of the state of Washington, now existing or hereafter organized, which has no bonded indebtedness outstanding, and which has been in existence for more than twenty years without having secured the irrigation of any of its lands, may be disorganized and its business and affairs liquidated and wound up in the manner hereinafter provided. [1939 c 149 § 1; RRS § 7527-1. Formerly RCW 87.52.020, part.]

**87.52.080 Petition.** A petition signed by twenty-five or more holders of title or evidence of title to lands within said district who shall be qualified electors, reciting the fact that said district has no bonded indebtedness, has been in existence for more than twenty years, and has secured no irrigation for any of its lands, and praying that said district be disorganized under the provisions of RCW 87.52.070 through 87.52.090, shall be delivered to the secretary of the board of directors of said district or to one of the directors thereof. [1939 c 149 § 2; RRS § 7527-2. Formerly RCW 87.52.020, part.]

**87.52.090 Election—Procedure when three-fifths vote for disorganization.** Upon the delivery of said petition, as aforesaid, the board of directors of said district, the secretary thereof, and all other officials provided by law, shall call, notice, conduct and canvass an election, and if three-fifths of the votes cast at said election are in favor of the disorganization of the district, shall proceed with the disorganization of the district, all in the manner, with the same powers and with the same force and effect and in accordance with RCW 87.52.030 through 87.52.060. [1939 c 149 § 3; RRS § 7527-3. Formerly RCW 87.52.030, part and 87.52.040, part.]

**87.52.150 Disposal of real property—Right of adjacent owners.** See RCW 87.03.820.

## Chapter 87.53 RCW

## DISSOLUTION OF DISTRICTS WITH BONDS

## Sections

87.53.001	Actions subject to review by boundary review board.
87.53.010	Dissolution authorized—Consent of bondholders recorded.
87.53.020	Bondholders' consent necessary—Offer to buy district property.
87.53.030	Petition for dissolution.
87.53.040	Election to be called.
87.53.050	Manner of calling, noticing, conducting election—Ballot—Qualification of electors.
87.53.060	Election returns, effect—Records to auditor.
87.53.070	Transcript of proceedings—Financial statement.
87.53.080	Proceedings docketed in court—Notice to file claims—Claims barred, when.
87.53.090	Determination of claims—Court order—Appeal.
87.53.100	Trustee—Appointment—Compensation—Bond.
87.53.110	Sale of district assets.
87.53.120	Report of sale—Rights of purchasers.
87.53.130	Order of dissolution—Effect.
87.53.140	Assessments for unpaid obligations.
87.53.150	State's consent to dissolution.
87.53.200	Disposal of real property—Right of adjacent owners.

*Dissolution of inactive special purpose districts: Chapter 36.96 RCW.*

**87.53.001 Actions subject to review by boundary review board.** Actions taken under chapter 87.53 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 68.]

**87.53.010 Dissolution authorized—Consent of bondholders recorded.** An irrigation district may be dissolved and its affairs liquidated as herein prescribed. If there are outstanding bonds of the district the acknowledged uniform consent in writing of at least two-thirds in amount of the holders of the bonds must be recorded in the office of the auditor of the county in which the district board has its office. [1951 c 237 § 1. Prior: 1899 c 102 §§ 1, 2; RRS §§ 7531, 7532.]

**Reviser's note:** For prior laws on this subject see 1899 c 102; RRS §§ 7531-7543.

**87.53.020 Bondholders' consent necessary—Offer to buy district property.** The acknowledged uniform written consent of one hundred percent of the holders of bonds may provide for cancellation of part of the bonds and for the manner and terms of payment of the balance. The bondholders may also make a firm offer for all property and rights of the district, except property in the district sold for taxes and district assessments, to be paid for by turning over for cancellation an appropriate amount in bonds with accrued interest. [1951 c 237 § 2.]

**87.53.030 Petition for dissolution.** At least one-third of the electors of the district shall sign and file with the auditor a petition, reciting the substance of the uniform text of the bondholders' consent, that the consent has been filed, and praying that the district be dissolved and its affairs liquidated. [1951 c 237 § 3. Prior: 1899 c 102 § 3; RRS § 7533.]

**87.53.040 Election to be called.** The board of commissioners of the county shall at their present or next regular meeting, call an election to submit to the electors of the district the question of whether the district shall be so dissolved. They shall direct the auditor to give notice of the election and

shall appoint the election officials. [1951 c 237 § 4. Prior: 1899 c 102 § 5; RRS § 7535.]

**87.53.050 Manner of calling, noticing, conducting election—Ballot—Qualification of electors.** The election shall be called upon the same notice and conducted in like manner as other elections of the district: PROVIDED, That when the bondholder's consent to dissolution provides for an adjustment of the bonded debt and/or the terms and method of its payment the notice of election shall recite the substance thereof.

The ballot shall contain the words "For dissolution, Yes" and "For dissolution, No." No person not a qualified elector under the general election laws and a freeholder of the district shall be deemed a qualified elector under this chapter. [1951 c 237 § 5. Prior: 1899 c 102 § 4; RRS § 7534.]

*District elections: RCW 87.03.030 through 87.03.110.*

*Qualification of voters: RCW 87.03.045.*

**87.53.060 Election returns, effect—Records to auditor.** The election officials shall file with the auditor the returns within ten days of the election, and at their next meeting the commissioners shall canvass the returns, and if a majority of the votes cast favor dissolution, the commissioners shall declare the election carried. All records of the district shall, upon demand, be delivered to the auditor. [1951 c 237 § 6. Prior: 1899 c 102 § 6; RRS § 7536.]

**87.53.070 Transcript of proceedings—Financial statement.** The auditor shall deliver to the county clerk a certified copy of the transcript of the proceedings of the commissioners on the matter together with a statement of the district's cash assets, segregated as to the bond fund and the total of all other funds, and a statement of the debts of the district as they appear on the records, taking into account any reduction in bond debt offered by the bondholders in their consent to dissolution; also a general inventory of the district property segregated only as to main classes, together with any offer for same submitted in the bondholders' consent to dissolution. [1951 c 237 § 7. Prior: 1899 c 102 § 7; RRS § 7537.]

**87.53.080 Proceedings docketed in court—Notice to file claims—Claims barred, when.** The clerk shall docket the proceedings entitled "In the matter of the dissolution of . . . . irrigation district," and the court shall direct the clerk to give notice thereof. The notice shall contain a general statement of the nature of the proceedings, and notify all persons having claims against the district to present them on or before a day specified therein, and shall be published once a week for at least six weeks in a newspaper of general circulation in the county. Any claim not so filed shall be barred. [1985 c 469 § 91; 1951 c 237 § 8. Prior: 1899 c 102 § 8; RRS § 7538.]

*Official paper for publication: RCW 87.03.020.*

**87.53.090 Determination of claims—Court order—Appeal.** If the court finds that the provisions of this chapter have been complied with, it shall then determine the validity and amount of the claims so filed. No claim barred by the statute of limitations shall be allowed. It shall separately

determine the validity and amount of outstanding bonds with accrued interest, making allowances for any offer of adjustments contained in the bondholders' consent to dissolution, and shall order that all cash in the district's bond fund together with the proceeds from a sale of all the property and rights of the district shall be first applied to the redemption of outstanding bonds with interest; that other cash funds of the district be applied on payment of valid unsecured claims, and the remainder on the redemption of any balance of outstanding bonds with interest. The court shall further order that in the event the district's cash funds together with proceeds from the sale of district property and rights shall prove insufficient to discharge all valid obligations of the district, one or more annual assessments shall be made against the assessable property in the district, as herein provided, sufficient in amounts to discharge all valid debt. The district or any person affected by the judgment may appeal therefrom within ten days of the entry of judgment. [1951 c 237 § 9. Prior: 1899 c 102 § 9; RRS § 7539.]

**87.53.100 Trustee—Appointment—Compensation—Bond.** Upon the entry of final judgment, the court shall issue an order appointing a trustee for the district and shall deliver to him a certified copy of the order. The court shall fix the compensation of the trustee and the amount of his bond to be obtained at the cost of the district. [1951 c 237 § 10. Prior: 1899 c 102 § 10, part; RRS § 7540, part.]

**87.53.110 Sale of district assets.** The trustee shall give notice that all the property and rights of the district, except property in the district sold for taxes or district assessments, will be sold pursuant to order of the court. The notice shall be given in the same manner and for the same time as for sale of real property on execution, except that it need not be posted.

The sale shall be made at public auction at the front door of the courthouse and may be adjourned from time to time not exceeding three weeks in all, by public announcement at the time and place of the sale.

Any claim established by the previous judgment of the court or any securities of the district may be accepted at face value on the purchase price: **PROVIDED**, That any offer made in the bondholders' written consent to dissolution shall be considered a bid and shall be accepted in the absence of a better offer. No bid shall be considered nor shall any sale be made for less than all the property and rights of the district. The trustee shall forthwith disburse the cash funds of the district in accordance with the order of the court. [1951 c 237 § 11. Prior: 1899 c 102 § 10, part; RRS § 7540, part.]

*Executions: Chapter 6.17 RCW.*

**87.53.120 Report of sale—Rights of purchasers.** The trustee shall file with the clerk a report of the disposition made of the cash funds and of the sale and if the court finds the sale was fairly conducted, it shall enter an order confirming the sale, and the trustee shall execute and deliver to the purchaser an instrument conveying to him all property and rights of the district, free from all claims of the district or its creditors, which shall entitle the purchaser to immediate possession. [1951 c 237 § 12. Prior: 1899 c 102 § 11; RRS § 7541.]

**87.53.130 Order of dissolution—Effect.** Upon verification of the disposition of the cash funds and confirmation of the sale the court shall enter an order dissolving the district and discharging the trustee, and a certified copy of the order shall be recorded in the office of the auditor. Thereupon the district shall cease to exist, except for the purpose of collecting its indebtedness. All records of the proceedings shall be delivered to the auditor. [1951 c 237 § 13. Prior: 1899 c 102 § 13; RRS § 7543.]

**87.53.140 Assessments for unpaid obligations.** Upon the dissolution of the district the county commissioners shall determine from the records the remaining bond and other indebtedness of the district, and shall determine the proper number of annual assessments, not over five, necessary to discharge the debt. They shall cause the county assessor to prepare the annual assessment roll for the lands in the district, based upon the acreages shown on the last district assessment roll. The commissioners shall levy annual assessments, not exceeding five, upon all property in the district assessed for the bond fund on the district's last assessment roll and according to the ratios of benefits there shown, sufficient to pay any remaining claims, including bonds. They shall levy and equalize the assessments, after the same notice of hearing as are required of district directors on irrigation assessments. The county auditor shall perform the duties of the secretary of the district and the county treasurer shall be ex officio treasurer of the district and shall collect the assessments. In all other respects the general irrigation district laws shall govern.

Any funds remaining after all assessments have been collected and all indebtedness and costs liquidated shall be paid over to the bondholders in cases where they have accepted a compromise settlement. Otherwise the surplus shall be distributed as by law provided. [1951 c 237 § 14. Prior: 1899 c 102 § 12; RRS § 7542.]

*General irrigation district laws: Chapter 87.03 RCW.*

**87.53.150 State's consent to dissolution.** Whenever any bonds of the district are held in the state reclamation revolving account, and, in the opinion of the director of ecology, the district is or will be unable to meet its obligations, and that the state's investment can be best preserved by the dissolution of the district the director may give his consent to dissolution under such stipulations and adjustments of the indebtedness as he deems best for the state. [1988 c 127 § 62; 1951 c 237 § 15.]

**87.53.200 Disposal of real property—Right of adjacent owners.** See RCW 87.03.820.

## Chapter 87.56 RCW

### DISSOLUTION OF INSOLVENT DISTRICTS

#### Sections

87.56.001	Actions subject to review by boundary review board.
87.56.010	When district insolvent—Election to dissolve.
87.56.020	Majority vote—Action for dissolution.
87.56.030	Powers of court.
87.56.040	Service of process.
87.56.050	Complaint—Contents.
87.56.060	Notice of hearing—Publication.
87.56.065	Hearing—Decree—Receiver.

87.56.100	Unmatured claims—Acceleration.
87.56.160	Liquidation—Assessments to pay remaining debts.
87.56.170	Judgment upon stipulation—Payment.
87.56.180	Trustee for creditors—Bond—Duties.
87.56.190	Enforcement of judgment.
87.56.200	Distribution of funds—Court to retain jurisdiction.
87.56.203	Compensation of trustee.
87.56.205	Judgment upon stipulation—Prerequisites.
87.56.210	Judgment upon stipulation—Evidences of indebtedness to be canceled.
87.56.225	Appellate review.
87.56.230	Final report of receiver—Apportionment of excess assets—Decree of dissolution.
87.56.240	Decree to be filed in each county.
87.56.260	Disposal of real property—Right of adjacent owners.
87.56.900	Chapter alternative method—Saving.
87.56.910	Construction—1925 ex.s. c 124.

*Dissolution of inactive special purpose districts: Chapter 36.96 RCW.*

**87.56.001 Actions subject to review by boundary review board.** Actions taken under chapter 87.56 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 69.]

**87.56.010 When district insolvent—Election to dissolve.** In all instances where fifty percent of the acreage within an irrigation district has been sold to the district on account of delinquent district assessments, and more than one year has elapsed since the sale of said property to the district without redemption by the owners thereof, and the district is unable to raise sufficient revenue to meet its obligations when the same become due and payable, such district shall be deemed insolvent and the district board shall have authority to call an election in the district to determine whether the district shall discontinue operation and dissolve: PROVIDED, That in case there are bonds of the district outstanding, written consent of the holders of at least fifty-one percent in amount of such outstanding bonds shall be obtained by the district board before calling said election: PROVIDED, FURTHER, That if any portion of such outstanding bonds are owned by the state of Washington the board of directors of such district shall give written notice to the director of ecology of the intention of the board of directors to call such election, and unless the director of ecology shall sign written objection to the calling of such election within ten days after the giving of such notice the state shall be deemed as consenting thereto.

Said election shall be called, shall be conducted and the results canvassed in the same manner substantially provided by law for a bond election in the district. [1988 c 127 § 63; 1931 c 60 § 11; 1925 ex.s. c 124 § 1; RRS § 7543-1.]

*Bonds, election for: RCW 87.03.200.*

**87.56.020 Majority vote—Action for dissolution.** If a majority of the votes cast at said election is in favor of dissolution of the district, the district board shall institute an action in the superior court of the county in which the office of the board is located to determine the indebtedness of the district and to adopt a plan of appropriating the available resources of the district to the satisfaction of such indebtedness as in this chapter provided. [1925 ex.s. c 124 § 2; RRS § 7543-2.]

**87.56.030 Powers of court.** The superior court in the exercise of its jurisdiction in matters of this kind shall have full authority to determine the indebtedness of the district and

to determine the status and priorities thereof in accordance with the laws of the state relating to irrigation districts, shall have power to apportion the obligation of such indebtedness against the district and the several lands included therein; the court may award process and cause to come before it all persons whom it may deem necessary to examine and have and cause to be issued all such writs as may be proper or necessary, and do all things proper or incidental to the exercise of such jurisdiction. [1925 ex.s. c 124 § 3; RRS § 7543-3.]

**87.56.040 Service of process.** Such action shall be one in rem and personal service of process shall not be required to be made on any interested person: PROVIDED, That the court shall be authorized in proper instances to order issuance and personal service of process specifying such time for appearance as the court shall require, AND PROVIDED FURTHER, That any owner of land within the district or any creditor of the district or their respective attorneys may file with the receiver provided for in this chapter, a written request that his name and address be placed on the receiver's mailing list and thereafter the receiver shall mail to such person at his given address at least ten days' written notice of all subsequent hearings before the court. Personal service of said notice may be made in any instance in lieu of mailing at the option of the receiver. [1925 ex.s. c 124 § 4; RRS § 7543-4.]

**87.56.050 Complaint—Contents.** The complaint in said action shall recite the holding of the election and the result thereof and shall give in general terms a summary of the district assets and the amount and character of its obligations and the maturities thereof; shall state that the district desires to discontinue operation and dissolve its corporate existence and shall pray that the court take the necessary steps to effect such an object. [1925 ex.s. c 124 § 5; RRS § 7543-5.]

**87.56.060 Notice of hearing—Publication.** The court shall thereupon fix a time and place for a hearing of the complaint and notice of the hearing shall be published once a week for two successive weeks in a newspaper of general circulation in each county in which any lands in the district are located. [1985 c 469 § 92; 1925 ex.s. c 124 § 6; RRS § 7543-6. FORMER PART OF SECTION: 1925 ex.s. c 124 § 7; RRS § 7543-7, now codified as RCW 87.56.065.]

**87.56.065 Hearing—Decree—Receiver.** At the time and place fixed in the notice the court shall hear the objections of interested persons and shall determine whether the district is insolvent within the provisions of this chapter and whether the district shall be dissolved. If the court concludes that the district shall not dissolve, the court shall so find and dismiss the action. If the court concludes that the district should be dissolved, the court shall appoint a receiver to take charge of the district assets and to perform such other duties as may be required by the court or by law. [2004 c 165 § 45; 1925 ex.s. c 124 § 7; RRS § 7543-7. Formerly RCW 87.56.060, part.]

**Purpose—Captions not law—2004 c 165:** See notes following RCW 7.60.005.

**87.56.100 Unmatured claims—Acceleration.** If the owner or holder of a claim of indebtedness against the district not yet due or matured files a claim in any case in which a receiver is appointed under RCW 87.56.065, the maturity of the indebtedness owing to the person by the district shall be accelerated to such date as the court shall determine upon. [2004 c 165 § 46; 1925 ex.s. c 124 § 12; RRS § 7543-12.]

**Purpose—Captions not law—2004 c 165:** See notes following RCW 7.60.005.

**87.56.160 Liquidation—Assessments to pay remaining debts.** In the execution of a plan of liquidation, the court shall have authority to order the sale of any or all of the district property or the exchange of any of the district property for any evidence of district indebtedness in accordance with the rights of the district and of all the creditors concerned, and if upon the exhaustion of the district property in the payment of the district indebtedness including the costs of dissolution and receivership proceedings, any district indebtedness remain undischarged, the court shall have authority to order district assessments against the lands included within the operation of the district to continue to be made in accordance with the rights of the persons interested in the manner provided by law to pay the remaining indebtedness until sufficient revenue has been raised to pay fully all the obligations of the district. [1925 ex.s. c 124 § 21; RRS § 7543-21.]

*Assessments, levies: RCW 87.03.240 through 87.03.305.*

**87.56.170 Judgment upon stipulation—Payment.** Upon stipulation of the owners of lands within the district, and holders of bond liens against said lands, and the district creditors concerned, the court shall have authority in such proceedings in lieu of the plan of liquidation set forth in RCW 87.56.160, to determine the amount of the district indebtedness remaining after the exhaustion of the district property and the proportion thereof which each ownership of land within the district shall be obligated to pay, and judgment may be rendered in favor of the respective creditors against the several lands concerned. Said judgment may in the discretion of the court provide that the payment thereof shall be made by the landowners in one or more annual installments not to exceed ten in all with annual interest on all unpaid installments at such rate as the court shall fix not in excess of the rate to which the respective creditors may be entitled in their original evidences of indebtedness. [1925 ex.s. c 124 § 22; RRS § 7543-22. FORMER PART OF SECTION: 1925 ex.s. c 124 § 27; RRS § 7543-27, now codified as RCW 87.56.205.]

*Prerequisite to judgment upon stipulation: RCW 87.56.205.*

**87.56.180 Trustee for creditors—Bond—Duties.** The judgment shall also name a trustee to be nominated by the creditors representing a majority of the indebtedness who shall give bond conditioned for the faithful performance of his duties and the strict accounting of all funds received by him in such amount as the court shall determine, and who shall have authority to receive payment on account of said judgment and to satisfy said judgment against the several lands at the time payment thereon is made by the landowners in proportion to the amount of said payment. When any landowner shall make full payment of the amount of the judgment

apportioned against his land, he shall be entitled to full satisfaction thereof of record. [1925 ex.s. c 124 § 23; RRS § 7543-23.]

**87.56.190 Enforcement of judgment.** In case any landowner fails to pay the judgment against his land or any installment thereof, when the same shall become due and payable, said judgment may be enforced by the trustee named in the decree in the manner provided by law for the enforcement of judgments in the superior court, and the costs of execution and sale shall be charged to the defaulting land. [1925 ex.s. c 124 § 24; RRS § 7543-24.]

*Enforcement of judgments: Title 6 RCW.*

**87.56.200 Distribution of funds—Court to retain jurisdiction.** The trustee named in the decree shall make distribution of all funds collected on account of said decree in such manner as the creditors shall agree upon, or in case of disagreement, then in such manner as the court shall direct, and jurisdiction of the court in the dissolution proceedings shall continue until full disbursement of funds collected on account of said judgment has been made to the judgment creditors. [1925 ex.s. c 124 § 25; RRS § 7543-25.]

**87.56.203 Compensation of trustee.** The trustee named in the decree shall receive such compensation for his services as the court shall determine to be paid at such times as the court shall fix from funds collected on account of said judgment. [1925 ex.s. c 124 § 26; RRS § 7543-26. Formerly RCW 87.56.220.]

**87.56.205 Judgment upon stipulation—Prerequisites.** Before the court shall enter judgment upon stipulation of the parties as in this chapter provided, the creditors concerned shall file all evidences of district indebtedness held by them into the registry of the court to be held subject to the order of the court. [1925 ex.s. c 124 § 27; RRS § 7543-27. Formerly RCW 87.56.170, part.]

*Judgment upon stipulation—Payment: RCW 87.56.170.*

**87.56.210 Judgment upon stipulation—Evidences of indebtedness to be canceled.** If the judgment rendered by the court, upon stipulation, be not appealed from as in this chapter provided and the time for appeal has expired, or having been appealed from has been finally determined upon appeal, the court shall upon application of the receiver, order all evidences of indebtedness filed in the registry of the court under the provisions relating to judgment upon stipulation to be delivered to the office of the county treasurer, who shall have authority and it shall be his duty to cancel the same, and said evidences of indebtedness shall thereafter cease to be obligations of the district, and the district thereafter shall be discharged of said indebtedness. [1925 ex.s. c 124 § 28; RRS § 7543-28.]

**87.56.225 Appellate review.** Any interested person feeling aggrieved at the judgment of the superior court dismissing the proceedings or determining the indebtedness of the district and the status and priority thereof and determining the plan of liquidation, may seek appellate review of such

judgment in the same manner as in other cases in equity, except that notice of appeal must be both served and filed within sixty days from the entry thereof. [1988 c 202 § 89; 1971 c 81 § 174; 1925 ex.s. c 124 § 29; RRS § 7543-29. Formerly RCW 87.56.250.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**87.56.230 Final report of receiver—Apportionment of excess assets—Decree of dissolution.** When all district indebtedness has been discharged as in this chapter provided, and all expenses of the dissolution proceedings have been paid, the receiver shall report such fact to the court with a full account of all assets and moneys received and disbursed. The court shall examine said report and if found satisfactory shall approve the same; shall order any funds remaining after the payment of all indebtedness apportioned to the several owners of land within the district in accordance with the ratio of the last assessment roll of the district, and shall enter a decree dissolving and annulling the district, which shall thereafter cease to exist as a corporate entity. [1925 ex.s. c 124 § 30; RRS § 7543-30.]

**87.56.240 Decree to be filed in each county.** A copy of said decree shall be filed for record forthwith by the receiver in the office of the county auditor and in the office of the county assessor, of the counties in which any of the lands within the district are situated, and said decree shall be recorded by each of said offices without charge of fee. [1925 ex.s. c 124 § 31; RRS § 7543-31.]

**87.56.260 Disposal of real property—Right of adjacent owners.** See RCW 87.03.820.

**87.56.900 Chapter alternative method—Saving.** This chapter is designed to provide an alternative method for the dissolution of irrigation districts and shall not be deemed to repeal any other statute or statutes. [1925 ex.s. c 124 § 32; RRS § 7543-32.]

**87.56.910 Construction—1925 ex.s. c 124.** Nothing in this chapter contained shall be construed to enlarge, abridge, modify or otherwise affect the rights, privileges or obligations of solvent districts, the lands therein or creditors thereof. [1925 ex.s. c 124 § 33; RRS § 7543-33.]

## Chapter 87.64 RCW

### ADJUSTMENT OF IRRIGATION, DIKING, AND DRAINAGE DISTRICT INDEBTEDNESS

#### Sections

87.64.010	State authorized to adjust indebtedness—When state owns entire bond issue.
87.64.020	State authorized to adjust indebtedness—When state owns part of bond issue.
87.64.040	Claim for moneys expended may be settled and compromised.
87.64.060	Cancellation of district's assessments and taxes.
87.64.070	Powers of district.

**87.64.010 State authorized to adjust indebtedness—When state owns entire bond issue.** Whenever the state shall now or hereafter own, the entire issue of the bonds of

any irrigation, diking or drainage district, and in the judgment of the director of ecology such district is, or will be, unable to meet its obligations to the state as they mature, and in the judgment of the director of ecology the investment of the state can be made more secure by extending, without refunding, the time of payment of any or all said bonds and interest payments, or by the exchange of the bonds held by the state for refunding bonds of such district issued as in the manner provided by law at the same or a lower rate of interest and/or for a longer term, or by the cancellation of a portion of the bonds held by the state and/or interest accrued thereon, and the exchange of the remaining bonds held by the state for the refunding bonds of the district issued in the manner provided by law at the same or a lower rate of interest and/or for the same or a longer term, the director of ecology shall be and is hereby authorized and empowered to enter into contract with the district so extending the time of payment of said bonds and interest payments, without refunding or to so exchange the bonds held by the state for such refunding bonds or to cancel a portion of the bonds held by the state and/or interest accrued thereon, and exchange the remaining bonds held by the state for such refunding bonds as in his judgment will be for the best interest of the state. [1983 c 167 § 243; 1941 c 39 § 1; 1929 c 121 § 2; Rem. Supp. 1941 § 7530-41. FORMER PART OF SECTION: 1941 c 39 § 3, part, last am'ds 1929 c 121 § 3; Rem. Supp. 1941 § 7530-42, part, now codified in RCW 87.64.020.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

*Dissolution:* Chapter 87.53 RCW.

*Refunding bonds:* Chapters 87.19 and 87.22 RCW.

**87.64.020 State authorized to adjust indebtedness—When state owns part of bond issue.** Whenever the state shall, now or hereafter, own a portion of the bonds of any irrigation, diking or drainage district, and in the judgment of the director of ecology such district is, or will be, unable to meet its obligations as they mature, and in the judgment of the director of ecology the investment of the state can be made more secure by extending, without refunding, the time of payment of any or all said bonds and interest payments or by exchanging the bonds held by the state for the refunding bonds of the district issued in the manner provided by law at the same or a lower rate of interest and/or for a longer term, or by the cancellation of a portion of the bonds held by the state and/or interest accrued thereon, and the exchange of the remaining bonds held by the state for the refunding bonds of the district issued in the manner provided by law at the same or a lower rate of interest and/or for a longer term, the director of ecology shall be and is hereby authorized and empowered to enter into contract with the district so extending the time of payment of said bonds and interest payments, without refunding, or to so exchange the bonds held by the state for such refunding bonds or to cancel a portion of the bonds held by the state and/or interest accrued thereon, and exchange the remaining bonds held by the state for such refunding bonds as in his judgment will be for the best interest of the state: PROVIDED, That the owners of at least ninety percent of all the other bonds of said district shall make and execute the same arrangement with the district: AND PROVIDED FURTHER, That when, in addition to owning a portion of the first

issue of bonds of any such irrigation, diking or drainage district, the state also owns all the outstanding second issue of bonds of such district, the director of ecology shall be and he is hereby authorized and empowered to surrender and cancel said second issue of bonds held by the state upon whatsoever terms and conditions he shall deem to be the best interest of the state: AND PROVIDED FURTHER, That whenever the owners of at least ninety percent of all other bonds of such district and/or other evidences of indebtedness are willing to release their existing obligations against said district and to substitute therefor a contract to pay such existing indebtedness in whole or in part from the proceeds of the sale of lands owned by the district at the time of such settlement, or acquired by the district through levies then existing, the director of ecology shall be and he is hereby authorized and empowered to cancel the bonds held by the state upon whatsoever terms that he shall deem most beneficial for the state, or if deemed beneficial to the state, he may release the state's bonds and join with the other holders in the above mentioned contract for the sale of the district land as hereinbefore stated: AND PROVIDED FURTHER, That the director of ecology be and he is hereby authorized to accept in any settlement made under this chapter, refunding bonds of any irrigation district that may be issued in accordance with chapter 87.22 RCW, or any amendment thereto, and he is hereby authorized, when in his judgment it is to the interest of the state, to participate in the refunding of bonds of an irrigation district held under said chapter 87.22 RCW, or any amendment thereto. [1983 c 167 § 244; 1941 c 39 § 3; 1931 c 43 § 1; 1929 c 121 § 3; Rem. Supp. 1941 § 7530-42. Formerly RCW 87.64.010, part, 87.64.020, and 87.64.030.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**87.64.040 Claim for moneys expended may be settled and compromised.** Whenever the department of ecology shall have heretofore entered, or shall hereafter enter, into a contract with an irrigation, diking or drainage district and shall have expended moneys under said contract, and said district shall be indebted to the state for the moneys so expended, and in the judgment of the director of ecology said district shall have not received benefits equal to the amount of said indebtedness, the director of ecology shall be and is hereby authorized and empowered to settle and compromise the claim of the state against said district upon such terms and for such an amount as he shall deem fair and just to the state and the district. [1988 c 127 § 64; 1941 c 39 § 2; 1929 c 121 § 4; Rem. Supp. 1941 § 7530-43.]

**87.64.060 Cancellation of district's assessments and taxes.** Whenever the director of ecology shall find any irrigation district is, or will be unable to meet its obligations and that refunding operations under this chapter are necessary, and that as a part of such refunding operations the cancellation of assessments and county taxes on the irrigation system and the irrigable lands in such district then delinquent, is necessary, the board of county commissioners of the county in which such irrigation district is situated may, upon request of the director of ecology, cancel any or all delinquent assessments and county taxes levied upon the irrigable lands in such district and all county taxes levied upon the irrigation

system of such district, if such board shall find that such irrigation district is or will be unable to meet its obligations and such refunding operations are necessary, of which the report of the director of ecology shall be prima facie evidence. [1988 c 127 § 65; 1929 c 121 § 5; RRS § 7530-44.]

**87.64.070 Powers of district.** Any irrigation, diking or drainage district now or hereafter coming within the provisions of this chapter shall be and it is hereby authorized and empowered to enter into contracts, issue evidences of indebtedness and otherwise carry out on its part the provisions of this chapter. [1941 c 39 § 4; Rem. Supp. 1941 § 7530-45. Formerly RCW 87.64.050.]

## Chapter 87.68 RCW

### DISTRICTS UNDER CONTRACT WITH UNITED STATES

#### Sections

- 87.68.010 Resolution to fix time of paying assessments.
- 87.68.020 Discount on advance payments.
- 87.68.030 Meeting of board of equalization—Resolution—Notice.
- 87.68.040 Assessment rolls, resolution, to county treasurers.
- 87.68.050 Payment and collection of assessments.
- 87.68.060 Certain elections—Districts of two hundred thousand acres—Notice of election.
- 87.68.070 Deposit of funds in bank of board of control's choice.
- 87.68.090 Security for deposits.
- 87.68.100 Audit of board's records.
- 87.68.110 Costs, assessments for—Special funds—Investment of.
- 87.68.120 Contract for use of canal.
- 87.68.130 Contract with board to operate works.
- 87.68.140 Disposal of property authorized—Board may sue and be sued.

*Acquisition, construction and operating funds—Tolls and assessments, alternative methods of—Liens, foreclosure of—Delinquencies by tenants:* RCW 87.03.445.

*Board's powers and duties generally (contracts with state and United States):* RCW 87.03.140.

*Bonds, election for (when contracts with United States):* RCW 87.03.200.

*Cancellation of assessments due United States—Procedure:* RCW 87.03.280.

*Certain purposes for which district may be formed:* RCW 87.03.010(5).

*Indemnity to state on land settlement contracts:* Chapter 87.48 RCW.

*Levies and assessments (for state or United States):* RCW 87.03.260 through 87.03.280.

*L.I.D.'s—Contract with state or United States for local improvement work:* RCW 87.03.520.

*Payment of bonds and interest (to state and United States):* RCW 87.03.215.

*Proposed works—Reclamation service may make findings:* RCW 87.03.185.

*Rights of federal agencies as to certain district bonds:* RCW 87.03.235.

**87.68.010 Resolution to fix time of paying assessments.** At the option of the board of directors assessments of irrigation districts in this state under contract with the United States involving payments thereto for the development and operation of their respective projects shall be payable on or before December 31st of the year in which the assessment is levied and upon the resolution of the board of directors of the district to that effect, adopted and entered at a regular meeting thereof not later than the second Tuesday of September of the year in which the levy is made. Such resolution shall thereafter remain in full force and effect until revoked by the board. [1941 c 141 § 1; Rem. Supp. 1941 § 7525-13.]

**Severability—1941 c 141:** "If any section, provision or part of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or of any section, provision, or part thereof not adjudged invalid or unconstitutional." [1941 c 141 § 7.]

**Construction—1941 c 141:** "Nothing in this act contained shall be held or construed to modify, abridge or extend any other law or provision thereof relating to irrigation district assessments or the collection thereof except as herein provided." [1941 c 141 § 6.]

**87.68.020 Discount on advance payments.** In the event of the adoption and entering of such resolution by the board of directors, a person paying all or one-half of the current district assessment against any tract of land on or before December 31st of the year in which said assessment is levied shall be entitled to a discount of ten percent of said assessment if paid in full and ten percent of one-half of said assessment if one-half only is paid. In the event one-half of said assessment is paid on or before December 31st as aforesaid, the payer of the second half of said assessment shall be entitled to a discount of ten percent of the amount of said second half of said assessment if the same is paid on or before May 31st, next following the December payment. No discount shall be made for payment of district assessments except as herein specifically provided. [1941 c 141 § 2; Rem. Supp. 1941 § 7525-14.]

**Severability—Construction—1941 c 141:** See notes following RCW 87.68.010.

**87.68.030 Meeting of board of equalization—Resolution—Notice.** Said board of directors shall adopt and enter a resolution fixing the day, hour, and place when and where the board will convene as a board of equalization to equalize the assessment roll and a copy of the resolution adopting December 31st as the day on or before which assessments shall be paid, together with a notice signed by the secretary stating the day, hour, and place of the meeting of the board of equalization, shall be published for two consecutive weekly issues prior to the day of the convening of the board of equalization in some newspaper of general circulation in the district to be previously designated by the district board. [1941 c 141 § 3; Rem. Supp. 1941 § 7525-15.]

**Severability—Construction—1941 c 141:** See notes following RCW 87.68.010.

**87.68.040 Assessment rolls, resolution, to county treasurers.** The officers of said district shall cause said assessments to be made, levied and equalized and the assessment roll and any parts thereof to be delivered to the proper county treasurers on or before December 10th of said year and upon receipt of a certified copy of said resolution adopting December 31st as the day on or before which assessments shall be paid, the county officers charged with the collection of irrigation district assessments shall be authorized and it shall be their duty respectively to collect the same in accordance with the provisions of RCW 87.68.010 through 87.68.050 and of said resolution and to account for collections in the manner provided by the irrigation district law. [1941 c 141 § 4; Rem. Supp. 1941 § 7525-16.]

**Severability—Construction—1941 c 141:** See notes following RCW 87.68.010.

*Assessments and levies:* RCW 87.03.240 through 87.03.305.

*Claims, how paid, etc.:* RCW 87.03.440.

(2006 Ed.)

**87.68.050 Payment and collection of assessments.** Irrigation district assessments levied and becoming payable under the provisions of RCW 87.68.010 through 87.68.050 shall be payable on and after December 10th next following the levy and except as in RCW 87.68.010 through 87.68.050 otherwise provided shall become delinquent, shall be collected by the same officials and lands charged with said assessments shall be sold when delinquent; all at the same times in the same manner with the same kind and length of notice and with the same force, effect, obligations, and privileges as provided by the irrigation district law generally for the collection of assessments, and for the sale and redemption of lands charged with delinquent district assessments. [1941 c 141 § 5; Rem. Supp. 1941 § 7525-17.]

**Severability—Construction—1941 c 141:** See notes following RCW 87.68.010.

*Assessments, sale, redemption:* RCW 87.03.240 through 87.03.475.

**87.68.060 Certain elections—Districts of two hundred thousand acres—Notice of election.** In any election called and held in an irrigation district organized and existing under the laws of this state, comprising two hundred thousand or more acres of land within its boundaries, for the purpose of voting on any proposed contract between the district and the United States or any agency thereof where the proposed contract is to include a provision in accordance with the fourth proviso in section 1(b) of the act of congress of May 27, 1937 (50 Stat. 208), the notice of said election shall state, in addition to the other matters and things required by law relating to elections in such districts, that the proposed contract shall include a provision in accordance with the fourth proviso in section 1(b) of the act of congress of May 27, 1937 (50 Stat. 208), and shall also set forth the provisions of section 1(a) and (b) of said federal act. [1939 c 190 § 1; RRS § 7402-283.]

*Qualification of voters:* RCW 87.03.045.

**87.68.070 Deposit of funds in bank of board of control's choice.** Funds in the custody of the board of control of the Sunnyside Division, Yakima Project, or any similar board created or operated by contract or otherwise under or pursuant to the federal reclamation laws, or acting as operating agent for the United States and/or irrigation districts of this state or of other states, may be deposited on general deposit in any one or more banks in this state which such board of control may designate. All such deposits shall be made in the name of the board and be subject to payment on demand on the check of any officer or agent fully authorized and designated by such board. The board of control of the Sunnyside Division, Yakima Project, referred to herein, is the board of control created by the respective contracts entered into by and between the United States of America and the Sunnyside Valley Irrigation District and other irrigation districts of the Sunnyside Division of the Yakima Project, in the state of Washington, under the provisions of the act of congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all generally referred to as the federal reclamation laws. [1945 c 163 § 1; Rem. Supp. 1945 § 7525-40. FORMER PART OF SECTION: 1947 c 265 § 2, part; 1945 c 163 § 7, part; Rem. Supp. 1945 § 7525-46, part, now

codified in RCW 87.68.140. Formerly RCW 87.68.070 and 87.68.080.]

**87.68.090 Security for deposits.** Upon the designation of any bank by the board of control as in RCW 87.68.070 through 87.68.140 provided, the bank shall furnish security for any deposits by mortgage, pledge or hypothecation of bank assets or otherwise in such manner as may be agreed upon between the board of control and the bank, or in lieu thereof, the bank shall file with the board of control a surety bond to such board of control, properly executed by some reliable surety company qualified under the laws of this state to do business therein, in the maximum amount of deposits designated by said board to be carried in such bank, conditioned for the prompt and faithful payment thereof on checks drawn by the officer or agent fully authorized and designated by such board. [1945 c 163 § 2; Rem. Supp. 1945 § 7525-41.]

**87.68.100 Audit of board's records.** The state auditor shall audit the books, records and affairs of the board of control every two years, or at such other times as the board shall request, and the costs of the audit shall be paid by said board. [1945 c 163 § 3; Rem. Supp. 1945 § 7525-42.]

**87.68.110 Costs, assessments for—Special funds—Investment of.** Each irrigation district which has or hereafter may enter into a contract with the United States providing for the operation and maintenance, by means of a board of control, of irrigation works used in common with other districts, shall include in the annual levy of assessments a sufficient amount to pay the annual estimated pro rata proportion of the costs chargeable to such district and also such reserve fund as may be fixed by the contract: PROVIDED, That any district may appropriate moneys from other funds to pay said costs.

When assessments are paid to the county treasurer for the board of control fund, they shall be deposited in a special fund, known as the "Board of Control Fund," and when assessments are paid to the county treasurer for the board of control reserve fund they shall be deposited in a special fund known as the "Board of Control Reserve Fund," and said funds may be disbursed only upon vouchers approved by a majority of the voting power of the members of the board of control, and the county auditor shall issue warrants for the payments of such claims which shall be payable out of the funds on which the same are drawn.

Any moneys in the "Board of Control Reserve Fund," when so requested by the board of control, shall be invested by the treasurer of said county and under the direction of said board of control in U.S. bonds or bonds of the state or any bonds pronounced by the treasurer of the state as valid securities for the deposit of public funds. [1951 c 158 § 1; 1947 c 265 § 1; 1945 c 163 § 4; Rem. Supp. 1947 § 7525-43.]

**87.68.120 Contract for use of canal.** Any irrigation district, city, town, or other water user or users whose lands are irrigated by water carried in works transferred by the United States to a board of control, are hereby authorized to enter into contract with another irrigation district whose lands are irrigated by water carried in the same canal to operate and

maintain the main canal and other works known as transferred works, and to pay such district in a lump sum its pro rata proportion of the cost of maintenance and operation of such transferred works: PROVIDED, That the amount said pro rata proportion may be estimated and such estimated amount paid at the beginning of any year, and at the end of the year the board shall after determining the true pro rata amount of such user's cost, require such user to pay the balance, if any, of said true pro rata amount. [1945 c 163 § 5; Rem. Supp. 1945 § 7525-44.]

**87.68.130 Contract with board to operate works.** Any irrigation district, city, town, or other water user or users whose lands are irrigated by water carried in works transferred by the United States to a board of control are hereby authorized to enter into contract with the board of control for the operation and maintenance of the irrigation works within the district by the board of control and to pay such district in a lump sum the cost of maintenance and operation of such works within the district: PROVIDED, That the amount of the cost of operation of the works in the district may be estimated and the estimated amount paid to the board. At the end of each year the board shall, after determining the true amount of such costs of operation, require such district to pay the balance, if any, of such true amount. [1945 c 163 § 6; Rem. Supp. 1945 § 7525-45.]

**87.68.140 Disposal of property authorized—Board may sue and be sued.** Any such board of control shall have authority to be exercised by a majority of the voting power of the board to sell at such price and upon such terms as may be fixed by said board and any real or personal property owned by the board of control and to authorize the execution by the president and secretary of said board of a good and sufficient conveyance therefor, and said board may sue or be sued in any of the courts of this state without joining the person, corporation or district for whose benefit the suit may be prosecuted or defended. [1947 c 265 § 2; 1945 c 163 § 7; Rem. Supp. 1947 § 7525-46. Formerly RCW 87.68.070, part and 87.68.140.]

*Rules of court: Cf. Superior Court Civil Rules.*

## Chapter 87.76 RCW

### ASSOCIATION OF IRRIGATION DISTRICTS

#### Sections

- 87.76.010 Coordination of programs—Reports.
- 87.76.020 Coordinating agency—Expense, how defrayed.
- 87.76.030 General powers of directors.
- 87.76.040 Cooperation with other agencies authorized—Financial contributions—Contracts with public and private agencies.

**87.76.010 Coordination of programs—Reports.** The directors of the several irrigation districts in the state shall take such action as they deem necessary to effect coordination of their common programs for the economical and efficient operation of their districts and the reclamation of lands therein, and prepare reports annually for such operations. [1947 c 193 § 1; Rem. Supp. 1947 § 7505-10.]

**87.76.020 Coordinating agency—Expense, how defrayed.** The directors of such irrigation districts may designate a statewide association dedicated to the promotion of irrigated agriculture as a coordinating agency in the execution of the duties imposed by this chapter, and pay dues or assessments, or both, to the association from district expense funds, and the several districts may levy assessments against the lands therein for this purpose. Such dues and assessments shall be paid only on vouchers approved by the board of directors of the contributing district in the manner provided for the approval of district vouchers generally. The total of such voucher claims for any district in any calendar year shall not exceed two percent of the total amount or its equivalent of the expense fund levy of the district for that year. [1987 c 124 § 1; 1947 c 193 § 2; Rem. Supp. 1947 § 7505-11.]

*Claims, how paid:* RCW 87.03.440.

*Power as to incurring indebtedness:* RCW 87.03.475.

**87.76.030 General powers of directors.** The board of directors of the several districts may effect the state organization herein contemplated and take such further and other action in behalf of their respective districts as they deem necessary to carry out the intent of this chapter, including support of and attendance at such meetings as may be required to promote and perfect the organization and to effect its purposes. [1947 c 193 § 3; Rem. Supp. 1947 § 7505-12.]

**87.76.040 Cooperation with other agencies authorized—Financial contributions—Contracts with public and private agencies.** To avoid duplication of effort the state association may, in the discretion of its officers, affiliate and cooperate with other organizations and agencies engaged in the furthering of reclamation of lands in the state and make financial contributions to them for such purpose. In carrying out the powers authorized by this chapter, the association of irrigation districts is authorized to enter into contracts with the federal government, the state, irrigation districts, boards of control, municipal or quasi-municipal corporations, cooperatives, other public or private agencies, and associate organizations. The association of irrigation districts is authorized to advance funds to promote the development and utilization of agricultural water and power resources and to employ the technical and professional assistance necessary to survey, plan, investigate, study, print, and publish information and literature to promote the development and utilization of such resources and provide and present data and information to members of congress, any committee of congress, and to other federal officials as an aid in securing needed legislation, contracts, and timely appropriations. [1996 c 214 § 2; 1987 c 124 § 2; 1951 c 202 § 1; 1949 c 41 § 1; Rem. Supp. 1949 § 7505-13.]

**Chapter 87.80 RCW**

**JOINT CONTROL OF IRRIGATION DISTRICTS**

Sections

87.80.005	Definitions.
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87.80.030	Form and contents of petition—Map.
87.80.040	Petition filed if regular in form—Hearing set.
87.80.050	Notice of hearing.

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87.80.060	Form and contents of notice.
87.80.070	Conduct and scope of hearing—Independent investigation authorized.
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87.80.110	Organization of board—Meetings—Quorum.
87.80.120	Compensation of board members and employees.
87.80.130	Powers of board of joint control—Limitation.
87.80.135	Board's limitations.
87.80.140	Annual budget of board—Hearing—Notice.
87.80.150	Hearing and adoption of budget.
87.80.160	Entity's levy to include budget apportionment.
87.80.190	Control fund created—Deposits and remittances.
87.80.200	Payments from control fund.
87.80.220	Agencies under contract with federal government—Ability to participate in board.
87.80.230	Board created among entities using Yakima river and tributaries—Coordination with federal and state programs.
87.80.900	Effect of chapter on general water rights adjudications.
87.80.901	Construction—2003 c 306.

**87.80.005 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Area of jurisdiction" means all lands within the exterior boundary of the composite area served by the irrigation entities that comprise the board of joint control as the boundary is represented on the map filed under RCW 87.80.030.

(2) "Irrigation entity" means an irrigation district or an operating entity for a division within a federal reclamation project. For the purposes of this chapter, a water company, a water users' association, a municipality, a water right owner and user of irrigation water, or any other entity that provides irrigation water as a primary purpose, is an irrigation entity when creating or joining a board of joint control with an irrigation district or operating entity for a division within a federal reclamation project.

(3) "Joint use facilities" means those works, including reservoirs, canals, ditches, natural streams in which the irrigation entity has rights of conveyance under RCW 90.03.030, hydroelectric facilities, pumping stations, drainage works, reserved works as may be transferred by contracts with the United States, and system interties that are determined by the board of joint control to provide common benefit to its members.

(4) "Ownership interest" means the irrigation entity holds water rights in its name for the benefit of itself, its water users or, in federal reclamation projects, the irrigation entity has a contractual responsibility for delivery of water to its individual water users.

(5) "Source of water" means a hydrological distinct river and tributary system or aquifer system from which board of joint control member entities appropriate water. [2003 c 306 § 1; 1996 c 320 § 2.]

**87.80.010 Board of joint control authorized.** A board of joint control may be created as provided in this chapter to administer: (1) The construction, operation, maintenance, betterments, and regulations of the joint use facilities, including reservoirs, canals, hydroelectric facilities within the works of the irrigation water supply system, pumping stations, drainage works, reserved works, and system interconnections, of two or more irrigation entities which are the owners of, have an ownership interest in, or are trustees for

owners of water rights having the same source or which use common works for the diversion and either transportation, or drainage, or both, of all or any part of their respective irrigation water supplies; and (2) activities and programs that promote more effective and efficient water management for the benefit of member entities of a board of joint control. [1996 c 320 § 1; 1949 c 56 § 1; Rem. Supp. 1949 § 7505-20.]

**87.80.020 Petition to create board required—Signatures—Filing.** (1) For the purpose of creating a board of joint control a petition signed by two or more entities that are owners of or hold an ownership interest in water rights having the same source of water or use common works for the diversion, transportation, or drainage of all or any part of their respective irrigation water supplies, must be filed with the board of county commissioners of the county in which the greater part of the land irrigated from the source of water supply is situated.

(2) The petition shall also be filed with the board of commissioners of each county containing lands irrigated from the source of water supply of the entities signing the petition. The board of county commissioners making the review under RCW 87.80.090 shall consider any comments of other boards of county commissioners provided within the public hearing and comment period on the petition. [1996 c 320 § 3; 1949 c 56 § 2; Rem. Supp. 1949 § 7505-21.]

**87.80.030 Form and contents of petition—Map.** The petition for the creation of a board of joint control shall be addressed to the board of county commissioners, shall describe generally the relationship, if any, of the irrigation entities to an established federal reclamation project, the primary water works of the entities including reservoirs, main canals, hydroelectric facilities, pumping stations, and drainage facilities, giving them their local names, if any they have, and shall show generally the physical relationship of the lands being watered from the water facilities. However, lands included in any irrigation entity involved need not be described individually but shall be included by stating the name of the irrigation entity and all the irrigable lands in the irrigation entity named shall by that method be deemed to be involved unless otherwise specifically stated in the petition. Further, the petition must propose the formula for board of joint control apportionment of costs among its members, and may propose the composition of the board of joint control as to membership, chair, and voting structure. When a board of joint control includes irrigation entities other than an irrigation district or an operating entity for a division within a federal reclamation project as provided in RCW 87.80.005, the voting structure must be such that the votes apportioned to those entities are less than fifty percent of the total votes.

The petition shall also state generally the reasons for the creation of a board of joint control and any other matter the petitioners deem material, and shall allege that it is in the public interest and to the benefit of all the owners of the lands receiving water within the area of jurisdiction, that the board of joint control be created and request that the board of county commissioners consider the petition and take the necessary steps provided by law for the creation of a board of joint control. The petition shall be accompanied by a map

showing the area of jurisdiction and the general location of the water supply and distribution facilities. [2003 c 306 § 2; 1996 c 320 § 4; 1949 c 56 § 3; Rem. Supp. 1949 § 7505-22.]

**87.80.040 Petition filed if regular in form—Hearing set.** Upon the filing of a petition for the creation of a board of joint control the board of county commissioners at a regular meeting or at a special meeting shall examine the petition and, if found regular in form, shall accept the same for filing, and shall fix a time and place for hearing said petition. [1949 c 56 § 4; Rem. Supp. 1949 § 7505-23.]

**87.80.050 Notice of hearing.** Notice of the hearing on the petition shall be given by the clerk of the board of county commissioners by publishing the same, at the cost of the board of control, if created, otherwise at the cost of the petitioners, in the official newspaper of each county containing lands irrigated from the source of supply of the entities signing the petition. The notice shall be published in at least three weekly issues thereof. However, the time of the hearing shall not be less than thirty days from the date of the first publication of the notice. A copy of the notice shall be posted at the regular meeting place of the board of directors of each irrigation entity concerned in the granting or denial of the petition and a copy of the notice shall be mailed to the department of ecology at Olympia at least thirty days prior to the day of the hearing. [1996 c 320 § 5; 1988 c 127 § 66; 1949 c 56 § 5; Rem. Supp. 1949 § 7505-24.]

**87.80.060 Form and contents of notice.** The notice of the hearing on the petition shall state that a petition requesting the creation of a board of joint control to administer the facilities and activities, naming them if named in the petition, has been filed with the board of county commissioners of the county, naming the county; that the board of joint control, if it is created, will have authority to provide for apportionment of costs to carry out the objects of its creation among the member irrigation entities (naming them); shall state the day, hour, and place of the hearing on the petition; shall state that any person interested in the creation of the board of joint control may appear on or before the day of hearing on the petition, and show cause in writing, if any, why the same should not be granted, and the notice shall be over the name of the clerk of the board of county commissioners. [1996 c 320 § 6; 1949 c 56 § 6; Rem. Supp. 1949 § 7505-25.]

**87.80.070 Conduct and scope of hearing—Independent investigation authorized.** The board of county commissioners, at the time and place mentioned in the notice of hearing or at the time or times to which the hearing on said petition may be adjourned, shall proceed to hear the petition and all evidence submitted against and in support of the same. The board of county commissioners shall have full authority to adjourn the hearing from time to time not exceeding four weeks in all and to grant or reject the petition, and to determine the matter; any irregularities or omissions in the allegations of the petition shall not be held or construed to deprive the board of county commissioners of jurisdiction and authority to consider and determine the matter of any such petition accepted by it for consideration and said board

of county commissioners shall have full authority to make such independent investigation of the matter of such petition as it shall deem advisable and to base its judgment on such independent investigation as well as upon the evidence submitted for and against the petition upon a hearing thereon as hereinafter provided. [1949 c 56 § 7; Rem. Supp. 1949 § 7505-26. Formerly RCW 87.80.070 and 87.80.080.]

**87.80.090 Creation of board of joint control—Resolution filed.** If the board of county commissioners determine[s] that the creation of a board of joint control is in the public interest, of benefit to the irrigation entities and individual water uses within those entities concerned, and will not be detrimental to water right interests outside the proposed board of joint control area of jurisdiction: Then the county board shall so find and adopt a resolution creating the board of joint control, designating it (name of county) County Joint Control Board No. (specify number), and the county board at the same time shall appoint the first members of the board of joint control based on the board composition proposed in the petition and the board of joint control shall consist of this membership. A copy of the resolution creating the board of joint control certified by the clerk of the county board shall be filed with the county assessor of the county in which the board of joint control was created and with the county assessor in any other county in the state in which any lands involved are situated, within five days after the resolution is adopted. [1996 c 320 § 7; 1949 c 56 § 8; Rem. Supp. 1949 § 7505-27.]

**87.80.100 Principal office, oaths, terms, of board—Representation on board.** The principal office and place of business of the board of joint control shall be at a place to be designated by the board in the county in which the board was created. Each member of the board before entering on the duties of his or her office shall subscribe a written oath for the faithful discharge of his or her duties as a member and file the oath with the county clerk of the county. The filing of the oath shall be without clerk's fee. The term of office of members of the board is for one year or a fraction thereof ending on the first Monday in March next following their selection and until their respective successors are selected as provided in this section. The term of the first members of the board shall also be as above stated. In January of each year the board of directors of each irrigation entity concerned shall designate in writing and deliver to the board of joint control, the name or names of the person or persons who constitute the entity's membership and who shall represent the entity on the board of joint control for the ensuing year. The persons designated under this section constitute the board of joint control for the year and until their respective successors are selected and have qualified. Any irrigation entity that fails to designate its representative and to file the same as provided in this section is not entitled to representation on the board unless and until the requirements are complied with. [1996 c 320 § 8; 1949 c 56 § 9; Rem. Supp. 1949 § 7505-28.]

**87.80.110 Organization of board—Meetings—Quorum.** In the month of March, or another time as determined by the board of joint control, in each year the members of the

board of joint control shall meet and organize as a board for the ensuing year and shall select a chair from their number and appoint a secretary who may, but need not, be a member of the board, and who shall keep a record of their proceedings, and perform other duties as the board prescribes. Business of the board shall be transacted at meetings thereof and a majority of the qualified membership of the board constitutes a quorum for the transaction of business and in all matters requiring action by the board there shall be a concurrence of at least a majority of the members present. However, if an alternative voting structure was proposed in the petition and adopted in the board of county commissioners' resolution, this structure will govern the voting procedures of the board of joint control. All meetings of the board shall be public. [1996 c 320 § 9; 1949 c 56 § 10; Rem. Supp. 1949 § 7505-29.]

**87.80.120 Compensation of board members and employees.** Each member of the board of joint control shall be compensated for services in accordance with the provisions of RCW 87.03.460. The amount must be fixed by resolution and entered in the minutes of the proceedings of the board. The board shall fix the compensation to be paid the secretary and all other agents and employees of the board. [1996 c 320 § 10; 1949 c 56 § 11; Rem. Supp. 1949 § 7505-30.]

**87.80.130 Powers of board of joint control—Limitation.** (1) A board of joint control created under the provisions of this chapter shall have full authority within its area of jurisdiction to enter into and perform any and all necessary contracts; to accept grants and loans, including, but not limited to, those provided under chapters 43.83B and 43.99E RCW, to appoint and employ and discharge the necessary officers, agents, and employees; to sue and be sued as a board but without personal liability of the members thereof in any and all matters in which all the irrigation entities represented on the board as a whole have a common interest without making the irrigation entities parties to the suit; to represent the entities in all matters of common interest as a whole within the scope of this chapter; and to do any and all lawful acts required and expedient to carry out the purposes of this chapter. A board of joint control may, subject to the same limitations as an irrigation district operating under chapter 87.03 RCW, acquire any property or property rights for use within the board's area of jurisdiction by power of eminent domain; acquire, purchase, or lease in its own name all necessary real or personal property or property rights; and sell, lease, or exchange any surplus real or personal property or property rights. Any transfers of water, however, are limited to transfers authorized under subsection (2) of this section.

(2)(a) A board of joint control is authorized and encouraged to pursue conservation and system efficiency improvements to optimize the use of appropriated waters and to either redistribute the saved water within its area of jurisdiction, or transfer the water to others, or both. A redistribution of saved water as an operational practice internal to the board of joint control's area of jurisdiction, may be authorized if it can be made without detriment or injury to rights existing outside of

the board of control's area of jurisdiction, including instream flow water rights established under state or federal law.

(b) Prior to undertaking a water conservation or system efficiency improvement project that will result in a redistribution of saved water, the board of joint control must consult with the department of ecology and, if the board's jurisdiction is within a United States reclamation project, the board must obtain the approval of the bureau of reclamation. The purpose of such consultation is to assure that the proposal will not impair the rights of other water holders or bureau of reclamation contract water users.

(c) A board of joint control does not have the power to authorize a change of any water right that would change the point or points of diversion, purpose of use, or place of use outside the board's area of jurisdiction, without the approval of the department of ecology pursuant to RCW 90.03.380 and, if the board's jurisdiction is within a United States reclamation project, the approval of the bureau of reclamation. Any change in place of use that results from a transfer of water between the individual entities of the board of joint control shall not result in any reduction in the total water supply available in a federal reclamation project. In making the determination of whether a change of place of use in an area covered by a federal reclamation project will result in a reduction in the total water supply available, the board of joint control shall consult with the bureau of reclamation.

(d) The board of joint control shall notify the department of ecology, and any Indian tribe requesting notice, of transfers of water between the individual entities of the board of joint control. This subsection (2)(d) applies only to a board of joint control created after January 1, 2003.

(3) A board of joint control is authorized to design, construct, and operate either drainage projects, or water quality enhancement projects, or both.

(4) Where the board of joint control area of jurisdiction is totally within a federal reclamation project, the board is authorized to accept operational responsibility for federal reserved works.

(5) Nothing contained in this chapter gives a board of joint control the authority to abridge the existing rights, responsibilities, and authorities of an individual irrigation entity or others within the area of jurisdiction; nor in a case where the board of joint control consists of representatives of two or more divisions of a federal reclamation project shall the board of joint control abridge any powers of an existing board of control created through federal contract; nor shall a board of joint control have any authority to abridge or modify a water right benefiting lands within its area of jurisdiction without consent of the party holding the ownership interest in the water right.

(6) A board of joint control created under this chapter may not use any authority granted to it by this chapter or by RCW 90.03.380 to authorize a transfer of or change in a water right or to authorize a redistribution of saved water before July 1, 1997. [2003 c 306 § 3; 1998 c 84 § 2; 1996 c 320 § 11; 1949 c 56 § 12; Rem. Supp. 1949 § 7505-31.]

**87.80.135 Board's limitations.** A board of joint control created under this chapter is limited to the membership, area of jurisdiction, and other terms and conditions contained in the resolution of the board of county commissioners filed

under RCW 87.80.090. Amendments may be proposed at any time by the board of joint control to the board of county commissioners and acted upon through the petition process contained in RCW 87.80.030 through 87.80.090. [1996 c 320 § 16.]

**87.80.140 Annual budget of board—Hearing—Notice.** In September of each year the board of joint control shall prepare a budget of its estimated expenses and outlay for the ensuing calendar year and the apportionment thereof chargeable against the several irrigation entities coming within the jurisdiction of the board and shall fix a time and place when the budget shall be considered and adopted by the board. Notice of the hearing of the budget signed by the secretary of the board shall be published in at least two weekly issues of a newspaper of general circulation in each county in which any lands chargeable with the expense and outlay of the board are situated. The date of the first publication of the notice shall be not less than ten days prior to the day of the hearing. [1996 c 320 § 12; 1949 c 56 § 13; Rem. Supp. 1949 § 7505-32.]

**87.80.150 Hearing and adoption of budget.** At the time and place stated in said notice the board shall meet and consider any objections and suggestions as to the items of said budget which may be offered by any interested person and may adjourn its meeting from time to time not exceeding ten days in all and shall finally determine the same and adopt a budget for its operations for the ensuing calendar year. [1949 c 56 § 14; Rem. Supp. 1949 § 7505-33.]

**87.80.160 Entity's levy to include budget apportionment.** Immediately after final adoption of the budget the secretary of the board shall mail or deliver a copy thereof showing the apportionment of the charge to each irrigation entity, to the secretary of each irrigation entity coming under the jurisdiction of the board of joint control and it shall be the duty of each irrigation entity to include in its levy for the ensuing year, the amount apportioned and charged to it in the budget. [1996 c 320 § 13; 1949 c 56 § 15; Rem. Supp. 1949 § 7505-34.]

**87.80.190 Control fund created—Deposits and remittances.** There is created in the county treasurer's office of the county in which the board of joint control was created, a special fund to be designated Control Fund of the (naming the county) County Joint Control Board No. (specifying the number). The county treasurer shall distribute all collections for this fund to the control fund. The treasurer of any other county collecting assessments for this fund shall remit the assessments monthly to the county treasurer of the county in which the board of joint control was created. However, at the option of the board of joint control, a treasurer other than the county treasurer may be designated under RCW 87.03.440. [1996 c 320 § 14; 1949 c 56 § 18; Rem. Supp. 1949 § 7505-37.]

**87.80.200 Payments from control fund.** When the county treasurer serves as treasurer for the board of joint control, the board of joint control shall issue vouchers for its

operations against the control fund and the county treasurer shall pay out moneys from the fund upon warrants drawn by the county auditor of said county. [1996 c 320 § 15; 1949 c 56 § 19; Rem. Supp. 1949 § 7505-38.]

**87.80.220 Agencies under contract with federal government—Ability to participate in board.** An irrigation entity under contract with an agency of the federal government for the construction or operation of its irrigation system may not participate in a board of joint control under this chapter if this action is in conflict with provisions of the subject contract. If a responsible official of the federal agency notifies the board of county commissioners in writing on or before the day of hearing provided under RCW 87.80.060 of a conflict in contract provisions and evidences the conflict, the board of county commissioners must deny the irrigation entity's proposed participation. If subsequent to formation of a board of joint control, a judicial decision determines a conflict in contract conditions, the irrigation entity must not participate in a project or activity inconsistent with the court determination. [1996 c 320 § 17.]

**87.80.230 Board created among entities using Yakima river and tributaries—Coordination with federal and state programs.** A board of joint control created among irrigation entities utilizing waters of the Yakima river and tributaries shall, when undertaking water conservation projects, fully coordinate those projects with federal and state programs adopted under the Yakima river basin water enhancement project, P.L. 103-434. The projects shall be developed and implemented, consistent with the board's development schedule, within the framework of the Yakima river basin water enhancement project policies and procedures provided by the state and federal governments, as funds are available to the board of joint control for the projects. However, should there be no reasonable prospect of funding for construction by the federal and state government within three years of the date of the publication of the Yakima river basin conservation plan under P.L. 103-434, the board of joint control may pursue the projects under alternative funding programs and conditions. [1996 c 320 § 22.]

**87.80.900 Effect of chapter on general water rights adjudications.** This chapter shall not affect the final decree of a general adjudication conducted under RCW 90.03.110 through 90.03.245. [1996 c 320 § 23.]

**87.80.901 Construction—2003 c 306.** The provisions of chapter 306, Laws of 2003 shall not be construed or interpreted to authorize the impairment of any existing water rights. [2003 c 306 § 4.]

## Chapter 87.84 RCW

### IRRIGATION AND REHABILITATION DISTRICTS

#### Sections

87.84.005	Purpose—Districts authorized.
87.84.010	Eligibility.
87.84.020	Petition to convert irrigation district to an irrigation and rehabilitation district, contents—Bond for costs.
87.84.030	Notice and hearing on petition.

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87.84.040	Notice and election.
87.84.050	Purposes of organization.
87.84.060	Directors—Powers, rights and authority of directors and district.
87.84.061	Directors—Additional powers.
87.84.070	Special assessments—Notice and election—Collection.
87.84.071	Special assessments inferior to existing city or town L.I.D. assessments.
87.84.080	Rules and regulations—Authorized—Publication—Hearing.
87.84.090	Rules and regulations—Violation as misdemeanor—Jurisdiction—Penalty—Review.
87.84.100	Rules and regulations—Sheriff to enforce.
87.84.110	Corporate powers and authority.
87.84.120	City, town, county, powers not restricted—Title 79 RCW not modified.

**87.84.005 Purpose—Districts authorized.** The growing population of the state of Washington, coupled with increasing amounts of available leisure time have greatly expanded the need for and use of the larger lakes in the state of Washington, both by Washington state residents and guests from other states and countries. In order to make the use of such larger lakes safer, and more beneficial to all concerned, the state of Washington to further the health, safety, recreation and welfare of its citizens has authorized the conversion of certain irrigation districts to irrigation and rehabilitation districts. [1963 c 221 § 1.]

**Severability—1963 c 221:** "If any section, sentence, clause, or part of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, sentence, clause and part thereof despite the fact that one or more sections, clauses or parts thereof be declared unconstitutional." [1963 c 221 § 11.]

**87.84.010 Eligibility.** Any irrigation district having the major portion of an inland navigable body of water within its exterior boundaries and which has filed with the department of ecology and been granted a water right certificate for fifty thousand acre feet of water or more shall be eligible to become an irrigation and rehabilitation district as provided in this chapter. [1988 c 127 § 67; 1963 c 221 § 2; 1961 c 226 § 2.]

**Severability—1963 c 221:** See note following RCW 87.84.005.

**87.84.020 Petition to convert irrigation district to an irrigation and rehabilitation district, contents—Bond for costs.** A petition to convert an existing irrigation district to an irrigation and rehabilitation district shall be signed by at least fifty holders of title or evidence of title to land within the district. The petition shall contain the following:

- (1) The legal description of the property to be served.
- (2) The signature and address of each petitioner, together with the legal description of the lands within the district owned by each.
- (3) Any other matter deemed material.

The petition shall be accompanied by a bond, to be approved by the board, in double the amount of the probable cost of organizing the district, and conditioned that the bondsman will pay all the costs if the organization is not effected. [1961 c 226 § 3.]

**87.84.030 Notice and hearing on petition.** A notice of hearing and a hearing on the petition shall be held as provided by RCW 87.03.020. [1961 c 226 § 4.]

**87.84.040 Notice and election.** A notice of election and election shall be held to determine whether the electors desire to convert the existing irrigation district to an irrigation and rehabilitation district.

The notice of election and election shall be governed by the applicable provisions of chapter 87.03 RCW relating to the original formation of districts. [1961 c 226 § 5.]

**87.84.050 Purposes of organization.** In addition to the purposes for which irrigation districts may be organized under RCW 87.03.010, an irrigation and rehabilitation district may also be organized or maintained to further the recreational potential of the area and to further the rehabilitation or improvement of inland lakes and shore lines and the modification or improvement of existing or planned control structures located in the district in order to further the health, recreation, and welfare of the residents in the area. [1963 c 221 § 3; 1961 c 226 § 6.]

**Severability—1963 c 221:** See note following RCW 87.84.005.

**87.84.060 Directors—Powers, rights and authority of directors and district.** The directors of the irrigation and rehabilitation district shall be the same as of the irrigation district and the directors shall retain all power, rights and authority heretofore granted to them or hereafter granted to them as directors of an irrigation district under any provision of Title 87 RCW or any amendments thereto or any authority granted to directors of irrigation districts under any other law of the state of Washington. The irrigation and rehabilitation district shall also retain all power, rights and authority heretofore or hereafter granted to irrigation districts under Title 87 RCW or any other law or laws of the state of Washington, and use said power and authority including local improvement district provisions to further irrigation and rehabilitation district purposes and in addition shall have authority to rehabilitate or improve all or a portion of any inland body of water including adjacent shore lines located in the district and shall have the further power of modifying or improving any existing or planned water control structure located in the district in order to further the health, recreation, and welfare of the residents in the district.

All rights held by the irrigation district to water located wholly or partially in the district including but not limited to rights granted by the department of ecology shall upon formation of the irrigation and rehabilitation district immediately vest in the irrigation and rehabilitation district and in addition all water in the newly formed district as to which the prior district had any rights shall be held by the new district for all the beneficial uses and purposes for which the irrigation and rehabilitation district is formed. [1988 c 127 § 68; 1963 c 221 § 4; 1961 c 226 § 7.]

**Severability—1963 c 221:** See note following RCW 87.84.005.

**87.84.061 Directors—Additional powers.** The water in any natural or impounded lake, wholly or partially within the boundaries of an irrigation and rehabilitation district, together with all use of said water and the bottom and shore lines to the line established by the highest level where water has been or shall be stored in said lake, shall be regulated, controlled and used by the irrigation and rehabilitation dis-

trict in order to further the health, safety, recreation and welfare of the residents in the district and the citizens and guests of the state of Washington, subject to rights of the United States bureau of reclamation and any irrigation districts organized under the laws of the state of Washington.

In addition to the powers expressly or impliedly enumerated above, the directors of an irrigation and rehabilitation district shall have the power and authority to:

(1) Control and regulate the use of boats, skiers, skin divers, aircraft, ice skating, ice boats, swimmers or any other use of said lake, by means of appropriate rules and regulations not inconsistent with state fish, game or aeronautics laws.

(2) Expend district funds for the control of mosquitoes or other harmful insects which may affect the use of any lake located in the district: PROVIDED, That the state department of social and health services gives its approval in writing to any district program instituted under the authority of this item. District funds may be expended for mosquito and insect control or other district projects or activities even though it may be necessary to place chemicals or carry on activities on areas located outside of an irrigation and rehabilitation district's boundaries. These funds may be transferred to the jurisdictional health department for the purpose of carrying out the provisions of this item.

(3) Except for state highways, control, regulate or prohibit by means of rules and regulations, the building, construction, placing or allowing to be placed from adjoining land, sand, gravel, dirt, rock, tires, lumber, logs, bottles, cans, garbage and trash, or any loathsome, noxious substances or materials of any kind, and any piling, causeways, fill, roads, culverts, wharfs, bulkheads, buildings, structures, floats, or markers, in, on or above the line established by the highest level where water has been or shall be stored in said lake, located in the district, in order to further the interests of the citizens of the state of Washington, and residents of the district.

(4) Except for state highways, control, regulate and require the placing, maintenance and use of culverts and boat accesses under and through existing fills constructed over and/or across any lake located within the district to facilitate water circulation, navigation and the reduction of flood danger.

(5) Control the taking of carp or other rough fish located in the district and including the right to grant or sell an exclusive or concurrent franchise for the taking of carp or other rough fish, providing the department of fish and wildlife give their approval in writing to any district project regarding the capture, or sale of fish.

(6) Control and regulate by means of rules and regulations the direct or indirect introduction into any lake within the district of any human, animal or industrial waste products, sewage, effluent or byproducts, treated or untreated: PROVIDED, That the state department of ecology gives its approval in writing to any district program instituted under this section, and nothing herein shall be deemed to amend, repeal, supersede, or otherwise modify any laws or regulations relating to public health or to the department of ecology.

(7) Except for state highways, construct, maintain, place, and/or restore roads, buildings, docks, dams, canals, locks, mechanical lifts or any other type of transportation facility;

redge, purchase land, or lease land, or enter into agreements with other agencies or conduct any other activity within or without the district boundaries in order to carry out district projects or activities to further the recreational potential of the area. [1994 c 264 § 79; 1988 c 127 § 69; 1979 c 141 § 383; 1963 c 221 § 5.]

**Severability—1963 c 221:** See note following RCW 87.84.005.

**87.84.070 Special assessments—Notice and election—Collection.** The directors shall be empowered to specially assess land located in the district for benefits thereto taking as a basis the last equalized assessment for county purposes: PROVIDED, That such assessment shall not exceed twenty-five cents per thousand dollars of assessed value upon such assessed valuation without securing authorization by vote of the electors of the district at an election called for that purpose.

The board shall give notice of such an election, for the time and in the manner and form provided for irrigation district elections. The manner of conducting and voting at such an election, opening and closing polls, canvassing the votes, certifying the returns, and declaring the result shall be nearly as practicable the same as in irrigation district elections.

The special assessment provided for herein shall be due and payable at such times and in such amounts as designated by the district directors, which designation shall be made to the county auditor in writing, and the amount so designated shall be added to the general taxes, and entered upon the assessment rolls in his office, and collected therewith. [1973 1st ex.s. c 195 § 132; 1961 c 226 § 8.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**87.84.071 Special assessments inferior to existing city or town L.I.D. assessments.** The special assessments provided for in RCW 87.84.070 shall be subject to and inferior to existing local improvement district assessments of any city or town which is included within the boundaries of an irrigation and rehabilitation district. The collection of local improvement district assessments of a city or town, and the right to foreclose the same when delinquent, shall not be impaired in any manner whatsoever by subsequent special assessments of an irrigation and rehabilitation district. In the event that the county treasurer forecloses on land located within the corporate limits of a city or town for nonpayment of irrigation and rehabilitation district assessments, the certificates of sale and the deeds issued pursuant to the foreclosure proceedings shall contain a recital that the certificate of sale and/or deed is subject to outstanding local improvement district assessments of the city or town. [1965 ex.s. c 6 § 5.]

**Severability—1965 ex.s. c 6:** See RCW 35.47.900.

**87.84.080 Rules and regulations—Authorized—Publication—Hearing.** The directors of an irrigation and rehabilitation district shall have the authority to pass rules and regulations to accomplish district purposes. The rules and regulations shall (except in case of emergency) be published at least once in a newspaper of general circulation in the district and a public hearing shall be held prior to adoption by the directors, at a regular public meeting. [1963 c 221 § 6.]

(2006 Ed.)

**Severability—1963 c 221:** See note following RCW 87.84.005.

**87.84.090 Rules and regulations—Violation as misdemeanor—Jurisdiction—Penalty—Review.** The directors may enact rules and regulations, the violation of which shall be punishable as a misdemeanor, and the district judges in said district shall have exclusive jurisdiction over such offenses. Penalty for violation shall not exceed a five hundred dollar fine or six months in jail: PROVIDED, That where a violation is designated a misdemeanor, the directors shall submit such rules and regulations to the county commissioners of the county or counties in which the district is located who shall review same and approve or disapprove thereof. Rules or regulations disapproved by county commissioners within thirty days of submission shall be of no force or effect. [1987 c 202 § 246; 1963 c 221 § 7.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**Severability—1963 c 221:** See note following RCW 87.84.005.

**87.84.100 Rules and regulations—Sheriff to enforce.** The sheriff's department of any county in which an irrigation and rehabilitation district is located shall enforce the rules and regulations of the district. [1963 c 221 § 8.]

**Severability—1963 c 221:** See note following RCW 87.84.005.

**87.84.110 Corporate powers and authority.** An irrigation and rehabilitation district shall possess all the usual powers of a municipal corporation and shall have the authority to sue and enforce its rules and regulations. [1963 c 221 § 9.]

**Severability—1963 c 221:** See note following RCW 87.84.005.

**87.84.120 City, town, county, powers not restricted—Title 79 RCW not modified.** The provisions of this chapter shall not be construed so as to restrict the governing body of any city, town or county located on or adjacent to an inland body of water controlled by an irrigation and rehabilitation district from conducting or carrying out governmental or proprietary functions of said city, town or county: PROVIDED, That nothing herein shall be deemed to amend, repeal, supersede or otherwise modify any provisions of Title 79 RCW. [1963 c 221 § 10.]

**Severability—1963 c 221:** See note following RCW 87.84.005.



# Title 88

## NAVIGATION AND HARBOR IMPROVEMENTS

### Chapters

- 88.01 Boating offense compact.**
- 88.02 Vessel registration.**
- 88.04 Charter boat safety act.**
- 88.08 Specific acts prohibited.**
- 88.16 Pilotage act.**
- 88.24 Wharves and landings.**
- 88.26 Private moorage facilities.**
- 88.28 Obstructions in navigable waters.**
- 88.32 River and harbor improvements.**
- 88.40 Transport of petroleum products—Financial responsibility.**
- 88.46 Vessel oil spill prevention and response.**

*Canal commission: Chapter 47.72 RCW.*

*Construction projects in state waters: Chapter 77.55 RCW.*

*Harbor improvements in port districts: Chapter 53.20 RCW.*

*Harbor line commission: RCW 79.115.010.*

*Harbor line commission: State Constitution Art. 15 § 1 (Amendment 15).*

*Harbors and tide waters: State Constitution Art. 15 § 1 (Amendment 15).*

*Interference with navigable body, a nuisance: RCW 9.66.010.*

*Jurisdiction of cities and towns over adjacent waters: RCW 35.21.160.*

*Lien for transportation, storage, advancements, etc.: Chapter 60.60 RCW.*

*Lien on vessels and equipment for labor, material, damages, and handling cargo: Chapter 60.36 RCW.*

*Marine employees—Public employment relations: Chapter 47.64 RCW.*

*Marine recreation land act: Chapter 79A.25 RCW.*

*Material removed for channel or harbor improvement, or flood control—Use for public purpose: RCW 79.140.110.*

*Port districts: Title 53 RCW.*

*Powers of cities and towns relative to docks and other appurtenances to harbors and shipping: RCW 35.22.280, 35.23.440, and 35A.11.020.*

*Steamboat companies: Chapter 81.84 RCW.*

*Tidelands, ownership by state: State Constitution Art. 17.*

*Waterways: Title 91 RCW.*

*Wood debris—Removal from navigable waters: Chapter 76.42 RCW.*

### Chapter 88.01 RCW

#### BOATING OFFENSE COMPACT

##### Sections

- 88.01.010 Compact provisions.

**88.01.010 Compact provisions.** The Boating Offense Compact is enacted into law and entered into on behalf of this state with all other states legally joining therein in a form substantially as follows:

##### ARTICLE I

##### Findings and Declaration of Policy

(1) The party states find that:

(a) The safety of their waters is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of boats;

(b) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property;

(2) It is the policy of each of the party states to promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of boats by their operators in each of the jurisdictions where such operators operate boats.

##### ARTICLE II

##### Definition

As used in this compact, "state" means a state that has entered into this compact.

##### ARTICLE III

##### Concurrent Jurisdiction

(1) If conduct is prohibited by two adjoining party states, courts and law enforcement officers in either state who have jurisdiction over boating offenses committed where waters form a common interstate boundary have concurrent jurisdiction to arrest, prosecute, and try offenders for the prohibited conduct committed anywhere on the boundary water between the two states.

(2) This compact does not authorize:

(a) Prosecution of any person for conduct that is unlawful in the state where it was committed, but lawful in the other party state;

(b) A prohibited conduct by the party state.

##### ARTICLE IV

##### Entry Into Force and Withdrawal

(1) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same.

##### ARTICLE V

##### Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1992 c 33 § 1.]

## Chapter 88.02 RCW

## VESSEL REGISTRATION

(Formerly: Watercraft registration)

## Sections

88.02.010	Definitions.
88.02.020	Registration and display of registration number and decal prerequisite to ownership or operation of vessel—Exceptions—Penalty.
88.02.023	Vessel dealer display decals—Use.
88.02.025	Registration of vessels numbered under the federal boat safety act.
88.02.028	Registration of rented vessels—Dealer's vessels—Dealer registration numbers not transferable.
88.02.030	Exceptions from vessel registration—Use of excess document identification fee for boating safety programs—Rules.
88.02.035	Confidential vessel registration, law enforcement purposes.
88.02.040	Issuance of registrations—Agents—Deposit of fees in general fund—Allocation for boating safety and education, law enforcement, and derelict vessel removal and disposal.
88.02.045	Allocation of funds under RCW 88.02.040 to counties—Deposit to account for boating safety programs.
88.02.050	Application—Registration fee and excise tax—Registration number and decal—Registration periods—Renewals—Marine oil refuse dump and holding tank information—Transfer of registrations.
88.02.052	Voluntary donations in conjunction with registration—Maritime historic restoration and preservation.
88.02.053	Maritime historic restoration and preservation account.
88.02.055	Refund, collection of erroneous amounts—Penalty for false statement.
88.02.060	Registration of dealers—Surety bond—Fees.
88.02.070	Certificates of title.
88.02.075	Duplicate certificates—Replacement decals—Surrender of original certificate or decal.
88.02.078	Vessel dealer business address—Office—Identification of business.
88.02.090	Inspection of registration—Violation of chapter—Penalty.
88.02.100	Rule-making authority.
88.02.110	Penalties—Disposition of moneys collected—Enforcement authority.
88.02.112	Registration certificate required—Penalty.
88.02.115	Additional penalties for unauthorized or personal use of dealer display decals.
88.02.118	Evasive registration—Penalty.
88.02.120	Title certificate system—Legislative intent—Authority for rules and procedures to establish system.
88.02.125	Evidence of ownership by vessel dealers—Sales of consigned vessels—Assignment and warranty of certificates of ownership.
88.02.130	Class A title certificates.
88.02.140	Issuance of class A title certificates—Required evidence.
88.02.150	Issuance of class A title certificates—Limitation.
88.02.160	Class B title certificates.
88.02.170	Class A and class B title certificates to have apparent distinctions—Class B certificate to bear legend.
88.02.180	Application for title certificate—Oath by owner.
88.02.184	Issuance of temporary permits by registered vessel dealers—Fee.
88.02.188	Denial, suspension, or revocation of vessel dealer registration—Penalties.
88.02.189	Vessel registration or vessel dealer registration suspension—Noncompliance with support order—Reissuance.
88.02.190	Inspection of vessels.
88.02.200	Department and state immune from suit for administration of chapter.
88.02.210	Records of the purchase and sale of vessels.
88.02.220	Receipt of cash or negotiable instrument before delivery of vessel—Trust account.
88.02.230	Exemption from vessel dealer requirements.
88.02.235	Denial of license.
88.02.250	Carbon monoxide warning sticker—Display required.
88.02.260	Carbon monoxide poisoning informational brochure.

*Boat trailer fee: RCW 46.16.670.*

*Leases: Chapter 62A.2A RCW.*

**88.02.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

[Title 88 RCW—page 2]

(1) "Vessel" means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.

(2) "Owner" means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(3) "Dealer" means a person, partnership, association, or corporation engaged in the business of selling vessels at wholesale or retail in this state.

(4) "Department" means the department of licensing. [1983 c 7 § 14.]

**88.02.020 Registration and display of registration number and decal prerequisite to ownership or operation of vessel—Exceptions—Penalty.** Except as provided in this chapter, no person may own or operate any vessel on the waters of this state unless the vessel has been registered and displays a registration number and a valid decal in accordance with this chapter, except that a vessel which has or is required to have a valid marine document as a vessel of the United States is only required to display a valid decal. A violation of this section is a class 2 civil infraction. [2006 c 29 § 1; 1985 c 267 § 1; 1983 2nd ex.s. c 3 § 47; 1983 c 7 § 15.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**88.02.023 Vessel dealer display decals—Use.** Vessel dealer display decals shall only be used:

(1) To demonstrate vessels held for sale when operated by a prospective customer holding a dated demonstration permit, and shall be carried in the vessel at all times it is being operated by such individual;

(2) On vessels owned or consigned for sale that are in fact available for sale and being used only for vessel dealer business purposes by an officer of the corporation, a partner, a proprietor, or by a bona fide employee of the firm if a card so identifying any such individual is carried in the vessel at all times it is so operated. [1987 c 149 § 4.]

**Effective date—1987 c 149:** See note following RCW 88.02.060.

**88.02.025 Registration of vessels numbered under the federal boat safety act.** (1) A vessel numbered in this state under the federal boat safety act need not register under chapter 88.02 RCW until the earlier of: (a) One year from the date this state's vessel numbering system is approved under the federal boat safety act; or (b) the expiration date of the certificate of number issued for the vessel under the federal boat safety act. At the time of registration under chapter 88.02 RCW, the amount of excise tax due under chapter 82.49 RCW shall include amounts which would have been due under that chapter if the vessel had been registered at the time otherwise required under chapter 88.02 RCW.

(2) As used in this section, "federal boat safety act" means the federal boat safety act of 1971 (85 Stat. 213; 46 U.S.C. 1451 et seq.). [1984 c 250 § 3.]

**88.02.028 Registration of rented vessels—Dealer's vessels—Dealer registration numbers not transferable.**

(2006 Ed.)

(1) Rented vessels shall be registered separately under RCW 88.02.020 through 88.02.050.

(2) RCW 88.02.020 does not apply to any registered dealer's vessels held for sale.

(3) Dealer registration numbers are not transferable. [1987 c 149 § 5.]

**Effective date—1987 c 149:** See note following RCW 88.02.060.

**88.02.030 Exceptions from vessel registration—Use of excess document identification fee for boating safety programs—Rules.** Vessel registration is required under this chapter except for the following:

(1) Military or public vessels of the United States, except recreational-type public vessels;

(2) Vessels owned by a state or subdivision thereof, used principally for governmental purposes and clearly identifiable as such;

(3) Vessels either (a) registered or numbered under the laws of a country other than the United States; or (b) having a valid United States customs service cruising license issued pursuant to 19 C.F.R. Sec. 4.94. On or before the sixty-first day of use in the state, any vessel in the state under this subsection shall obtain an identification document from the department of licensing, its agents, or subagents indicating when the vessel first came into the state. At the time of any issuance of an identification document, a thirty dollar identification document fee shall be paid by the vessel owner to the department of licensing for the cost of providing the identification document by the department of licensing. Five dollars from each such transaction must be deposited in the derelict vessel removal account created in RCW 79.100.100. Any moneys remaining from the fee after the payment of costs and the deposit to the derelict vessel removal account shall be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.045. The department of licensing shall adopt rules to implement its duties under this subsection, including issuing and displaying the identification document and collecting the thirty dollar fee;

(4) Vessels that have been issued a valid number under federal law or by an approved issuing authority of the state of principal operation. However, a vessel that is validly registered in another state but that is removed to this state for principal use is subject to registration under this chapter. The issuing authority for this state shall recognize the validity of the numbers previously issued for a period of sixty days after arrival in this state;

(5) Vessels owned by a nonresident if the vessel is located upon the waters of this state exclusively for repairs, alteration, or reconstruction, or any testing related to the repair, alteration, or reconstruction conducted in this state if an employee of the repair, alteration, or construction facility is on board the vessel during any testing. However, any vessel owned by a nonresident is located upon the waters of this state exclusively for repairs, alteration, reconstruction, or testing for a period longer than sixty days, that the nonresident shall file an affidavit with the department of revenue verifying the vessel is located upon the waters of this state for repair, alteration, reconstruction, or testing and shall continue to file such affidavit every sixty days thereafter, while the

vessel is located upon the waters of this state exclusively for repairs, alteration, reconstruction, or testing;

(6) Vessels equipped with propulsion machinery of less than ten horsepower that:

(a) Are owned by the owner of a vessel for which a valid vessel number has been issued;

(b) Display the number of that numbered vessel followed by the suffix "1" in the manner prescribed by the department; and

(c) Are used as a tender for direct transportation between that vessel and the shore and for no other purpose;

(7) Vessels under sixteen feet in overall length which have no propulsion machinery of any type or which are not used on waters subject to the jurisdiction of the United States or on the high seas beyond the territorial seas for vessels owned in the United States and are powered by propulsion machinery of ten or less horsepower;

(8) Vessels with no propulsion machinery of any type for which the primary mode of propulsion is human power;

(9) Vessels primarily engaged in commerce which have or are required to have a valid marine document as a vessel of the United States. Commercial vessels which the department of revenue determines have the external appearance of vessels which would otherwise be required to register under this chapter, must display decals issued annually by the department of revenue that indicate the vessel's exempt status;

(10) Vessels primarily engaged in commerce which are owned by a resident of a country other than the United States; and

(11) On and after January 1, 1998, vessels owned by a nonresident individual brought into the state for his or her use or enjoyment while temporarily within the state for not more than six months in any continuous twelve-month period, unless the vessel is used in conducting a nontransitory business activity within the state. However, the vessel must have been issued a valid number under federal law or by an approved issuing authority of the state of principal operation. On or before the sixty-first day of use in the state, any vessel temporarily in the state under this subsection shall obtain an identification document from the department of licensing, its agents, or subagents indicating when the vessel first came into the state. An identification document shall be valid for a period of two months. At the time of any issuance of an identification document, a twenty-five dollar identification document fee shall be paid by the vessel owner to the department of licensing for the cost of providing the identification document by the department of licensing. Any moneys remaining from the fee after payment of costs shall be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.045. The department of licensing shall adopt rules to implement its duties under this subsection, including issuing and displaying the identification document and collecting the twenty-five dollar fee. [2002 c 286 § 12; 1998 c 198 § 1; 1997 c 83 § 1; 1991 c 339 § 30. Prior: 1989 c 393 § 13; 1989 c 102 § 1; 1985 c 452 § 1; 1984 c 250 § 2; 1983 2nd ex.s. c 3 § 44; 1983 c 7 § 16.]

**Severability—Effective date—2002 c 286:** See RCW 79.100.900 and 79.100.901.

**Effective date—1998 c 198:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [March 27, 1998]. [1998 c 198 § 2.]

**Effective date—1985 c 452:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 452 § 2.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

*Commission to adopt rules:* RCW 79A.60.595.

*Partial exemption from ad valorem taxes of ships and vessels exempt from excise tax under RCW 88.02.030(9):* RCW 84.36.080.

**88.02.035 Confidential vessel registration, law enforcement purposes.** (1) The department may issue confidential vessel registration for law enforcement purposes only to units of local government and to agencies of the federal government.

(2) The department shall limit confidential vessel registrations owned or operated by the state of Washington or by any officer or employee thereof, to confidential, investigative, or undercover work of state law enforcement agencies.

(3) The director may adopt rules governing applications for and the use of confidential vessel registrations by law enforcement and other public agencies. [1991 c 339 § 32.]

**88.02.040 Issuance of registrations—Agents—Deposit of fees in general fund—Allocation for boating safety and education, law enforcement, and derelict vessel removal and disposal.** The department shall provide for the issuance of vessel registrations and may appoint agents for collecting fees and issuing registration numbers and decals. General fees for vessel registrations collected by the director shall be deposited in the general fund: PROVIDED, That any amount above one million one hundred thousand dollars per fiscal year shall be allocated to counties by the state treasurer for boating safety/education and law enforcement programs and the fee collected specifically for the removal and disposal of derelict vessels must be deposited in the derelict vessel removal account created in RCW 79.100.100. Eligibility for boating safety/education and law enforcement program allocations shall be contingent upon approval of the local boating safety program by the state parks and recreation commission. Fund allocation shall be based on the numbers of registered vessels by county of moorage. Each benefitting county shall be responsible for equitable distribution of such allocation to other jurisdictions with approved boating safety programs within said county. Any fees not allocated to counties due to the absence of an approved boating safety program, shall be allocated to the commission for awards to local governments to offset law enforcement and boating safety impacts of boaters recreating in jurisdictions other than where registered. [2002 c 286 § 14; 1989 c 393 § 12; 1983 c 7 § 17.]

**Severability—Effective date—2002 c 286:** See RCW 79.100.900 and 79.100.901.

*Commission to adopt rules:* RCW 79A.60.595.

**88.02.045 Allocation of funds under RCW 88.02.040 to counties—Deposit to account for boating safety programs.** Jurisdictions receiving funds under RCW 88.02.040 shall deposit such funds into an account dedicated solely for supporting the jurisdiction's boating safety programs. These

funds shall not supplant existing local funds used for boating safety programs. [1993 c 244 § 40.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**88.02.050 Application—Registration fee and excise tax—Registration number and decal—Registration periods—Renewals—Marine oil refuse dump and holding tank information—Transfer of registrations.** (*Expires June 30, 2012.*) (1) Application for a vessel registration shall be made to the department or its authorized agent in the manner and upon forms prescribed by the department. The application shall state the name and address of each owner of the vessel and such other information as may be required by the department, shall be signed by at least one owner, and shall be accompanied by a vessel registration fee of ten dollars and fifty cents per year and the excise tax imposed under chapter 82.49 RCW.

(2) Five additional dollars must be collected annually from every vessel registration application. These moneys must be distributed in the following manner:

(a) Two dollars must be deposited into the derelict vessel removal account established in RCW 79.100.100. If the department of natural resources indicates that the balance of the derelict vessel removal account reaches one million dollars as of March 1st of any year, the collection of the two-dollar fee must be suspended for the following fiscal year.

(b) One dollar and fifty cents must be deposited in the aquatic invasive species prevention account created in RCW 77.12.879.

(c) One dollar must be deposited into the freshwater aquatic algae control account created in RCW 43.21A.667.

(d) Fifty cents must be deposited into the aquatic invasive species enforcement account created in RCW 43.43.400.

(3) Any fees required for licensing agents under RCW 46.01.140 shall be in addition to the ten dollar and fifty cent annual registration fee and the five-dollar fee created in subsection (2) of this section.

(4) Upon receipt of the application and the registration fee, the department shall assign a registration number and issue a decal for each vessel. The registration number and decal shall be issued and affixed to the vessel in a manner prescribed by the department consistent with the standard numbering system for vessels set forth in volume 33, part 174, of the code of federal regulations. A valid decal affixed as prescribed shall indicate compliance with the annual registration requirements of this chapter.

(5) The vessel registrations and decals are valid for a period of one year, except that the director of licensing may extend or diminish vessel registration periods, and the decals therefor, for the purpose of staggered renewal periods. For registration periods of more or less than one year, the department may collect prorated annual registration fees and excise taxes based upon the number of months in the registration period. Vessel registrations are renewable every year in a manner prescribed by the department upon payment of the vessel registration fee, excise tax, and the derelict vessel fee. Upon renewing a vessel registration, the department shall issue a new decal to be affixed as prescribed by the department.

(6) When the department issues either a notice to renew a vessel registration or a decal for a new or renewed vessel registration, it shall also provide information on the location of marine oil recycling tanks and sewage holding tank pumping stations. This information will be provided to the department by the state parks and recreation commission in a form ready for distribution. The form will be developed and prepared by the state parks and recreation commission with the cooperation of the department of ecology. The department, the state parks and recreation commission, and the department of ecology shall enter into a memorandum of agreement to implement this process.

(7) A person acquiring a vessel from a dealer or a vessel already validly registered under this chapter shall, within fifteen days of the acquisition or purchase of the vessel, apply to the department or its authorized agent for transfer of the vessel registration, and the application shall be accompanied by a transfer fee of one dollar. [2005 c 464 § 2; 2002 c 286 § 13; 1993 c 244 § 38; 1989 c 17 § 1; 1983 2nd ex.s. c 3 § 45; 1983 c 7 § 18.]

**Findings—Intent—2005 c 464:** "The legislature finds that aquatic invasive species and freshwater aquatic algae are causing economic, environmental, and public health problems that affect the citizens and aquatic resources of our state. Many highly destructive species, such as the zebra mussel, are currently not found in Washington's waters and efforts should be made to prevent the introduction or spread of these aquatic invasive species into our state waters. Preventing new introductions is significantly less expensive and causes far less ecological damage than trying to control new infestations.

The legislature also finds that freshwater algae, particularly blue-green algae, are also seriously degrading the water quality and recreational value of a number of our lakes. Blue-green algae can produce toxins that inhibit recreational uses and pose a threat to humans and pets.

It is therefore the intent of the legislature to clarify the roles of the different state agencies involved in these issues in order to address the threat of aquatic invasive species and the problem caused by aquatic freshwater algae, and to provide a dedicated fund source to prevent and control further impacts." [2005 c 464 § 1.]

**Application—2005 c 464 § 2:** "Section 2 of this act applies to vessel registration fees that are due or become due on or after August 1, 2005." [2005 c 464 § 6.]

**Expiration date—2005 c 464 § 2:** "Section 2 of this act expires June 30, 2012." [2005 c 464 § 7.]

**Severability—Effective date—2002 c 286:** See RCW 79.100.900 and 79.100.901.

**Application—1993 c 244 § 38:** "Section 38 of this act [the 1993 amendments to RCW 88.02.050] applies to registrations expiring June 30, 1995, and thereafter." [1993 c 244 § 43.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**88.02.050 Application—Registration fee and excise tax—Registration number and decal—Registration periods—Renewals—Marine oil refuse dump and holding tank information—Transfer of registrations.** (*Effective June 30, 2012.*) Application for a vessel registration shall be made to the department or its authorized agent in the manner and upon forms prescribed by the department. The application shall state the name and address of each owner of the vessel and such other information as may be required by the department, shall be signed by at least one owner, and shall be accompanied by a vessel registration fee of ten dollars and fifty cents per year and the excise tax imposed under chapter 82.49 RCW. In addition, two additional dollars must be col-

lected annually from every vessel registration application. These moneys must be deposited into the derelict vessel removal account established in RCW 79.100.100. If the department of natural resources indicates that the balance of the derelict vessel removal account reaches one million dollars as of March 1st of any year, the collection of the two-dollar fee must be suspended for the following fiscal year. Any fees required for licensing agents under RCW 46.01.140 shall be in addition to the ten dollar and fifty cent annual registration fee and the two-dollar derelict vessel fee.

Upon receipt of the application and the registration fee, the department shall assign a registration number and issue a decal for each vessel. The registration number and decal shall be issued and affixed to the vessel in a manner prescribed by the department consistent with the standard numbering system for vessels set forth in volume 33, part 174, of the code of federal regulations. A valid decal affixed as prescribed shall indicate compliance with the annual registration requirements of this chapter.

The vessel registrations and decals are valid for a period of one year, except that the director of licensing may extend or diminish vessel registration periods, and the decals therefor, for the purpose of staggered renewal periods. For registration periods of more or less than one year, the department may collect prorated annual registration fees and excise taxes based upon the number of months in the registration period. Vessel registrations are renewable every year in a manner prescribed by the department upon payment of the vessel registration fee, excise tax, and the derelict vessel fee. Upon renewing a vessel registration, the department shall issue a new decal to be affixed as prescribed by the department.

When the department issues either a notice to renew a vessel registration or a decal for a new or renewed vessel registration, it shall also provide information on the location of marine oil recycling tanks and sewage holding tank pumping stations. This information will be provided to the department by the state parks and recreation commission in a form ready for distribution. The form will be developed and prepared by the state parks and recreation commission with the cooperation of the department of ecology. The department, the state parks and recreation commission, and the department of ecology shall enter into a memorandum of agreement to implement this process.

A person acquiring a vessel from a dealer or a vessel already validly registered under this chapter shall, within fifteen days of the acquisition or purchase of the vessel, apply to the department or its authorized agent for transfer of the vessel registration, and the application shall be accompanied by a transfer fee of one dollar. [2002 c 286 § 13; 1993 c 244 § 38; 1989 c 17 § 1; 1983 2nd ex.s. c 3 § 45; 1983 c 7 § 18.]

**Severability—Effective date—2002 c 286:** See RCW 79.100.900 and 79.100.901.

**Application—1993 c 244 § 38:** "Section 38 of this act applies to registrations expiring June 30, 1995, and thereafter." [1993 c 244 § 43.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**88.02.052 Voluntary donations in conjunction with registration—Maritime historic restoration and preservation.** In conjunction with the registration of vessels under

this chapter, the department shall provide an opportunity for each person registering a vessel to make a voluntary donation to support the maritime historic restoration and preservation activities of the Grays Harbor Historical Seaport and the Steamer Virginia V Foundation. All voluntary donations collected under this section shall be deposited in the maritime historic restoration and preservation account created under RCW 88.02.053. [1996 c 3 § 1.]

**88.02.053 Maritime historic restoration and preservation account.** (1) The maritime historic restoration and preservation account is created in the custody of the state treasurer. All receipts from the voluntary donations made simultaneously with the registration of vessels under chapter 88.02 RCW shall be deposited into this account. These deposits are not public funds and are not subject to allotment procedures under chapter 43.88 RCW.

(2) At the end of each fiscal year, the state treasurer shall pay from this account to the department of licensing an amount equal to the reasonable administrative expenses of that agency for that fiscal year for collecting the voluntary donations and transmitting them to the state treasurer and shall pay to the state treasurer an amount equal to the reasonable administrative expenses of that agency for that fiscal year for maintaining the account and disbursing funds from the account.

(3) At the end of each fiscal year, the state treasurer shall pay one-half of the balance of the funds in the account after payment of the administrative costs provided in subsection (2) of this section, to the Grays Harbor historical seaport or its corporate successor and the remainder to the Steamer Virginia V foundation or its corporate successor.

(4) If either the Grays Harbor historical seaport and its corporate successors or the Steamer Virginia V foundation and its corporate successors legally ceases to exist, the state treasurer shall, at the end of each fiscal year, pay the balance of the funds in the account to the remaining organization.

(5) If both the Grays Harbor historical seaport and its corporate successors and the Steamer Virginia V foundation and its corporate successors legally cease to exist, the department of licensing shall discontinue the collection of the voluntary donations in conjunction with the registration of vessels under RCW 88.02.052, and the balance of the funds in the account escheat to the state, one-half of the fund balance shall be provided to the \*office of archaeology and historic preservation and the remainder shall be deposited into the parks renewal and stewardship account.

(6) The secretary of state, the directors of the state historical societies, the director of the \*office of archaeology and historic preservation within the department of community, trade, and economic development, and two members representing the recreational boating community appointed by the secretary of state, shall review the success of the voluntary donation program for maritime historic restoration and preservation established under RCW 88.02.052 and report their findings to the appropriate legislative committees by January 31, 1998. The findings must include the progress of the program and the potential to expand the voluntary funding to other historic vessels. [1996 c 3 § 2.]

**Reviser's note:** \*(1) Powers, duties, and functions of the office of archaeology and historic preservation were transferred to the department of archaeology and historic preservation pursuant to 2005 c 333 § 12.

(2) 1996 c 3 directed that this section be added to chapter 43.08 RCW. This section has been codified in chapter 88.02 RCW, which relates more directly to vessel registration receipts.

**88.02.055 Refund, collection of erroneous amounts—Penalty for false statement.** (1) Whenever any license fee paid under this chapter has been erroneously paid, in whole or in part, the person paying the fee, upon satisfactory proof to the director of licensing, is entitled to a refund of the amount erroneously paid.

(2) A license fee is refundable in one or more of the following circumstances: (a) If the vessel for which the renewal license was purchased was destroyed before the beginning date of the registration period for which the renewal fee was paid; (b) if the vessel for which the renewal license was purchased was permanently removed from the state before the beginning date of the registration period for which the renewal fee was paid; (c) if the vessel license was purchased after the owner has sold the vessel; (d) if the vessel is currently licensed in Washington and is subsequently licensed in another jurisdiction, in which case any full months of Washington fees between the date of license application in the other jurisdiction and the expiration of the Washington license are refundable; or (e) if the vessel for which the renewal license was purchased is sold before the beginning date of the registration period for which the renewal fee was paid, and the payor returns the new, unused, never affixed license renewal decal to the department before the beginning of the registration period for which the registration was purchased.

(3) Upon the refund being certified as correct to the state treasurer by the director and being claimed in the time required by law, the state treasurer shall mail or deliver the amount of each refund to the person entitled to the refund.

(4) A claim for refund shall not be allowed for erroneous payments unless the claim is filed with the director within three years after such payment was made.

(5) If due to error a person has been required to pay a license fee under this chapter and excise tax which amounts to an overpayment of ten dollars or more, the person is entitled to a refund of the entire amount of the overpayment, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect the additional amount as will constitute full payment of the tax and fees.

(6) Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor. [2003 c 53 § 413; 1997 c 22 § 2; 1996 c 31 § 2; 1989 c 68 § 5.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**88.02.060 Registration of dealers—Surety bond—Fees.** (1) Each vessel dealer in this state shall register with the department in the manner and upon forms prescribed by the department, in accordance with rules adopted under chap-

ter 34.05 RCW. After the completed vessel dealer application has been satisfactorily filed and the applicant is eligible as determined by the department's rules, the department shall, if no denial proceeding is in effect, issue the vessel dealer's registration on the basis of staggered annual expiration dates.

(2) Before issuing a vessel dealer's registration, the department shall require the applicant to file with the department a surety bond in the amount of five thousand dollars, running to the state of Washington, and executed by a surety company authorized to do business in the state of Washington. The bond shall be approved by the attorney general as to form and conditioned that the dealer shall conduct his business in conformity with the provisions of this chapter. Any vessel consignor or purchaser who has suffered any loss or damage by reason of any act or omission by a dealer that constitutes a violation of this chapter may institute an action for recovery against the dealer and the surety upon the bond. Successive recoveries against the bond shall be permitted, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. Upon exhaustion of the penalty of the bond or cancellation of the bond by the surety, the vessel dealer registration shall automatically be deemed canceled.

(3) Vessel dealers selling fifteen vessels or fewer per year having a retail value of no more than two thousand dollars each shall not be subject to the provisions of subsection (2).

(4) For the fiscal biennium from July 1, 1987, through June 30, 1989, the registration fee for dealers shall be fifty dollars per year for an original registration, and twenty-five dollars for any subsequent renewal. In addition, a fee of twenty-five dollars shall be collected for the first decal, fifteen dollars for each additional decal, and fifteen dollars for each vessel dealer display decal replacement. In ensuing biennia, the director shall establish the amount of such fees at a sufficient level to defray the costs of administering the vessel dealer registration program. All such fees shall be fixed by rule adopted by the director in accordance with the Administrative Procedure Act, chapter 34.05 RCW. All fees collected under this section shall be deposited with the state treasurer and credited to the general fund. [1987 c 149 § 1; 1983 c 7 § 19.]

**Effective date—1987 c 149:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 149 § 15.]

**88.02.070 Certificates of title.** (1) The department shall provide for the issuance of vessel certificates of title. Applications for certificates may be made through the agents appointed under RCW 88.02.040. The fee for a vessel certificate of title is five dollars. Fees required for licensing agents under RCW 46.01.140 are in addition to the vessel certificate of title fee. Fees for vessel certificates of title shall be deposited in the general fund. Security interests in vessels subject to the requirements of this chapter and attaching after July 1, 1983, shall be perfected only by indication upon the vessel's title certificate. The provisions of chapters 46.12 and 46.16 RCW relating to motor vehicle certificates of registration, titles, certificate issuance, ownership transfer, and perfection of security interests, and other provisions which may be

applied to vessels subject to this chapter, may be so applied by rule of the department if they are not inconsistent with this chapter.

(2) Whenever a vessel is to be registered for the first time as required by this chapter, except for a vessel having a valid marine document as a vessel of the United States, application shall be made at the same time for a certificate of title. Any person who purchases or otherwise obtains majority ownership of any vessel subject to the provisions of this chapter, except for a vessel having a valid marine document as a vessel of the United States, shall within fifteen days thereof apply for a new certificate of title which shows the vessel's change of ownership.

(3) Security interests may be released or acted upon as provided by the law under which they arose or were perfected. No new security interest or renewal or extension of an existing security interest is affected except as provided under the terms of this chapter and RCW 46.12.095.

(4) Notice shall be given to the issuing authority by the owner indicated on the certificate of registration within fifteen days of the occurrence of any of the following: Any change of address of owner; destruction, loss, abandonment, theft, or recovery of the vessel; or loss or destruction of a valid certificate of registration on the vessel.

(5) Within five days, excluding Saturdays, Sundays, and state and federal holidays, the owner shall notify the department in writing, on the appropriate form, of the date of the sale or transfer, the name and address of the owner and of the transferee, and such description of the vessel, including the hull identification number, the vessel decal number, or both, as may be required by the department. [1996 c 315 § 5; 1991 c 339 § 31; 1985 c 258 § 4; 1983 2nd ex.s. c 3 § 46.]

**Effective dates—1996 c 315 §§ 1, 4, 5:** See note following RCW 46.01.140.

**Effective date—1985 c 258:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1985." [1985 c 258 § 13.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**88.02.075 Duplicate certificates—Replacement decals—Surrender of original certificate or decal.** (1) If a certificate of ownership, a certificate of registration, or a pair of decals is lost, stolen, mutilated, or destroyed or becomes illegible, the first priority secured party or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, shall promptly apply for and may obtain a duplicate certificate or replacement decals upon payment of one dollar and twenty-five cents and furnishing information satisfactory to the department.

(a) An application for a duplicate certificate of title shall be accompanied by an affidavit of loss or destruction in a form approved by the department and signed by the first secured party or, if none, the owner or legal representative of the owner.

(b) An application for a duplicate certificate of registration or replacement decals shall be accompanied by an affidavit of loss or destruction in a form approved by the depart-

ment and signed by the registered owner or legal representative of the owner.

(2) The duplicate certificate of ownership or registration shall contain the legend, "duplicate." It shall be mailed to the first priority secured party named in it or, if none, to the owner.

(3) A person recovering an original certificate of ownership, certificate of registration, or decal for which a duplicate or replacement has been issued shall promptly surrender the original to the department. [1997 c 241 § 12; 1986 c 71 § 1.]

**88.02.078 Vessel dealer business address—Office—Identification of business.** (1) A vessel dealer shall have and maintain an office in which to conduct business at the business address of the dealer.

(2) The vessel dealer's place of business shall be identified by an exterior sign with the business name. In the absence of other identifiers that the business conducted is marine business, the sign must identify the nature of the business, such as marine sales, service, repair, or manufacturing. [1987 c 149 § 2.]

**Effective date—1987 c 149:** See note following RCW 88.02.060.

**88.02.090 Inspection of registration—Violation of chapter—Penalty.** Any person charged with the enforcement of this chapter may request for inspection the certificate of registration from any vessel owner or operator to ascertain the legal and registered ownership of such vessel. Failure to provide such certificate for inspection upon the request of any person charged with enforcement of this chapter is a class 2 civil infraction. [2006 c 29 § 2; 1983 c 7 § 21.]

**88.02.100 Rule-making authority.** The department may adopt rules under chapter 34.05 RCW to implement this chapter. [1983 c 7 § 20.]

**88.02.110 Penalties—Disposition of moneys collected—Enforcement authority.** (1) Except as otherwise provided in this chapter, a violation of this chapter and the rules adopted by the department pursuant to these statutes is a misdemeanor punishable only by a fine not to exceed one hundred dollars per vessel for the first violation. Subsequent violations in the same year are subject to the following fines:

(a) For the second violation, a fine of two hundred dollars per vessel;

(b) For the third and successive violations, a fine of four hundred dollars per vessel.

(2) A violation designated in this chapter as a civil infraction shall be punished accordingly pursuant to chapter 7.80 RCW.

(3) After subtraction of court costs and administrative collection fees, moneys collected under this section shall be credited to the current expense fund of the arresting jurisdiction.

(4) All law enforcement officers shall have the authority to enforce this chapter, and the rules adopted by the department pursuant to these statutes within their respective jurisdictions: PROVIDED, That a city, town, or county may contract with a fire protection district for such enforcement and fire protection districts are authorized to engage in such

activities. [2006 c 29 § 3; 1993 c 244 § 4; 1987 c 149 § 13; 1984 c 183 § 2; 1983 2nd ex.s. c 3 § 50; 1983 c 7 § 22.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**Effective date—1987 c 149:** See note following RCW 88.02.060.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**88.02.112 Registration certificate required—Penalty.** Any person engaging in vessel dealer activities without first obtaining a registration certificate is guilty of a gross misdemeanor. [1987 c 149 § 3.]

**Effective date—1987 c 149:** See note following RCW 88.02.060.

**88.02.115 Additional penalties for unauthorized or personal use of dealer display decals.** In addition to other penalties imposed by this chapter for unauthorized or personal use of vessel dealer display decals, the director may confiscate all display decals for such period as the director deems appropriate, and in addition, or in lieu of other sanctions, the director may impose a monetary penalty not exceeding twice the amount of excise tax that should have been paid to register each vessel properly. A monetary penalty assessment is in addition to any fees owing to register each vessel properly. Any monetary penalty imposed or vessel display decals confiscated shall be done in accordance with chapter 34.05 RCW. Any monetary penalty imposed by the director and the delinquent excise taxes collected shall be deposited in the general fund. [1987 c 149 § 6.]

**Effective date—1987 c 149:** See note following RCW 88.02.060.

**88.02.118 Evasive registration—Penalty.** It is a gross misdemeanor punishable as provided under chapter 9A.20 RCW for any person owning a vessel subject to taxation under chapter 82.49 RCW to register a vessel in another state to avoid Washington state vessel excise tax required under chapter 82.49 RCW or to obtain a vessel dealer's registration for the purpose of evading excise tax on vessels under chapter 82.49 RCW. For a second or subsequent offense, the person convicted is also subject to a fine equal to four times the amount of avoided taxes and fees, no part of which may be suspended or deferred. Excise taxes owed and fines assessed will be deposited in the manner provided under RCW 46.16.010(4). [2003 c 53 § 414; 2000 c 229 § 6; 1999 c 277 § 10; 1996 c 184 § 4; 1993 c 238 § 4; 1987 c 149 § 7.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Effective date—2000 c 229:** See note following RCW 46.16.010.

**Effective date—1996 c 184:** See note following RCW 46.16.010.

**Effective date—1987 c 149:** See note following RCW 88.02.060.

**88.02.120 Title certificate system—Legislative intent—Authority for rules and procedures to establish system.** It is the intention of the legislature to establish a system of certificates of title for vessels and watercraft similar to that in existence for motor vehicles. It is the goal of this legislation that the title certificate become prima facie evidence of ownership of the vessel it describes so that persons may rely upon that certificate; and that security interest in vessels be perfected solely by notation of a secured party upon the title certificate. However, there are title certificates issued

prior to June 30, 1985, which may not indicate security interests in the certificated vessel. The establishment of a more reliable system will require implementation over several years, as the existing security interests are either satisfied or their perfection is not continued. During this interim period of five years from June 30, 1985, two different classes, class A and class B, of title certificates will be in existence and issued by the department of licensing. The establishment and operation of the system for watercraft and vessels should be patterned upon the system established and operating for motor vehicles and the department of licensing is hereby authorized and directed to adopt the regulations and procedures necessary and desirable to establish such a similar system, excepting only as the same may be inconsistent with this chapter. [1985 c 258 § 1.]

**Effective date—1985 c 258:** See note following RCW 88.02.070.

**88.02.125 Evidence of ownership by vessel dealers—Sales of consigned vessels—Assignment and warranty of certificates of ownership.** (1) Vessel dealers shall possess a certificate of ownership, a manufacturer's statement of origin, a carpenter's certificate, or a factory invoice or other evidence of ownership approved by the department for each vessel in the vessel dealer's inventory unless the vessel for sale is consigned or subject to an inventory security agreement. Evidence of ownership shall be either in the name of the dealer or in the name of the dealer's immediate vendor properly assigned.

(2) A vessel dealer may display and sell consigned vessels or vessels subject to an inventory security agreement if there is a written and signed consignment agreement for each vessel or an inventory security agreement covering all inventory vessels. The consignment agreement shall include verification by the vessel dealer that evidence of ownership by the consignor exists and its location, the name and address of the registered owner, and the legal owner, if any. Vessels that are subject to an inventory security interest shall be supported with evidence of ownership that is in the dealer's possession or the possession of the inventory security party. Upon payment of the debt secured for that vessel, the secured party shall deliver the ownership document, appropriately released, to the dealer. It is the vessel dealer's responsibility to ensure that ownership documents are available for ownership transfer upon the sale of the vessel.

(3) Following the retail sale of any vessel, the dealer shall promptly make application and execute the assignment and warranty of the certificate of ownership. Such assignment shall show any secured party holding a security interest created at the time of sale. The dealer shall deliver the certificate of ownership and application for registration to the department. [1994 c 262 § 27; 1987 c 149 § 8.]

**Effective date—1987 c 149:** See note following RCW 88.02.060.

**88.02.130 Class A title certificates.** After June 30, 1985, a class A certificate shall be issued in the following circumstances:

(1) Upon application for a certificate of title to a new vessel never before titled and sold by an in-state or out-of-state dealer or manufacturer. The application must be accompanied by a manufacturer's statement of origin or other

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document or documents certifying the first conveyance of said vessel after its manufacture. The manufacturer's statement of origin or other similar document or documents shall reflect the model year, make, and hull identification number of the vessel.

(2) Upon transfer of a vessel or release of a security interest in a vessel for which a class A certificate of title has previously been issued if the department receives appropriate releases of interests.

(3) Commencing five years after June 30, 1985, in all cases. [1985 c 258 § 7.]

**Effective date—1985 c 258:** See note following RCW 88.02.070.

**88.02.140 Issuance of class A title certificates—Required evidence.** After June 30, 1985, a class A title certificate may be issued upon application by an owner, purchaser, or secured party who presents evidence satisfactory to the department of ownership of the vessel in the registered owner's name and the absence of security interests or claims except as will be shown on the new title certificate. The absence of outstanding security interests may be evidenced by appropriate Uniform Commercial Code financing statement searches by the appropriate filing officer or officers pursuant to \*RCW 62A.9-407(2) and releases or disclaimers of interest by any secured parties who might have security interests perfected by filing of [a] Uniform Commercial Code financing statement. [1985 c 258 § 8.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

**Effective date—1985 c 258:** See note following RCW 88.02.070.

**88.02.150 Issuance of class A title certificates—Limitation.** A class A certificate of title shall not be issued for any vessel for which a class B certificate has been issued unless the class B certificate is surrendered together with appropriate releases of interest by parties shown on such certificate. [1985 c 258 § 9.]

**Effective date—1985 c 258:** See note following RCW 88.02.070.

**88.02.160 Class B title certificates.** All titles issued prior to June 30, 1985, are designated class B title certificates. Class B certificates evidence ownership of vessels but the vessel is more likely to be subject to a valid and perfected security interest or other claims of interest than class A certificated vessels. [1985 c 258 § 2.]

**Effective date—1985 c 258:** See note following RCW 88.02.070.

**88.02.170 Class A and class B title certificates to have apparent distinctions—Class B certificate to bear legend.** Class A and class B certificates shall be readily distinguishable from each other, through different color, format, or other apparent distinctions. Each class B certificate issued after June 30, 1985, shall bear the legend: "The vessel may be subject to perfected security interests or claims not indicated on this certificate." [1985 c 258 § 5.]

**Effective date—1985 c 258:** See note following RCW 88.02.070.

**88.02.180 Application for title certificate—Oath by owner.** Each application for a title certificate shall require

the person to be designated as the registered owner to swear under penalty of the perjury laws of this state that he is the owner or an authorized agent of the owner of the vessel, and that it is free of any claim of lien, mortgage, conditional sale, or other security interest of any person except the person or persons set forth in the application as secured parties. [1985 c 258 § 6.]

**Effective date—1985 c 258:** See note following RCW 88.02.070.

**88.02.184 Issuance of temporary permits by registered vessel dealers—Fee.** (1) The department may authorize vessel dealers properly registered pursuant to this chapter to issue temporary permits to operate vessels under such rules as the department adopts.

(2) The fee for each temporary permit application distributed to an authorized vessel dealer shall be five dollars, which shall be credited to the payment of registration fees at the time application for registration is made. [1987 c 149 § 9.]

**Effective date—1987 c 149:** See note following RCW 88.02.060.

**88.02.188 Denial, suspension, or revocation of vessel dealer registration—Penalties.** Except as otherwise provided in this chapter, the director may by order deny, suspend, or revoke the registration of any vessel dealer, or in lieu thereof or in addition thereto, may by order assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, if the director finds that the applicant or registrant:

(1) Is applying for a dealer's registration or has obtained a dealer's registration for the purpose of evading excise taxes on vessels; or

(2) Has been adjudged guilty of a felony that directly relates to marine trade and the time elapsed since the adjudication is less than ten years. For purposes of this section, adjudged guilty means, in addition to a final conviction in court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended; or

(3) Has failed to comply with the trust account requirements of this chapter; or

(4) Has failed to transfer a certificate of title to a purchaser as required in this chapter; or

(5) Has misrepresented the facts at the time of application for registration or renewal; or

(6) Has failed to comply with applicable provisions of this chapter or any rules adopted under it. [1987 c 149 § 12.]

**Effective date—1987 c 149:** See note following RCW 88.02.060.

**88.02.189 Vessel registration or vessel dealer registration suspension—Noncompliance with support order—Reissuance.** The department shall immediately suspend the vessel registration or vessel dealer's registration of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension,

reissuance of the registration shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 863.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**88.02.190 Inspection of vessels.** The department is hereby authorized to require inspection of vessels which are brought into this state from another state and for which no title certificate has been issued and for any other vessel if the department determines that inspection of the vessel will help to verify the accuracy of the information set forth on the application. [1985 c 258 § 10.]

**Effective date—1985 c 258:** See note following RCW 88.02.070.

**88.02.200 Department and state immune from suit for administration of chapter.** No suit or action shall ever be commenced or prosecuted against the department of licensing or the state of Washington by reason of any act done or omitted to be done in the administration of the duties and responsibilities imposed upon the department under chapter 88.02 RCW. [1985 c 258 § 11.]

**Effective date—1985 c 258:** See note following RCW 88.02.070.

**88.02.210 Records of the purchase and sale of vessels.** (1) A vessel dealer shall complete and maintain for a period of at least three years a record of the purchase and sale of all vessels purchased or consigned and sold by the vessel dealer. Records shall be made available for inspection by the department during normal business hours.

(2) Before renewal of the vessel dealer registration, the department shall require, on the forms prescribed, a record of the number of vessels sold during the registration year. Vessel dealers who assert that they qualify for the exemption provided in RCW 88.02.060(3) shall also record, on forms prescribed, the highest retail value of any vessel sold in the registration year. [1987 c 149 § 10.]

**Effective date—1987 c 149:** See note following RCW 88.02.060.

**88.02.220 Receipt of cash or negotiable instrument before delivery of vessel—Trust account.** A vessel dealer who receives cash or a negotiable instrument of deposit in excess of one thousand dollars, or a deposit of any amount that will be held for more than fourteen calendar days, shall place the funds in a separate trust account.

(1) The cash or negotiable instrument must be set aside immediately upon receipt for the trust account, or endorsed to such a trust account immediately upon receipt.

(2) The cash or negotiable instrument must be deposited in the trust account by the close of banking hours on the day following the receipt.

(3) After delivery of the purchaser's vessel the vessel dealer shall remove the deposited funds from the trust account.

(4) The dealer shall not commingle the purchaser's funds with any other funds at any time.

(5) The funds shall remain in the trust account until the delivery of the purchased vessel. However, upon written agreement from the purchaser, the vessel dealer may remove and release trust funds before delivery. [1991 c 339 § 33; 1987 c 149 § 11.]

**Effective date—1987 c 149:** See note following RCW 88.02.060.

**88.02.230 Exemption from vessel dealer requirements.** (1) The department may exempt from compliance with the vessel dealer requirements of this chapter, any person who is engaged in the business of selling in this state at wholesale or retail, human-powered watercraft which is: (a) Under sixteen feet in length; (b) unable to be powered by propulsion machinery or wind propulsion as designed by the manufacturer; and (c) not designed for use on commonly-used navigable waters.

(2) Any person engaged in the business of selling at wholesale or retail, exempt and nonexempt watercraft under this section shall only be required to comply with the provisions of this chapter in regard to the sale of nonexempt watercraft. [1990 c 250 § 90.]

**Severability—1990 c 250:** See note following RCW 46.16.301.

**88.02.235 Denial of license.** The director may deny a license under this chapter when the application is a subterfuge that conceals the real person in interest whose license has been denied, suspended, or revoked for cause under this chapter and the terms have not been fulfilled or a civil penalty has not been paid, or the director finds that the application was not filed in good faith. This section does not preclude the department from taking an action against a current licensee. [1997 c 432 § 3.]

**88.02.250 Carbon monoxide warning sticker—Display required.** (*Effective January 1, 2007.*) (1) Any new or used motor driven boat or vessel, as that term is defined in RCW 79A.60.010, other than a personal watercraft, sold within this state must display a carbon monoxide warning sticker developed by the department on the interior of the vessel.

(2) For vessels sold by a dealer, the dealer shall ensure that the warning sticker has been affixed prior to completing a transaction.

(3) For a vessel sold by an individual, the department shall include the sticker in the registration materials provided to the new owner, and the department shall notify the new owner that the sticker must be affixed as described in subsection (1) of this section.

(4) A warning sticker already developed by a vessel manufacturer may satisfy the requirements of this section if it has been approved by the department. The department shall approve a carbon monoxide warning sticker that has been approved by the United States coast guard for similar uses in other states. [2006 c 140 § 2.]

(2006 Ed.)

**Effective date—2006 c 140 §§ 2 and 3:** "Sections 2 and 3 of this act take effect January 1, 2007." [2006 c 140 § 6.]

**Short title—2006 c 140:** See note following RCW 79A.60.660.

**88.02.260 Carbon monoxide poisoning informational brochure.** (*Effective January 1, 2007.*) The department shall include an informational brochure about the dangers of carbon monoxide poisoning and vessels and the warning stickers required by RCW 88.02.250 as part of the registration materials mailed by the department for two consecutive years for registrations that are due or become due after January 1, 2007, and thereafter upon recommendation by the director of the department. The materials shall instruct the vessel owner to affix the stickers as required by RCW 88.02.250. [2006 c 140 § 3.]

**Effective date—2006 c 140 §§ 2 and 3:** See note following RCW 88.02.250.

**Short title—2006 c 140:** See note following RCW 79A.60.660.

## Chapter 88.04 RCW

### CHARTER BOAT SAFETY ACT

(Formerly: Passenger watercraft for hire—Regulation)

#### Sections

88.04.005	Purposes.
88.04.015	Definitions.
88.04.025	Operating on state waters—Conditions.
88.04.035	Inspection of charter boats—Certificate of inspection.
88.04.045	Application for inspection—Inspection fee—Deposit of fees.
88.04.055	Evidentiary hearings.
88.04.065	Reciprocal agreements—Annual operating permits—Education and enforcement programs.
88.04.075	Exemptions from chapter.
88.04.085	Application of Washington industrial safety and health act.
88.04.310	Inspection program fee.
88.04.320	Operating violations enumerated—Penalties.
88.04.330	Rule-making authority.
88.04.900	Short title.

*Inspection and regulation, department of labor and industries:* RCW 43.22.050.

*Regulating sale of passenger tickets:* RCW 81.56.150.

#### Regulation by

*first class cities:* RCW 35.22.280.

*noncharter and charter code cities:* RCW 35A.11.020.

*second class cities:* RCW 35.23.440.

**88.04.005 Purposes.** The purposes of this chapter are as follows:

(1) Regulate charter boats for the carrying of more than six passengers, which are operated on state waters and which are not regulated by the United States coast guard;

(2) Protect the safety and health of employees, passengers, and persons utilizing charter boats;

(3) Authorize the department of labor and industries to adopt rules regulating the use of charter boats operating on state waters and to issue licenses; and

(4) Provide penalties for violations of this chapter. [1999 c 111 § 1; 1989 c 295 § 1.]

**88.04.015 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of labor and industries.

(2) "Carrying passengers or cargo" means the transporting of any person or persons or cargo on a vessel for a fee or other consideration.

(3) "Charter boat" means a vessel or barge operating on state waters that is not inspected or licensed by the United States coast guard and over which the United States coast guard does not exercise jurisdiction and which is rented, leased, or chartered to carry more than six persons or cargo.

(4) "Equipment" means a system, part, or component of a vessel as originally manufactured, or a system, part, or component manufactured or sold for replacement, repair, or improvement of a system, part, or component of a vessel; an accessory or equipment for, or appurtenance to a vessel; or a marine safety article, accessory, or equipment, including radio equipment, intended for use by a person on board a vessel.

(5) "State waters" means all waters within the territorial limits of the state of Washington, and not subject to the jurisdiction of the United States coast guard.

(6) "Operate" means to start or operate any engine which propels a vessel, or to physically control the motion, direction, or speed of a vessel.

(7) "Owner" means a person who claims lawful possession of a vessel by virtue of legal title or an equitable interest in a vessel which entitles that person to possession of the vessel; but does not include charterers and lessees.

(8) "Passenger" means a person carried on board a charter boat except:

- (a) The owner of the vessel or the owner's agent; or
- (b) The captain and members of the vessel's crew.

(9) "Operator's license" means a vessel operator's license issued by the United States coast guard or department for the specified tonnage and operational waters of the vessel.

(10) "Vessel" means every description of motorized watercraft, other than a bare-boat charter boat, seaplane, or sailboat, used or capable of being used to transport more than six passengers or cargo on water for rent, lease, or hire.

(11) "Bare-boat charter" means the unconditional lease, rental, or charter of a boat by the owner, or his or her agent, to a person who by written agreement, or contract, assumes all responsibility and liability for the operation, navigation, and provisioning of the boat during the term of the agreement or contract, except when a captain or crew is required or provided by the owner or owner's agents to be hired by the charterer to operate the vessel. [1999 c 111 § 2; 1991 c 45 § 1; 1989 c 295 § 2.]

**88.04.025 Operating on state waters—Conditions.** A person shall not rent, lease, or hire out a charter boat, nor carry, advertise for the carrying of, nor arrange for the carrying of, more than six passengers on a vessel for a fee or other consideration on state waters unless each of the following conditions is satisfied:

(1)(a) The department has inspected the vessel within the previous twelve months and has issued for the vessel a certificate of inspection that is still valid and current and which allows the carrying of more than six passengers; or

(b) The United States coast guard has inspected the vessel and has issued a certificate of inspection that is still valid and current and which allows the carrying of more than six passengers.

(2) The operator of the vessel is licensed as an operator by either the United States coast guard or the department. The operator must carry such license at all times while operating the vessel and must display such license upon demand by the department.

(3) The vessel has a valid and current registration certificate which is available for inspection by the department.

(4) The vessel is covered by current and valid liability insurance. Proof of such coverage must be provided to the department upon demand. [1999 c 111 § 3; 1989 c 295 § 3.]

**88.04.035 Inspection of charter boats—Certificate of inspection.** The department shall inspect or provide for the inspection of every charter boat once every twelve months with the vessel in the water to determine if the vessel and its equipment comply with the rules promulgated by the department and with the applicable state and federal laws and regulations. Beginning no later than January 1, 2002, the department shall also inspect or provide for the inspection of every charter boat that carries more than six passengers once every sixty months with the vessel in drydock. In addition, the department may at any time inspect or provide for the inspection of any charter boat if the department has reasonable cause to believe either that a provision of this chapter has been violated or that an inspection is necessary to ensure the safety of persons or property on the vessel.

(1) Ninety days before any certificate of inspection expires, the department shall mail written notification to the owner of the vessel that a twelve-month or sixty-month inspection must be completed before the expiration date. The department shall include with the notification an application for inspection, which must be completed and returned by the owner no later than sixty days before the expiration date of the current certificate of inspection. The owner shall include the registration fee with the completed application form. A person filing an application shall certify by the person's signature that the information furnished on the application is true and correct.

(2) If, after the inspection, the department determines that the charter boat and its equipment comply with the rules promulgated by the department and with the applicable state and federal laws and regulations, the department shall issue to the owner of the charter boat a certificate of inspection. Such certificate shall specify the maximum passenger, crew, and total person capacity of the charter boat. The certificate shall be valid for one year from the date of issuance. The certificate shall be prominently displayed on the charter boat while the charter boat is operating upon state waters.

(3) The department shall determine the minimum number of crew necessary for the safe operation of the charter boat.

(4) If the department determines that the charter boat or its equipment does not comply with the rules promulgated by the department and with the applicable state and federal laws and regulations, the department shall not issue a certificate of inspection and any current certificate of inspection shall be revoked by the department. [1999 c 111 § 4; 1989 c 295 § 4.]

**88.04.045 Application for inspection—Inspection fee—Deposit of fees.** (1) The owner of a vessel which does

not have a current certificate of inspection or which has not previously been inspected by the department and which must be inspected by the department shall file an application for inspection, accompanied by the required fee, no later than sixty days before the scheduled or requested inspection date. A person filing an application shall certify by the person's signature that the information furnished on the application is true and correct.

(2) When the department inspects or provides for the inspection of any charter boat because the department has reasonable cause to believe either that a provision of this chapter has been violated or that an inspection is necessary to ensure the safety of persons or property, the owner shall not be required to pay an inspection fee for that inspection.

(3) When a twelve-month in-water inspection and a sixty-month drydock inspection are required in the same year, the owner shall only be required to pay the fee for the drydock inspection.

(4) All sums received from licenses, inspection fees, or other sources described in this chapter shall be deposited in the industrial insurance trust funds and shall be used for administrative, education, and enforcement costs associated with this chapter. [1999 c 111 § 5; 1989 c 295 § 5.]

**88.04.055 Evidentiary hearings.** (1) A person who has been denied a certificate of inspection or a license may petition the department for an evidentiary hearing.

(2) A person who owns a charter boat may petition the department for an evidentiary hearing regarding the determination of the maximum passengers, crew, or total capacity of the charter boat. [1989 c 295 § 9.]

**88.04.065 Reciprocal agreements—Annual operating permits—Education and enforcement programs.** (1) The department may enter into reciprocal agreements with other states concerning the operation and inspection of charter boats from those states that operate on the waters of the state of Washington. Reciprocity shall be granted only if a state can establish to the satisfaction of the department that their laws and standards concerning charter boats meet or exceed the laws and rules of the state of Washington. A charter boat that operates on state waters under a reciprocal agreement pursuant to this section shall obtain an annual operating permit from the department for a fee for each year the charter boat does business on the waters of the state of Washington. The department shall deposit the fees from annual operating permits issued pursuant to this section in the industrial insurance trust funds.

(2) The department shall develop an education and enforcement program designed to eliminate the operation of charter boats that have not been inspected and certified as required by this chapter, and shall provide the public with information regarding the safety features and requirements necessary for the lawful operation of charter boats. [1999 c 111 § 6; 1989 c 295 § 10.]

**88.04.075 Exemptions from chapter.** The provisions of this chapter shall not apply to:

(1) A vessel that is a charter boat but is being used by the documented or registered owner of the charter boat exclu-

sively for the owner's own noncommercial or personal pleasure purposes;

(2) A vessel owned by a person or corporate entity which is donated and used by a person or nonprofit organization to transport passengers for charitable or noncommercial purposes, regardless of whether consideration is directly or indirectly paid to the owner;

(3) A vessel that is rented, leased, or hired by an operator to transport passengers for noncommercial or personal pleasure purposes;

(4) A vessel used exclusively for, or incidental to, an educational purpose; or

(5) A bare-boat charter boat. [1991 c 45 § 2; 1989 c 295 § 11.]

**88.04.085 Application of Washington industrial safety and health act.** Unless specifically provided by statute this chapter and the rules adopted thereunder shall be implemented and enforced, including penalties, violations, citations, appeals, and other administrative procedures, pursuant to the Washington industrial safety and health act, chapter 49.17 RCW. [1989 c 295 § 12.]

**88.04.310 Inspection program fee.** The owner or operator of every vessel inspected by the department shall pay the department a fee for each inspection. The fee shall be established by rule and shall cover the full cost of the inspection program including travel, per diem, and administrative and legal support costs for the program. [1999 c 111 § 7; 1989 c 295 § 6; 1979 c 74 § 2.]

**88.04.320 Operating violations enumerated—Penalties.** (1) It is unlawful for any person to operate a vessel unless that person holds a valid license issued by the United States coast guard or the department to operate a vessel of that class.

(2) It is unlawful for any person to operate a vessel unless the vessel is operated in compliance with the rules of the department of labor and industries and has a current certificate of inspection posted.

(3) Any violation of the licensing and inspection provisions of this chapter is punishable pursuant to the penalties provided under the Washington industrial safety and health act, chapter 49.17 RCW. [1989 c 295 § 7; 1979 c 74 § 3.]

**88.04.330 Rule-making authority.** The department shall adopt by rule, under chapter 34.05 RCW:

(1) Procedures, standards, and fees for the licensing of operators of any vessel used as a charter boat, as defined under RCW 88.04.015, operating on state waters for rent, lease, or hire;

(2) Standards and fees for the inspection of vessels;

(3) Minimum safety and health standards for passengers and crew on board charter boats consistent with the rules adopted by the United States coast guard in 46 C.F.R., subchapter T, small passenger vessels under one hundred gross tons; and

(4) Any other rules needed for the efficient administration of the purposes of this chapter. [1999 c 111 § 8; 1989 c 295 § 8; 1979 c 74 § 4.]

**88.04.900 Short title.** This chapter may be known and cited as the charter boat safety act. [1989 c 295 § 13.]

### Chapter 88.08 RCW SPECIFIC ACTS PROHIBITED

#### Sections

88.08.020	Tampering with lights or signals.
88.08.030	Bringing certain foreign convicts into state.
88.08.050	Injury to lighthouses or United States light.
88.08.060	Unlicensed pilotage.

*Construction projects in state waters: Chapter 77.55 RCW.*

*Damage by vessel to underwater cable: RCW 80.36.070.*

*Excessive steam in boilers, penalty: RCW 70.54.080.*

*Intoxication of steamship employees: RCW 9.91.020.*

**88.08.020 Tampering with lights or signals.** Every person who, in such manner as might, if not discovered, endanger a vessel, railway engine, motor, train, or car, shall show, mask, extinguish, alter, or remove any light or signal, or exhibit any false light or signal, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years. [2003 c 53 § 415; 1992 c 7 § 62; 1909 c 249 § 402; RRS § 2654.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**88.08.030 Bringing certain foreign convicts into state.** Every person who, being the master or commander of any vessel or boat arriving from a foreign country, shall knowingly bring into this state a person who has been or is a foreign convict of any offense, which, if committed in this state would be punishable under the laws thereof, shall be guilty of a misdemeanor. [1909 c 249 § 435; RRS § 2687.]

**Reviser's note:** Caption for 1909 c 249 § 435 reads as follows: "Sec. 435. Master of Vessel Bringing Foreign Convict."

**88.08.050 Injury to lighthouses or United States light.** Every person who shall willfully break, injure, deface, or destroy any lighthouse station, post, platform, step, lamp, or other structure pertaining to such lighthouse station, or shall extinguish or tamper with any light erected by the United States upon or along the navigable waters of this state to aid in the navigation thereof, in case no punishment is provided therefor by the laws of the United States, shall be punished:

(1) As a class B felony punishable by imprisonment in a state correctional facility for not more than ten years whenever such act may endanger the safety of any vessel navigating such waters, or jeopardize the safety of any person or property in or upon such vessel.

(2) In all other cases by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both. [2003 c 53 § 416; 1992 c 7 § 63; 1909 c 249 § 403; RRS § 2655.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**88.08.060 Unlicensed pilotage.** Every person not duly licensed thereto, who shall pilot or offer to pilot any vessel into, within or out of the waters of Juan de Fuca Strait or

Puget Sound, shall be guilty of a misdemeanor: PROVIDED, That nothing herein shall prohibit a master of a vessel acting as his own pilot, nor compel a master or owner of any vessel to take out a pilot license for that purpose. [1909 c 249 § 293; RRS § 2545. Prior: 1888 p 177 § 18.]

### Chapter 88.16 RCW PILOTAGE ACT

#### Sections

88.16.005	Legislative declaration of policy and intent.
88.16.010	Board of pilotage commissioners—Created—Chairperson—Members—Terms—Qualifications—Vacancies—Quorum.
88.16.020	Board of pilotage commissioners—Office—Compensation and travel expenses of members—Employment of personnel.
88.16.035	Board of pilotage commissioners—Powers and duties.
88.16.040	Oaths and subpoenas—Compelling attendance of witnesses—Contempt.
88.16.050	Pilotage districts and waters affected.
88.16.061	Pilotage account.
88.16.070	Vessels exempted and included under chapter—Fee—Penalty.
88.16.090	Pilots' licenses—Qualifications—Duration—Annual fee—Examinations and evaluations—Training program and license—Penalty—Reporting requirements.
88.16.100	Pilots' licenses—Revocation, suspension, etc., of—Reprimand or fine—Other disciplinary actions—Procedure—Judicial review.
88.16.102	Pilots' licenses—Mandatory termination of.
88.16.103	Mandatory rest periods for pilots—Rules—Pilot to refuse assignment, when, report—Penalty.
88.16.105	Size and type of vessels prescribed for newly licensed pilot—Rules.
88.16.107	Pilots may testify without sanctions for doing so.
88.16.110	Pilots to file quarterly report—Contents.
88.16.115	Limiting liability of pilots and any countywide port district in Grays Harbor pilotage district—Deemed in public interest.
88.16.118	Limited liability of pilots and pilot trainees—Liability of vessel, owner, or operator not limited ( <i>as amended by 2005 c 26</i> ).
88.16.118	Limited liability of pilots and any countywide port district in Grays Harbor pilotage district—Liability of vessel, owner, or operator not limited ( <i>as amended by 2005 c 123</i> ).
88.16.120	Failure to observe pilotage rate—Penalty.
88.16.130	Unlicensed pilot liable for payment of rates—Penalty for refusing to employ licensed pilot.
88.16.135	Assignment of pilots to vessels—Request that pilot not be assigned—Hearing on request.
88.16.140	Pilot's lien for compensation.
88.16.150	General penalty—Civil penalty—Jurisdiction—Disposition of fines—Failure to inform of special directions, gross misdemeanor.
88.16.155	Vessel master to make certification before pilotage service offered—Procedure upon refusal—Rules—Penalties—Exception.
88.16.160	Severability and short title.
88.16.170	Oil tankers—Intent and purpose.
88.16.180	Oil tankers—State licensed pilot required.
88.16.190	Oil tankers—Restricted waters—Standard safety features required—Exemptions.
88.16.195	Oil tankers—Not to exceed speed of escorting tug.
88.16.200	Vessel designed to carry liquefied natural or propane gas to adhere to oil tanker provisions.

*Unlicensed pilotage: RCW 88.08.060.*

**88.16.005 Legislative declaration of policy and intent.** The legislature finds and declares that it is the policy of the state of Washington to prevent the loss of human lives, loss of property and vessels, and to protect the marine environment of the state of Washington through the sound application of compulsory pilotage provisions in certain of the state waters.

The legislature further finds and declares that it is a policy of the state of Washington to have pilots experienced in the handling of vessels aboard vessels in certain of the state

waters with prescribed qualifications and licenses issued by the state.

It is the intent of the legislature to ensure against the loss of lives, loss or damage to property and vessels, and to protect the marine environment through the establishment of a board of pilotage commissioners representing the interests of the people of the state of Washington.

It is the further intent of the legislature not to place in jeopardy Washington's position as an able competitor for waterborne commerce from other ports and nations of the world, but rather to continue to develop and encourage such commerce. [1977 ex.s. c 337 § 1.]

**Severability—1977 ex.s. c 337:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 337 § 18.]

**88.16.010 Board of pilotage commissioners—Created—Chairperson—Members—Terms—Qualifications—Vacancies—Quorum.** (1) The board of pilotage commissioners of the state of Washington is hereby created and shall consist of the assistant secretary of marine transportation of the department of transportation of the state of Washington, or the assistant secretary's designee who shall be an employee of the marine division, who shall be chairperson, the director of the department of ecology, or the director's designee, and seven members appointed by the governor and confirmed by the senate. Each of the appointed commissioners shall be appointed for a term of four years from the date of the member's commission. No person shall be eligible for appointment to the board unless that person is at the time of appointment eighteen years of age or over and a citizen of the United States and of the state of Washington. Two of the appointed commissioners shall be pilots licensed under this chapter and actively engaged in piloting upon the waters covered by this chapter for at least three years immediately preceding the time of appointment and while serving on the board. One pilot shall be from the Puget Sound pilotage district and the other pilot shall be from either the Grays Harbor pilotage district or the Puget Sound pilotage district. Two of the appointed commissioners shall be actively engaged in the ownership, operation, or management of deep sea cargo and/or passenger carrying vessels for at least three years immediately preceding the time of appointment and while serving on the board. One of the shipping commissioners shall be a representative of American and one of foreign shipping. One of the commissioners shall be a representative from a recognized environmental organization concerned with marine waters. The remaining commissioners shall be persons interested in and concerned with pilotage, maritime safety, and marine affairs, with broad experience related to the maritime industry exclusive of experience as either a state licensed pilot or as a shipping representative.

(2) Any vacancy in an appointed position on the board shall be filled by the governor for the remainder of the unfilled term, subject to confirmation by the senate.

(3) Five members of the board shall constitute a quorum. At least one pilot, one shipping representative, and one public member must be present at every meeting. All commissioners and the chairperson shall have a vote. [2003 c 58 § 1; 2001 c 36 § 4; 1991 c 200 § 1001; 1987 c 485 § 1; 1979 ex.s.

c 207 § 1; 1977 ex.s. c 337 § 2; 1977 ex.s. c 151 § 73; 1971 ex.s. c 292 § 58; 1935 c 18 § 1; RRS § 9871-1. Prior: 1888 p 175 § 1.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**Federal requirements—Severability—1977 ex.s. c 151:** See RCW 47.98.070 and 47.98.080.

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**88.16.020 Board of pilotage commissioners—Office—Compensation and travel expenses of members—Employment of personnel.** The department of transportation of the state of Washington shall be the office of the board, and all records shall be kept in the office of the department. Each pilotage commissioner shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060, to be paid out of the pilotage account on vouchers approved by the chairperson of the board: PROVIDED, That the sums received under this section shall not be considered compensation earnable as defined pursuant to RCW 41.40.010(8).

The board is authorized to employ personnel, pursuant to chapter 41.06 RCW, as necessary to conduct the business of the board. [1984 c 287 § 111; 1977 ex.s. c 337 § 3; 1977 ex.s. c 151 § 74; 1975-'76 2nd ex.s. c 34 § 178; 1967 c 15 § 1; 1941 c 184 § 1; 1935 c 18 § 2; RRS § 9871-2.]

**Legislative findings—Severability—Effective date—1984 c 287:** See notes following RCW 43.03.220.

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**Federal requirements—Severability—1977 ex.s. c 151:** See RCW 47.98.070 and 47.98.080.

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**88.16.035 Board of pilotage commissioners—Powers and duties.** (1) The board of pilotage commissioners shall:

(a) Adopt rules, pursuant to chapter 34.05 RCW, necessary for the enforcement and administration of this chapter;

(b)(i) Issue training licenses and pilot licenses to pilot applicants meeting the qualifications provided for in RCW 88.16.090 and such additional qualifications as may be determined by the board;

(ii) Establish a comprehensive training program to assist in the training and evaluation of pilot applicants before final licensing; and

(iii) Establish additional training requirements, including a program of continuing education developed after consultation with pilot organizations, including those located within the state of Washington, as required to maintain a competent pilotage service;

(c) Maintain a register of pilots, records of pilot accidents and other history pertinent to pilotage, along with a roster of vessels, agents, owners, operators, and masters necessary for the maintenance of a roster of persons interested in and concerned with pilotage and maritime safety;

(d) Determine from time to time the number of pilots necessary to be licensed in each district of the state to optimize the operation of a safe, fully regulated, efficient, and competent pilotage service in each district;

(e) Annually fix the pilotage tariffs for pilotage services performed aboard vessels as required by this chapter: PROVIDED, That the board may fix extra compensation for extra services to vessels in distress, for awaiting vessels, or for being carried to sea on vessels against the will of the pilot, and for such other services as may be determined by the board;

(f) File annually with the governor and the chairs of the transportation committees of the senate and house of representatives a report which includes, but is not limited to, the following: The number, names, addresses, ages, pilot license number, training license number, and years of service as a Washington licensed pilot of any person licensed by the board as a Washington state pilot or trainee; the names, employment, and other information of the members of the board; the total number of pilotage assignments by pilotage district, including information concerning the various types and sizes of vessels and the total annual tonnage; the annual earnings or stipends of individual pilots and trainees before and after deduction for expenses of pilot organizations, including extra compensation as a separate category; the annual expenses of private pilot associations, including personnel employed and capital expenditures; the status of pilotage tariffs, extra compensation, and travel; the retirement contributions paid to pilots and the disposition thereof; the number of groundings, mishaps, or other incidents which are reported to or investigated by the board, and which are determined to be accidents, as defined by the board, including the vessel name, location of incident, pilot's or trainee's name, and disposition of the case together with information received before the board acted from all persons concerned, including the United States coast guard; the names, qualifications, time scheduled for examinations, and the district of persons desiring to apply for Washington state pilotage licenses; summaries of dispatch records, quarterly reports from pilots, and the bylaws and operating rules of pilotage organizations; the names, sizes in deadweight tons, surcharges, if any, port of call, name of the pilot or trainee, and names and horsepower of tug boats for any and all oil tankers subject to the provisions of RCW 88.16.190 together with the names of any and all vessels for which the United States coast guard requires special handling pursuant to their authority under the Ports and Waterways Safety Act of 1972; the expenses of the board; and any and all other information which the board deems appropriate to include;

(g) Publish a manual which includes the pilotage act and other statutes of Washington state and the federal government which affect pilotage, including the rules of the board, together with such additional information as may be informative for pilots, agents, owners, operators, and masters. Such manual shall be distributed without cost to all pilots and governmental agencies upon request. All other copies shall be sold for a five dollar fee with proceeds to be credited to the pilotage account;

(h) Appoint advisory committees and employ marine experts as necessary to carry out its duties under this chapter;

(i) Provide for the maintenance of efficient and competent pilotage service on all waters covered by this chapter; and do such other things as are reasonable, necessary, and expedient to insure proper and safe pilotage upon the waters

covered by this chapter and facilitate the efficient administration of this chapter.

(2) The board may pay stipends to pilot trainees under subsection (1)(b) of this section. [2006 c 53 § 1; 2005 c 26 § 1; 1987 c 264 § 1; 1977 ex.s. c 337 § 4.]

**Retroactive application—2006 c 53:** "This act is intended to clarify the authority of the board of pilotage commissioners to pay stipends to pilot trainees that have indicated they wish to receive a stipend during the board of pilotage commissioners' training program. Section 1 of this act is remedial and curative in nature and applies retroactively to December 1, 2005. Specifically, the board may pay stipends, pursuant to the rules established by the board, to any pilot trainees that qualified for the stipends on, or after, December 1, 2005." [2006 c 53 § 3.]

**Effective date—2006 c 53:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2006]." [2006 c 53 § 4.]

**Effective date—2005 c 26:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 12, 2005]." [2005 c 26 § 4.]

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**88.16.040 Oaths and subpoenas—Compelling attendance of witnesses—Contempt.** Any member of the board shall have power to administer oaths in any matter before the board for consideration or inquiry and to issue subpoenas requiring witnesses to appear before the board. Such subpoenas shall be signed by a member of the board and issued in the name of the state of Washington and be served and returned, and mileage and witness fees shall be paid in like manner and effect as in a civil action. A witness wilfully disobeying such subpoena served upon the witness shall be proceeded against upon complaint of the board to the attorney general or the prosecuting attorney of the county where the attendance of the witness was demanded as for a contempt of the authority of the superior court of said county. [1987 c 485 § 2; 1967 c 15 § 9; 1935 c 18 § 14; RRS § 9871-14.]

**88.16.050 Pilotage districts and waters affected.** This chapter shall apply to the pilotage districts of this state as defined in this section.

(1) "Puget Sound pilotage district", whenever used in this chapter, shall be construed to mean and include all the waters of the state of Washington inside the international boundary line between the state of Washington, the United States and the province of British Columbia, Canada and east of one hundred twenty-three degrees twenty-four minutes west longitude.

(2) "Grays Harbor pilotage district" shall include all inland waters, channels, waterways, and navigable tributaries within Grays Harbor and Willapa Harbor. The boundary line between Grays Harbor and Willapa Harbor and the high seas shall be defined by the board. [1987 c 485 § 3; 1979 ex.s. c 207 § 2; 1977 ex.s. c 337 § 5; 1971 ex.s. c 297 § 2; 1967 c 15 § 2; 1935 c 18 § 3; RRS § 9871-3.]

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**88.16.061 Pilotage account.** The account in the general fund designated in RCW 43.79.330(17) as the "Puget Sound pilotage account" is hereby redesignated as the "pilotage account". [1967 c 15 § 11.]

**88.16.070 Vessels exempted and included under chapter—Fee—Penalty.** A United States vessel on a voyage in which it is operating exclusively on its coastwise endorsement, its fishery endorsement (including catching and processing its own catch outside United States waters and economic zone for delivery in the United States), and/or its recreational (or pleasure) endorsement, and all United States and Canadian vessels engaged exclusively in the coasting trade on the west coast of the continental United States (including Alaska) and/or British Columbia shall be exempt from the provisions of this chapter unless a pilot licensed under this chapter be actually employed, in which case the pilotage rates provided for in this chapter shall apply. However, the board shall, upon the written petition of any interested party, and upon notice and opportunity for hearing, grant an exemption from the provisions of this chapter to any vessel that the board finds is a small passenger vessel or yacht which is not more than five hundred gross tons (international), does not exceed two hundred feet in length, and is operated exclusively in the waters of the Puget Sound pilotage district and lower British Columbia. Such an exemption shall not be detrimental to the public interest in regard to safe operation preventing loss of human lives, loss of property, and protecting the marine environment of the state of Washington. Such petition shall set out the general description of the vessel, the contemplated use of same, the proposed area of operation, and the name and address of the vessel's owner. The board shall annually, or at any other time when in the public interest, review any exemptions granted to this specified class of small vessels to insure that each exempted vessel remains in compliance with the original exemption. The board shall have the authority to revoke such exemption where there is not continued compliance with the requirements for exemption. The board shall maintain a file which shall include all petitions for exemption, a roster of vessels granted exemption, and the board's written decisions which shall set forth the findings for grants of exemption. Each applicant for exemption or annual renewal shall pay a fee, payable to the pilotage account. Fees for initial applications and for renewals shall be established by rule, and shall not exceed one thousand five hundred dollars. The board shall report annually to the legislature on such exemptions. Every vessel not so exempt, shall while navigating the Puget Sound and Grays Harbor and Willapa Bay pilotage districts, employ a pilot licensed under the provisions of this chapter and shall be liable for and pay pilotage rates in accordance with the pilotage rates herein established or which may hereafter be established under the provisions of this chapter: PROVIDED, That any vessel inbound to or outbound from Canadian ports is exempt from the provisions of this section, if said vessel actually employs a pilot licensed by the Pacific pilotage authority (the pilot licensing authority for the western district of Canada), and if it is communicating with the vessel traffic system and has appropriate navigational charts, and if said vessel uses only those waters east of the international boundary line which are west of a line which begins at the southwestern edge of Point Roberts then to Alden Point (Patos Island), then to Skipjack Island light, then to Turn Point (Stuart Island), then to Kellet Bluff (Henry Island), then to Lime Kiln (San Juan Island) then to the intersection of one hundred twenty-three degrees seven minutes west longitude

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and forty-eight degrees twenty-five minutes north latitude then to the international boundary. The board shall correspond with the Pacific pilotage authority from time to time to ensure the provisions of this section are enforced. If any exempted vessel does not comply with these provisions it shall be deemed to be in violation of this section and subject to the penalties provided in RCW 88.16.150 as now or hereafter amended and liable to pilotage fees as determined by the board. The board shall investigate any accident on the waters covered by this chapter involving a Canadian pilot and shall include the results in its annual report. [1996 c 144 § 1; 1995 c 174 § 1; 1987 c 194 § 2; 1977 ex.s. c 337 § 6; 1971 ex.s. c 297 § 3; 1967 c 15 § 3; 1935 c 18 § 4; RRS § 9871-4.]

**Intent—1987 c 194:** "The legislature intends to provide a limited exemption from the provisions of this chapter for a specified class of small vessels registered as passenger vessels or yachts. It is not the intent of the legislature that such an exemption shall be a precedent for future exemptions of other classes of vessels from the provisions of this chapter." [1987 c 194 § 1.]

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**88.16.090 Pilots' licenses—Qualifications—Duration—Annual fee—Examinations and evaluations—Training program and license—Penalty—Reporting requirements.** (1) A person may pilot any vessel subject to this chapter on waters covered by this chapter only if licensed to pilot such vessels on such waters under this chapter.

(2)(a) A person is eligible to be licensed as a pilot if the person:

- (i) Is a citizen of the United States;
- (ii) Is over the age of twenty-five years and under the age of seventy years;
- (iii) Is a resident of the state of Washington at the time of licensure as a pilot;

(iv)(A) Holds at the time of application, as a minimum, a United States government license as master of steam or motor vessels of not more than one thousand six hundred gross register tons (three thousand international tonnage convention tons) upon oceans, near coastal waters, or inland waters; or the then most equivalent federal license as determined by the board; any such license to have been held by the applicant for a period of at least two years before application;

(B) Holds at the time of licensure as a pilot, after successful completion of the board-required training program, a first class United States endorsement without restrictions on the United States government license for the pilotage district in which the pilot applicant desires to be licensed; however, all applicants for a pilot examination scheduled to be given before July 1, 2008, must have the United States pilotage endorsement at the time of application; and

(C) The board may establish such other federal license requirements for applicants and pilots as it deems appropriate; and

(v) Successfully completes a board-specified training program.

(b) In addition to the requirements of (a) of this subsection, a pilot applicant must meet such other qualifications as may be required by the board.

(c) A person applying for a license under this section shall not have been convicted of an offense involving drugs or the personal consumption of alcohol in the twelve months

prior to the date of application. This restriction does not apply to license renewals under this section.

(3) The board may establish such other training license and pilot license requirements as it deems appropriate.

(4) Pilot applicants shall be evaluated and ranked in a manner specified by the board based on their experience, other qualifications as may be set by the board, performance on a written examination or examinations established by the board, and performance in such other evaluation exercises as may be required by the board, for entry into a board-specified training program.

When the board determines that the demand for pilots requires entry of an applicant into the training program it shall issue a training license to that applicant, but under no circumstances may an applicant be issued a training license more than four years after taking the written entry examination. The training license authorizes the trainee to do such actions as are specified in the training program.

After the completion of the training program the board shall evaluate the trainee's performance and knowledge. The board, as it deems appropriate, may then issue a pilot license, delay the issuance of the pilot license, deny the issuance of the pilot license, or require further training and evaluation.

(5) The board may appoint a special independent committee or may contract with a firm knowledgeable and experienced in the development of professional tests and evaluations for development and grading of the examinations and other evaluation methods. Active licensed state pilots may be consulted for the general development of any examinations and evaluation exercises but shall have no knowledge of the specific questions. The pilot members of the board may participate in the grading of examinations. If the board does appoint a special examination or evaluation development committee it is authorized to pay the members of the committee the same compensation and travel expenses as received by members of the board. Any person who willfully gives advance knowledge of information contained on a pilot examination or other evaluation exercise is guilty of a gross misdemeanor.

(6) Pilots are licensed under this section for a term of five years from and after the date of the issuance of their respective state licenses. Licenses must thereafter be renewed as a matter of course, unless the board withholds the license for good cause. Each pilot shall pay to the state treasurer an annual license fee of three thousand dollars. The fees must be deposited in the state treasury to the credit of the pilotage account. The board may assess partially active or inactive pilots a reduced fee.

(7) All pilots and applicants are subject to an annual physical examination by a physician chosen by the board. The physician shall examine the applicant's heart, blood pressure, circulatory system, lungs and respiratory system, eyesight, hearing, and such other items as may be prescribed by the board. After consultation with a physician and the United States coast guard, the board shall establish minimum health standards to ensure that pilots licensed by the state are able to perform their duties. Within ninety days of the date of each annual physical examination, and after review of the physician's report, the board shall make a determination of whether the pilot or applicant is fully able to carry out the duties of a pilot under this chapter. The board may in its dis-

cretion check with the appropriate authority for any convictions of offenses involving drugs or the personal consumption of alcohol in the prior twelve months.

(8) The board may require vessel simulator training for a pilot applicant and shall require vessel simulator training for a licensed pilot subject to RCW 88.16.105. The board shall also require vessel simulator training in the first year of active duty for a new pilot and at least once every five years for all active pilots.

(9) The board shall prescribe, pursuant to chapter 34.05 RCW, such reporting requirements and review procedures as may be necessary to assure the accuracy and validity of license and service claims. Willful misrepresentation of such required information by a pilot applicant shall result in disqualification of the pilot applicant. [2005 c 26 § 2; 1999 sp.s. c 1 § 607; 1995 c 175 § 1; 1991 c 200 § 1002. Prior: 1990 c 116 § 27; 1990 c 112 § 1; 1987 c 264 § 2; 1986 c 122 § 1; 1981 c 303 § 1; 1979 ex.s. c 207 § 3; 1977 ex.s. c 337 § 7; 1967 c 15 § 5; 1935 c 18 § 8; RRS § 9871-8; prior: 1907 c 147 § 1; 1888 p 176 § 8.]

**Effective date—2005 c 26:** See note following RCW 88.16.035.

**Severability—Effective date—1999 sp.s. c 1:** See notes following RCW 43.19.1906.

**Effective date—1995 c 175:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 175 § 2.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**88.16.100 Pilots' licenses—Revocation, suspension, etc., of—Reprimand or fine—Other disciplinary actions—Procedure—Judicial review.** (1) The board shall have power on its own motion or, in its discretion, upon the written request of any interested party, to investigate the performance of pilotage services subject to this chapter and to issue a reprimand, impose a fine against a pilot in an amount not to exceed five thousand dollars, suspend, withhold, or revoke the license of any pilot, or any combination of the above, for misconduct, incompetency, inattention to duty, intoxication, or failure to perform his duties under this chapter, or violation of any of the rules or regulations provided by the board for the government of pilots. The board may partially or totally stay any disciplinary action authorized in this subsection and subsection (2) of this section. The board shall have the power to require that a pilot satisfactorily complete a specific course of training or treatment.

(2) In all instances where a pilot licensed under this chapter performs pilot services on a vessel exempt under RCW 88.16.070, the board may on its own motion, or in its discretion upon the written request of any interested party, investigate whether the services were performed in a professional manner consistent with sound maritime practices. If the board finds that the pilotage services were performed in a manner that constitutes an act of incompetence, misconduct, or negligence so as to endanger life, limb, or property, or violated or failed to comply with state laws or regulations intended to promote marine safety or to protect navigable

waters, the board may issue a reprimand, impose a fine against a pilot in an amount not to exceed five thousand dollars, suspend, withhold, or revoke the state pilot license, or any combination of the above. The board shall have the power to require that a pilot satisfactorily complete a specific course of training or treatment.

(3) The board shall implement a system of specified disciplinary actions or corrective actions, including training or treatment, that will be taken when a state licensed pilot in a specified period of time has had multiple disciplinary actions taken against the pilot's license pursuant to subsections (1) and (2) of this section. In developing these disciplinary or corrective actions, the board shall take into account the cause of the disciplinary action and the pilot's previous record.

(4) The board shall immediately review the pilot's license of a pilot who has been convicted within the prior twelve months of any offense involving drugs or the personal consumption of alcohol while on duty, including an offense of operation of a vehicle or vessel while under the influence of alcohol or drugs. After a hearing held pursuant to subsection (5) of this section:

(a) The board shall order a pilot who has been found to have been convicted within the prior twelve months of an offense involving drugs or the personal consumption of alcohol while on duty and who has not been convicted of another offense involving drugs or the personal consumption of alcohol in the previous five years to actively participate in and satisfactorily complete a specific program of treatment. The board may impose other sanctions it determines are appropriate. If the pilot does not satisfactorily complete the program of treatment, the board shall suspend, revoke, or withhold the pilot's license until the treatment is completed; and

(b) The board shall suspend for up to one year the license of a pilot found to have been convicted within the prior twelve months of a second or subsequent offense involving drugs or the personal consumption of alcohol while on duty.

(5) When the board determines that reasonable cause exists to issue a reprimand, impose a fine, suspend, revoke, or withhold any pilot's license or require training or treatment under subsection (1), (2), or (4) of this section, it shall forthwith prepare and personally serve upon such pilot a notice advising him of the board's intended action, the specific grounds therefor, and the right to request a hearing to challenge the board's action. The pilot shall have thirty days from the date on which notice is served to request a full hearing before an administrative law judge on the issue of the reprimand, fine, suspension, revocation, or withholding of his pilot's license, or requiring treatment or training. The board's proposed reprimand, fine, suspension, revocation, or withholding of a license, or requiring treatment or training shall become final upon the expiration of thirty days from the date notice is served, unless a hearing has been requested prior to that time. When a hearing is requested the board shall request the appointment of an administrative law judge under chapter 34.12 RCW who has sufficient experience and familiarity with pilotage matters to be able to conduct a fair and impartial hearing. The hearing shall be governed by the provisions of Title 34 RCW. All final decisions of the administrative law judge shall be subject to review by the superior court of the state of Washington for Thurston county or by the superior court of the county in which the pilot maintains his residence

or principal place of business, to which court any case with all the papers and proceedings therein shall be immediately certified by the administrative law judge if requested to do so by any party to the proceedings at any time within thirty days after the date of any such final decision. No appeal may be taken after the expiration of thirty days after the date of final decision. Any case so certified to the superior court shall be tried de novo and after certification of the record to said superior court the proceedings shall be had as in a civil action. Moneys collected from fines under this section shall be deposited in the pilotage account.

(6) The board shall have the power, on an emergency basis, to temporarily suspend a state pilot's license: (a) When a pilot has been involved in any vessel accident where there has been major property damage, loss of life, or loss of a vessel, or (b) where there is a reasonable cause to believe that a pilot has diminished mental capacity or is under the influence of drugs, alcohol, or other substances, when in the opinion of the board, such an accident or physical or mental impairment would significantly diminish that pilot's ability to carry out pilotage duties and that the public health, safety, and welfare requires such emergency action. The board shall make a determination within seventy-two hours whether to continue the suspension. The board shall develop rules for exercising this authority including procedures for the chairperson or vice-chairperson of the board to temporarily order such suspensions, emergency meetings of the board to consider such suspensions, the length of suspension, opportunities for hearings, and an appeal process. The board shall develop rules under chapter 34.05 RCW.

(7) The board shall immediately notify the United States coast guard that it has revoked or suspended a license pursuant to this section and that a suspended or revoked license has been reinstated. [1990 c 116 § 28; 1987 c 392 § 1; 1986 c 121 § 1; 1981 c 67 § 36; 1977 ex.s. c 337 § 12; 1971 ex.s. c 297 § 4; 1935 c 18 § 13; RRS § 9871-13. Prior: 1888 p 178 § 10.]

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**Severability—1987 c 392:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 392 § 2.]

**Severability—1986 c 121:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 121 § 2.]

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**88.16.102 Pilots' licenses—Mandatory termination of.** The license of all pilots shall be terminated upon the pilot reaching the age of seventy: PROVIDED, That all pilots licensed as of September 1, 1979 may continue piloting and hold licenses until May 1, 1982. [1979 ex.s. c 207 § 4.]

**88.16.103 Mandatory rest periods for pilots—Rules—Pilot to refuse assignment, when, report—Penalty.** (1) Pilots, after completion of an assignment or assignments which are seven hours or longer in duration, shall receive a mandatory rest period of seven hours.

(2) A pilot shall refuse a pilotage assignment if the pilot is physically or mentally fatigued or if the pilot has a reasonable belief that the assignment cannot be carried out in a competent and safe manner. Upon refusing an assignment as herein provided a pilot shall submit a written explanation to the board within forty-eight hours. If the board finds that the pilot's written explanation is without merit, or reasonable cause did not exist for the assignment refusal, such pilot may be subject to the provisions of RCW 88.16.100.

(3) The board shall quarterly review the dispatch records of pilot organizations or pilot's quarterly reports to ensure the provisions of this section are enforced. The board may prescribe rules for rest periods pursuant to chapter 34.05 RCW. [1986 c 122 § 2; 1977 ex.s. c 337 § 9.]

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**88.16.105 Size and type of vessels prescribed for newly licensed pilot—Rules.** The board shall prescribe, pursuant to chapter 34.05 RCW, rules governing the size and type of vessels which a newly licensed pilot may be assigned to pilot on the waters of this state and whether the assignment involves docking or undocking a vessel. The rules shall also prescribe required familiarization trips before a newly licensed pilot may pilot a larger or different type of vessel. Such rules shall be for the first five-year period in which pilots are actually employed. [1991 c 200 § 1003; 1987 c 264 § 3; 1977 ex.s. c 337 § 10.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**88.16.107 Pilots may testify without sanctions for doing so.** Any pilot licensed pursuant to this chapter may appear or testify before the legislature or board of pilotage commissioners and no person shall place any sanction against said pilot for having testified or appeared. [1977 ex.s. c 337 § 15.]

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**88.16.110 Pilots to file quarterly report—Contents.** (1) Every pilot licensed under this chapter shall file with the board not later than the tenth day of January, April, July and October of each year a report for the preceding quarter. Said report shall contain an account of all moneys received for pilotage by him or her or by any other person for the pilot or on the pilot's account or for his or her benefit. Said report shall state the name of each vessel piloted, the amount charged to and/or collected from each vessel, the port of registry of such vessel, its dead weight tonnage, whether it was inward or outward bound, whether the amount so received, collected or charged is in full payment of pilotage and such other information as the board shall by regulation prescribe.

(2) The report shall include information for each vessel that suffers a grounding, collision, or other major marine casualty that occurred while the pilot was on duty during the reporting period. The report shall also include information on near miss incidents as defined in RCW 88.46.100. Information concerning near miss incidents provided pursuant to this section shall not be used for imposing any sanctions or penalties. The board shall forward information provided under this

subsection to the department of ecology for inclusion in the collision reporting system established under RCW 88.46.100. [2001 c 36 § 5; 1991 c 200 § 1004; 1935 c 18 § 7; RRS § 9871-7. Prior: 1888 p 178 § 22.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**88.16.115 Limiting liability of pilots and any county-wide port district in Grays Harbor pilotage district—Deemed in public interest.** The preservation of human life and property associated with maritime commerce on the pilotage waters of this state is declared to be in the public interest, and the limitation and regulation of the liability of pilots licensed by the state of Washington, and of any countywide port district located partly or entirely within the Grays Harbor pilotage district as defined by RCW 88.16.050(2) authorized to provide pilotage services, is necessary to such preservation and is deemed to be in the public interest. [2005 c 123 § 1; 1981 c 196 § 1.]

**Report to legislature and governor—1981 c 196:** "Prior to January 5, 1983, the board of pilotage commissioners shall forward to the legislature and governor a report concerning the implementation of sections 1 through 3 of this act." [1981 c 196 § 4.]

**88.16.118 Limited liability of pilots and pilot trainees—Liability of vessel, owner, or operator not limited (as amended by 2005 c 26).** (1) A ship's pilot licensed to act as such by the state of Washington shall not be liable for damages in excess of the amount of five thousand dollars for damages or loss occasioned by the pilot's errors, omissions, fault, or neglect in the performance of pilotage or pilot training services, except as may arise by reason of the willful misconduct or gross negligence of ~~((the))~~ that pilot. A ship's pilot trainee licensed to act as such by the state of Washington is not liable for damages in excess of the amount of five thousand dollars for damages or loss occasioned by the pilot trainee's errors, omissions, fault, or neglect in the performance of pilotage or pilot training services, except as may arise by reason of the willful misconduct or gross negligence of that pilot trainee.

(2) When a pilot or pilot trainee boards a vessel, that pilot or pilot trainee becomes a servant of the vessel and its owner and operator. Nothing in this section exempts the vessel, its owner or operator from liability for damage or loss occasioned by that ship to a person or property on the ground that ~~((+))~~ (a) the ship was piloted by a Washington state licensed pilot or pilot trainee, or ~~((=))~~ (b) the damage or loss was occasioned by the error, omission, fault, or neglect of a Washington state licensed pilot or pilot trainee. [2005 c 26 § 3; 1984 c 69 § 1.]

**Effective date—2005 c 26:** See note following RCW 88.16.035.

**88.16.118 Limited liability of pilots and any countywide port district in Grays Harbor pilotage district—Liability of vessel, owner, or operator not limited (as amended by 2005 c 123).** A ship's pilot licensed to act as such by the state of Washington, and any countywide port district located partly or entirely within the Grays Harbor pilotage district as defined by RCW 88.16.050(2) authorized to provide pilotage services, shall not be liable for damages in excess of the amount of five thousand dollars for damages or loss occasioned by ~~((the))~~ a pilot's errors, omissions, fault, or neglect in the performance of pilotage services, except as may arise by reason of the willful misconduct or gross negligence of ~~((the))~~ a pilot.

When a pilot boards a vessel, that pilot becomes a servant of the vessel and its owner and operator. Nothing in this section exempts the vessel, its owner or operator from liability for damage or loss occasioned by that ship to a person or property on the ground that (1) the ship was piloted by a Washington state licensed pilot, or (2) the damage or loss was occasioned by the error, omission, fault, or neglect of a Washington state licensed pilot. [2005 c 123 § 2; 1984 c 69 § 1.]

**Reviser's note:** RCW 88.16.118 was amended twice during the 2005 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**88.16.120 Failure to observe pilotage rate—Penalty.**

No pilot shall charge, collect or receive and no person, firm, corporation or association shall pay for pilotage or other services performed hereunder any greater, less or different amount, directly or indirectly, than the rates or charges herein established or which may be hereafter fixed by the board pursuant to this chapter. Any pilot, person, firm, corporation or association violating the provisions of this section shall be guilty of a misdemeanor and shall be punished pursuant to RCW 88.16.150 as now or hereafter amended, said prosecution to be conducted by the attorney general or the prosecuting attorney of any county wherein the offense or any part thereof was committed. [1987 c 485 § 4; 1977 ex.s. c 337 § 13; 1967 c 15 § 4; 1935 c 18 § 6; RRS § 9871-6.]

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**88.16.130 Unlicensed pilot liable for payment of rates—Penalty for refusing to employ licensed pilot.**

Any person not holding a license as pilot under the provisions of this chapter who pilots any vessel subject to the provisions of this chapter on waters covered by this chapter shall pay to the board the pilotage rates payable under the provisions of this chapter. Any master or owner of a vessel required to employ a pilot licensed under the provisions of this chapter who refuses to do so when such a pilot is available shall be punished pursuant to RCW 88.16.150 as now or hereafter amended and shall be imprisoned in the county jail of the county wherein he is so convicted until said fine and the costs of his prosecution are paid. [1977 ex.s. c 337 § 14; 1967 c 15 § 8; 1935 c 18 § 11; RRS § 9871-11. Prior: 1907 c 147 § 4.]

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**88.16.135 Assignment of pilots to vessels—Request that pilot not be assigned—Hearing on request.**

Any steamship company or agent may submit a request in writing to the board that a particular pilot not be assigned to pilot that company's vessels. The request shall be based on specific safety concerns of the steamship company or agent.

The board shall notify interested persons and hold a hearing on that request, and either approve or disapprove the request. If the request is approved, the board shall notify the affected pilot and give the pilot a specific list of vessels for which that pilot shall not provide pilotage services. [1987 c 485 § 6.]

**88.16.140 Pilot's lien for compensation.** Each vessel, its tackle, apparel and furniture and the owner thereof shall be jointly and severally liable for the compensation of any pilot employed thereon and such pilot shall have a lien upon such vessel, her tackle, apparel and furniture for such compensation. [1935 c 18 § 15; RRS § 9871-15. Prior: 1907 c 147 § 2; 1888 p 178 § 23.]

**88.16.150 General penalty—Civil penalty—Jurisdiction—Disposition of fines—Failure to inform of special directions, gross misdemeanor.** (1) In all cases where no other penalty is prescribed in this chapter, any violation of this chapter or of any rule or regulation of the board shall be punished as a gross misdemeanor, and all violations may be prosecuted in any court of competent jurisdiction in any

county where the offense or any part thereof was committed. In any case where the offense was committed upon a ship, boat or vessel, and there is doubt as to the proper county, the same may be prosecuted in any county through any part of which the ship, boat or vessel passed, during the trip upon which the offense was committed. All fines collected for any violation of this chapter or any rule or regulation of the board shall within thirty days be paid by the official collecting the same to the state treasurer and shall be credited to the pilotage account: **PROVIDED,** That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) Notwithstanding any other penalty imposed by this section, any person who shall violate the provisions of this chapter, shall be liable to a maximum civil penalty of ten thousand dollars for each violation. The board may request the attorney general or the prosecuting attorney of the county in which any violation of this chapter occurs to bring an action for imposing the civil penalties provided for in this subsection.

Moneys collected from civil penalties shall be deposited in the pilotage account.

(3) Any master of a vessel who shall knowingly fail to inform the pilot dispatched to said vessel or any agent, owner, or operator, who shall knowingly fail to inform the pilot dispatcher, or any dispatcher who shall knowingly fail to inform the pilot actually dispatched to said vessel of any special directions mandated by the coast guard captain of the port under authority of the Ports and Waterways Safety Act of 1972, as amended, for the handling of such vessel shall be guilty of a gross misdemeanor. [1995 c 174 § 2. Prior: 1987 c 485 § 5; 1987 c 202 § 247; 1977 ex.s. c 337 § 8; 1969 ex.s. c 199 § 41; 1967 c 15 § 7; 1935 c 18 § 10; RRS § 9871-10; prior: 1888 p 179 § 27.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**88.16.155 Vessel master to make certification before pilotage service offered—Procedure upon refusal—**

**Rules—Penalties—Exception.** (1) The master of any vessel which employs a Washington licensed pilot shall certify on a form prescribed by the board of pilotage commissioners that the vessel complies with:

(a) Such provisions of the United States coast guard regulations governing the safety and navigation of vessels in United States waters, as codified in Title 33 of the code of federal regulations, as the board may prescribe; and

(b) The provisions of current international agreements governing the safety, radio equipment, and pollution of vessels and other matters as ratified by the United States Senate and prescribed by the board.

(2) The master of any vessel which employs a Washington licensed pilot shall be prepared to produce, and any Washington licensed pilot employed by a vessel shall request to see, certificates of the vessel which certify and indicate that the vessel complies with subsection (1) of this section and the rules of the board promulgated pursuant to subsection (1) of this section.

(3) If the master of a vessel which employs a Washington licensed pilot cannot certify that the vessel complies with subsection (1) of this section and the rules of the board adopted pursuant to subsection (1) of this section, the master shall certify that:

(a) The vessel will comply with subsection (1) of this section before the time the vessel is scheduled to leave the waters of Washington state; and

(b) The coast guard captain of the port was notified of the noncomplying items when they were determined; and

(c) The coast guard captain of the port has authorized the vessel to proceed under such conditions as prescribed by the coast guard pursuant to its authority under federal statutes and regulations.

(4) After the board has prescribed the form required under subsection (1) of this section, no Washington licensed pilot shall offer pilotage services to any vessel on which the master has failed to make a certification required by this section. If the master fails to make a certification the pilot shall:

(a) Disembark from the vessel as soon as practicable; and

(b) Immediately inform the port captain of the conditions and circumstances by the best possible means; and

(c) Forward a written report to the board no later than twenty-four hours after disembarking from the vessel.

(5) Any Washington licensed pilot who offers pilotage services to a vessel on which the master has failed to make a certification required by this section or the rules of the board adopted under this section shall be subject to RCW 88.16.150, as now or hereafter amended, and RCW 88.16.100, as now or hereafter amended.

(6) The board shall revise the requirements enumerated in this section as necessary to reflect changes in coast guard regulations, federal statutes, and international agreements. All actions of the board under this section shall comply with chapters 34.05 and 42.30 RCW. The board shall prescribe the time of and method for retention of forms which have been signed by the master of a vessel in accordance with the provisions of this section.

(7) This section shall not apply to the movement of dead ships. The board shall prescribe pursuant to chapter 34.05 RCW, after consultation with the coast guard and interested persons, for the movement of dead ships and the certification process thereon. [1977 ex.s. c 337 § 11.]

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**88.16.160 Severability and short title.** If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining provisions of this chapter. This chapter may be cited as the "Pilotage Act." [1967 c 15 § 10; 1935 c 18 § 17; RRS § 9871-16.]

**88.16.170 Oil tankers—Intent and purpose.** Because of the danger of spills, the legislature finds that the transportation of crude oil and refined petroleum products by tankers on the Columbia river and on Puget Sound and adjacent waters creates a great potential hazard to important natural resources of the state and to jobs and incomes dependent on these resources.

The legislature recognizes that the Columbia river has many natural obstacles to navigation and shifting navigation channels that create the risk of an oil spill. The legislature also recognizes Puget Sound and adjacent waters are a relatively confined salt water environment with irregular shorelines and therefore there is a greater than usual likelihood of long-term damage from any large oil spill.

The legislature further recognizes that certain areas of the Columbia river and Puget Sound and adjacent waters have limited space for maneuvering a large oil tanker and that these waters contain many natural navigational obstacles as well as a high density of commercial and pleasure boat traffic.

For these reasons, it is important that large oil tankers be piloted by highly skilled persons who are familiar with local waters and that such tankers have sufficient capability for rapid maneuvering responses.

It is therefore the intent and purpose of RCW 88.16.180 and 88.16.190 to decrease the likelihood of oil spills on the Columbia river and on Puget Sound and its shorelines by requiring all oil tankers above a certain size to employ licensed pilots and to be escorted by a tug or tugs while navigating on certain areas of Puget Sound and adjacent waters. [1991 c 200 § 601; 1975 1st ex.s. c 125 § 1.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Severability—1975 1st ex.s. c 125:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 125 § 6.]

**Study authorized and directed:** "The House and Senate Transportation and Utilities Committees are authorized and directed to study the feasibility, benefits, and disadvantages of requiring similar pilot and tug assistance for vessels carrying other potentially hazardous materials and to submit their findings and recommendations prior to the 45th session of the Washington legislature in January, 1977. Such study shall also include a report on the feasibility, benefits and disadvantages of requiring vessels under tug escort to observe a speed limit, and such study shall include a discussion of the impact of a speed limit on the maneuverability of the vessel, the effectiveness of the tug escort and other legal and technical considerations material and relevant to the required study. Such study shall also include an evaluation and recommendations as to whether there should be a transfer of all duties and responsibilities of the board of pilotage commissioners to the Washington utilities and transportation commission or other state agency, and alternate methods for establishing fair and equitable rates for tug escort and pilot transfer." [1975 1st ex.s. c 125 § 5.]

*Discharge of oil and hazardous substances into state waters:* RCW 90.56.010 through 90.56.040.

**88.16.180 Oil tankers—State licensed pilot required.** Notwithstanding the provisions of RCW 88.16.070, any registered oil tanker of five thousand gross tons or greater, shall be required:

(1) To take a Washington state licensed pilot while navigating Puget Sound and adjacent waters and shall be liable for and pay pilotage rates pursuant to RCW 88.16.035; and

(2) To take a licensed pilot while navigating the Columbia river. [1991 c 200 § 602; 1983 c 3 § 231; 1975 1st ex.s. c 125 § 2.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Severability—1975 1st ex.s. c 125:** See notes following RCW 88.16.170.

**88.16.190 Oil tankers—Restricted waters—Standard safety features required—Exemptions.** (1) Any oil tanker, whether enrolled or registered, of greater than one hundred and twenty-five thousand deadweight tons shall be prohibited from proceeding beyond a point east of a line extending from Discovery Island light south to New Dungeness light.

(2) An oil tanker, whether enrolled or registered, of forty to one hundred and twenty-five thousand deadweight tons may proceed beyond the points enumerated in subsection (1) if such tanker possesses all of the following standard safety features:

- (a) Shaft horsepower in the ratio of one horsepower to each two and one-half deadweight tons; and
- (b) Twin screws; and
- (c) Double bottoms, underneath all oil and liquid cargo compartments; and
- (d) Two radars in working order and operating, one of which must be collision avoidance radar; and
- (e) Such other navigational position location systems as may be prescribed from time to time by the board of pilotage commissioners:

PROVIDED, That, if such forty to one hundred and twenty-five thousand deadweight ton tanker is in ballast or is under escort of a tug or tugs with an aggregate shaft horsepower equivalent to five percent of the deadweight tons of that tanker, subsection (2) of this section shall not apply: PROVIDED FURTHER, That additional tug shaft horsepower equivalencies may be required under certain conditions as established by rule and regulation of the Washington utilities and transportation commission pursuant to chapter 34.05 RCW: PROVIDED FURTHER, That a tanker assigned a deadweight of less than forty thousand deadweight tons at the time of construction or reconstruction as reported in Lloyd's Register of Ships is not subject to the provisions of RCW 88.16.170 through 88.16.190. [1994 c 52 § 1; 1975 1st ex.s. c 125 § 3.]

**Severability—1975 1st ex.s. c 125:** See note following RCW 88.16.170.

**88.16.195 Oil tankers—Not to exceed speed of escort-tug.** An oil tanker under escort of a tug or tugs pursuant to the provisions of RCW 88.16.190 shall not exceed the service speed of the tug or tugs that are escorting the oil tanker. [1990 c 116 § 26.]

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**88.16.200 Vessel designed to carry liquefied natural or propane gas to adhere to oil tanker provisions.** Any vessel designed for the purpose of carrying as its cargo liquefied natural or propane gas shall adhere to the provisions of RCW 88.16.190(2) as though it were an oil tanker. [1991 c 200 § 603; 1977 ex.s. c 337 § 16.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

(2006 Ed.)

## Chapter 88.24 RCW

### WHARVES AND LANDINGS

#### Sections

- 88.24.010 Right of riparian owner to construct—Rates.
- 88.24.020 County may authorize wharves and prescribe rates.
- 88.24.030 City or town may authorize wharves—Rates—Liability.
- 88.24.040 Construction requirements of wharves—When deemed incomplete.
- 88.24.070 County acquisition by condemnation of right-of-way.

*Powers of cities and towns relative to docks and other appurtenances to harbors and shipping: RCW 35.22.280, 35.23.440, and 35A.11.020.*

*Powers of port districts as to wharves, landings, etc.: Chapter 53.08 RCW.*

**88.24.010 Right of riparian owner to construct—Rates.** Any person owning land adjoining any navigable waters or watercourse, within or bordering upon this state, may erect upon his own land any wharf or wharves, and may extend them so far into said waters or watercourses as the convenience of shipping may require; and he may charge for wharfage such rates as shall be reasonable: PROVIDED, That he shall at all times leave sufficient room in the channel for the ordinary purposes of navigation. [Code 1881 § 3271; 1863 p 531 § 1; 1860 p 326 § 1; 1854 p 357 § 1; RRS § 9613.]

**88.24.020 County may authorize wharves and prescribe rates.** (1) Whenever any person shall be desirous of erecting any wharf at the terminus of any public highway, or at any accustomed landing place, he may apply to the county commissioners of the proper county, who, if they shall be satisfied that the public convenience requires said wharf, may authorize the same to be erected and kept up for any length of time not exceeding twenty years. And they shall annually prescribe the rates of wharfage and charges thereon, but there shall be no charge for the landing of passengers or their baggage. (2) No such authority shall be granted to any person other than the owner of the land where the wharf is proposed to be erected, unless such owner shall neglect to apply for such authority; and whenever application shall be made for such authority by any person other than such owner, the board of county commissioners shall not grant the same unless proof shall be made that the applicant caused notice in writing of his intention to make such application, to be given by posting up at least three notices in public places in the neighborhood where the proposed wharf is to be erected and one notice at the county court house, twenty days prior to any regular session of the board of county commissioners at which application shall be made and by serving a copy of said notice in writing upon such owner of the land, if residing in the county, at least ten days before the session of the board of county commissioners at which the application is made. (3) When such application is heard, if the owner of such land applies for such authority and files his undertaking with one or more sureties to be approved by the county commissioners in a sum not less than one hundred dollars nor more than five hundred dollars, to be fixed by the county commissioners, conditioned that such person will erect said wharf within the time therein limited, to be fixed by the county commissioners, and maintain the same and keep said wharf according to law; and if default shall at any time be made in the condition of such undertaking damages not exceeding the penalty may be recovered by any person aggrieved before any court hav-

ing competent jurisdiction, then said county commissioners shall authorize such owner of the land to erect and keep such wharf. (4) If such owner of the land does not apply as aforesaid the commissioners may authorize the same to be erected and kept by such applicant upon his entering into an undertaking as required of such owner of the land. [1893 c 49 § 1; Code 1881 § 3272; 1863 p 531 § 2; 1854 p 537 § 2; RRS § 9614.]

**88.24.030 City or town may authorize wharves—Rates—Liability.** Whenever any person or persons shall be desirous of erecting a wharf at the terminus of any street of any incorporated town or city in the state, he or they may apply to the municipal authorities of such town or city who, if they shall be satisfied that the public convenience requires said wharf, may authorize the same to be erected and kept in repair for any length of time not exceeding ten years; and every person building, owning or occupying a wharf in this state, upon which wharfage is charged and received, shall be held accountable to the owner or owners, consignees or agents, for any and all damage done to property stored upon, or passing over said wharf, in consequence of the unfinished, incomplete, or insufficient condition of said wharf; and every such person shall post or cause to be posted in a conspicuous place on said wharf the established rates of wharfage, noting passengers and their baggage free. [Code 1881 § 3273; 1863 p 531 § 3; RRS § 9615.]

**88.24.040 Construction requirements of wharves—When deemed incomplete.** All wharves now standing, or hereafter to be built, in this state, shall be deemed insufficient, incomplete and unfinished unless they have good and substantial banisters or railing on the sides thereof, or a strip of hewn timber at least eight by ten inches square, well secured all around said wharves within ten inches of the outer edge thereof, except at the ends. [Code 1881 § 3274; 1863 p 532 § 4; 1860 p 327 § 2; RRS § 9616.]

**88.24.070 County acquisition by condemnation of right-of-way.** In cases where a person or persons, firm or corporation has acquired a right, title or interest in and to the tidelands or other lands over which it is proposed to build, construct or maintain such wharf or landing, whether such interest be a title in fee simple or as lessee or under contract of purchase or otherwise, and the board of county commissioners shall be unable to agree with the person, persons, firm or corporation claiming such interest or title as to the compensation to be paid for the taking of such strip of tidelands or other lands, then and in that case such board of county commissioners may by an order direct proceedings to procure a right-of-way over said tidelands or other lands to be brought in the superior court by the prosecuting attorney in the manner provided by law, for the taking of private property for public use, and to that end are hereby authorized to institute and maintain in the name of the county the proceedings provided by the laws of this state for the appropriation of lands and other property by counties for public use. [1903 c 20 § 3; RRS § 9619.]

## Chapter 88.26 RCW

## PRIVATE MOORAGE FACILITIES

## Sections

- 88.26.010 Definitions.  
88.26.020 Securing vessels—Notice—Moving vessels ashore—Regaining possession—Abandoned vessels—Public sale.

**88.26.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Charges" means charges of a private moorage facility operator for moorage and storage, all other charges owing to or that become owing under a contract between a vessel owner and the private moorage facility operator, or any costs of sale and related legal expenses for implementing RCW 88.26.020.

(2) "Vessel" means every watercraft used or capable of being used as a means of transportation on the water. "Vessel" includes any trailer used for the transportation of watercraft.

(3) "Private moorage facility" means any properties or facilities owned or operated by a private moorage facility operator that are capable of use for the moorage or storage of vessels.

(4) "Private moorage facility operator" means every natural person, firm, partnership, corporation, association, organization, or any other legal entity, employee, or their agent, that owns or operates a private moorage facility. Private moorage facility operation does not include a "moorage facility operator" as defined in RCW 53.08.310.

(5) "Owner" means every natural person, firm, partnership, corporation, association, or organization, or their agent, with actual or apparent authority, who expressly or impliedly contracts for use of a moorage facility.

(6) "Transient vessel" means a vessel using a private moorage facility and that belongs to an owner who does not have a moorage agreement with the private moorage facility operator. Transient vessels include, but are not limited to, vessels seeking a harbor or refuge, day use, or overnight use of a private moorage facility on a space-as-available basis. [1993 c 474 § 1.]

**88.26.020 Securing vessels—Notice—Moving vessels ashore—Regaining possession—Abandoned vessels—Public sale.** (1) Any private moorage facility operator may take reasonable measures, including the use of chains, ropes, and locks, or removal from the water, to secure vessels within the private moorage facility so that the vessels are in the possession and control of the operator and cannot be removed from the facility. These procedures may be used if an owner mooring or storing a vessel at the facility fails, after being notified that charges are owing and of the owner's right to commence legal proceedings to contest that such charges are owing, to pay charges owed or to commence legal proceedings. Notification shall be by two separate letters, one sent by first class mail and one sent by registered mail to the owner and any lienholder of record at the last known address. In the case of a transient vessel, or where no address was furnished by the owner, the operator need not give notice prior to securing the vessel. At the time of securing the vessel, an operator

shall attach to the vessel a readily visible notice. The notice shall be of a reasonable size and shall contain the following information:

- (a) The date and time the notice was attached;
- (b) A statement that if the account is not paid in full within ninety days from the time the notice is attached the vessel may be sold at public auction to satisfy the charges; and
- (c) The address and telephone number where additional information may be obtained concerning release of the vessel.

After a vessel is secured, the operator shall make a reasonable effort to notify the owner and any lienholder of record by registered mail in order to give the owner the information contained in the notice.

(2) A private moorage facility operator, at his or her discretion, may move moored vessels ashore for storage within properties under the operator's control or for storage with a private person under their control as bailees of the private moorage facility, if the vessel is, in the opinion of the operator, a nuisance, in danger of sinking or creating other damage, or is owing charges. The costs of any such procedure shall be paid by the vessel's owner.

(3) If a vessel is secured under subsection (1) of this section or moved ashore under subsection (2) of this section, the owner who is obligated to the private operator for charges may regain possession of the vessel by:

(a) Making arrangements satisfactory with the operator for the immediate removal of the vessel from the facility or for authorized moorage; and

(b) Making payment to the operator of all charges, or by posting with the operator a sufficient cash bond or other acceptable security, to be held in trust by the operator pending written agreement of the parties with respect to payment by the vessel owner of the amount owing, or pending resolution of the matter of the charges in a civil action in a court of competent jurisdiction. After entry of judgment, including any appeals, in a court of competent jurisdiction, or after the parties reach agreement with respect to payment, the trust shall terminate and the operator shall receive so much of the bond or other security as agreed, or as is necessary, to satisfy any judgment, costs, and interest as may be awarded to the operator. The balance shall be refunded immediately to the owner at the last known address.

(4) If a vessel has been secured by the operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within ninety days after notifying or attempting to notify the owner under subsection (1) of this section, the vessel is conclusively presumed to have been abandoned by the owner.

(5) If a vessel moored or stored at a private moorage facility is abandoned, the operator may authorize the public sale of the vessel by authorized personnel to the highest and best bidder for cash as follows:

(a) Before the vessel is sold, the vessel owner and any lienholder of record shall be given at least twenty days' notice of the sale in the manner set forth in subsection (1) of this section if the name and address of the owner is known. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of charges owed with respect to the vessel. The notice of sale

shall be published at least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the facility is located. This notice shall include the name of the vessel, if any, the last known owner and address, and a reasonable description of the vessel to be sold. The operator may bid all or part of its charges at the sale and may become a purchaser at the sale.

(b) Before the vessel is sold, any person seeking to redeem an impounded vessel under this section may commence a lawsuit in the superior court for the county in which the vessel was impounded to contest the validity of the impoundment or the amount of charges owing. This lawsuit must be commenced within sixty days of the date the notification was provided under subsection (1) of this section, or the right to a hearing is deemed waived and the owner is liable for any charges owing the operator. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(c) The proceeds of a sale under this section shall be applied first to the payment of any liens superior to the claim for charges, then to payment of the charges, then to satisfy any other liens on the vessel in the order of their priority. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the operator within one year of the date of the sale, the excess funds from the sale shall revert to the department of revenue under chapter 63.29 RCW. If the sale is for a sum less than the applicable charges, the operator is entitled to assert a claim for deficiency, however, the deficiency judgment shall not exceed the moorage fees owed for the previous six-month period.

(d) In the event no one purchases the vessel at a sale, or a vessel is not removed from the premises or other arrangements are not made within ten days of sale, title to the vessel will revert to the operator.

(6) The rights granted to a private moorage facility operator under this section are in addition to any other legal rights an operator may have to hold and sell a vessel and in no manner does this section alter those rights, or affect the priority of other liens on a vessel. [1993 c 474 § 2.]

## Chapter 88.28 RCW

### OBSTRUCTIONS IN NAVIGABLE WATERS

#### Sections

- 88.28.050 Obstructing navigation—Penalty.
  - 88.28.055 Closure of Camas Slough.
  - 88.28.060 Discharging ballast, when prohibited—Exception—City areas—Penalty.
  - 88.28.070 Dams, restriction on heights on tributaries of Columbia River.
- Hours of labor of operators of power equipment in waterfront operations—Penalty: RCW 49.28.100.*
- Lease of beds of navigable waters for booming purposes: RCW 79.130.010 through 79.130.040.*
- Public lands: Title 79 RCW.*
- Railroad bridges over navigable streams: RCW 81.36.100 and chapter 79.110 RCW.*
- Relocation of harbor lines: RCW 79.115.020.*

**88.28.050 Obstructing navigation—Penalty.** Every person who shall in any manner obstruct the navigable portion or channel of any bay, harbor, or river or stream, within or bordering upon this state, navigable and generally used for

the navigation of vessels, boats, or other watercrafts, or for the floating down of logs, cord wood, fencing posts or rails, shall, on conviction thereof, be fined in any sum not exceeding three hundred dollars: PROVIDED, That the placing of any mill dam or boom across a stream used for floating saw logs, cord wood, fencing posts or rails shall not be construed to be an obstruction to the navigation of such stream, if the same shall be so constructed as to allow the passage of boats, saw logs, cord wood, fencing posts or rails without unreasonable delay: PROVIDED FURTHER, That the obstruction of navigable waters for the purpose of deploying equipment to contain or clean up a spill of oil or other hazardous material shall not be considered an obstruction. [1987 c 479 § 4; 1888 p 190 § 1; Code 1881 § 919; 1854 p 94 § 104; RRS § 9897.]

**88.28.055 Closure of Camas Slough.** The department of transportation may for highway purposes close off by fill or embankment all water transportation on Camas Slough, a part of the Columbia River extending from a point of land at the confluence of the left bank of the Washougal River and the right bank of the Columbia River to the land on Lady Island with the axis or center line of the embankment being more particularly described as a line bearing south seventy-six degrees (76°), fifty-one a one-half minutes (51 1/2') west from a point; said point being located on the line between section 11 and section 14 and distant approximately 520 feet westerly from the corner common to sections 11, 12, 13 and 14, all situate in township 1 north, range 3 east, W.M. The department shall construct in the fill, at or near the channel of the slough, an opening of sufficient dimensions to allow normal flow of water during the low water period or such opening as may be required or approved by the Corps of Engineers, United States Army. [1984 c 7 § 382; 1955 c 174 § 1.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**88.28.060 Discharging ballast, when prohibited—Exception—City areas—Penalty.** Every master or mate, or other officer or other person, belonging to or in charge of any vessel, who shall discharge or cause to be discharged the ballast of such vessels into the navigable portions or channels of any of the inlets, bays, harbors or rivers within or bordering on this state, where the water is less than twenty fathoms deep, shall, on conviction thereof, be fined in any sum not less than seventy-five dollars, nor more than five hundred dollars: PROVIDED, That nothing in this section shall be so construed as to prevent any such person from discharging ballast from such vessel on the beach at or above ordinary high tide in all waters where the tide ebbs and flows, and that no ballast shall be discharged on any of the flats included within the boundary of any city or townsite or extension thereof: AND PROVIDED FURTHER, That in harbors within or in front of any incorporated city, where the waters are less than twenty fathoms deep, a section of said harbor may be set aside and designated by the city council of said city as a ballast ground, where ballast may be discharged under control of a harbor master to be appointed by the council. [1897 c 18 § 1; 1891 c 69 § 30; Code 1881 § 918; 1877 p 285 § 1; 1854 p 94 § 103; RRS § 9898.]

**88.28.070 Dams, restriction on heights on tributaries of Columbia River.** See chapter 77.55 RCW.

### Chapter 88.32 RCW

#### RIVER AND HARBOR IMPROVEMENTS

##### Sections

88.32.010	Districts authorized.
88.32.020	Improvement commission—Appointment—Oath.
88.32.030	Improvement commission—Notification of appointment—Organization.
88.32.040	Establishment of assessment district—Assessments—State lands.
88.32.060	Assessment roll.
88.32.070	Hearing on roll—Date—Notice.
88.32.080	Hearing on roll—Objections—Certification for collection.
88.32.090	Appeal from final assessment.
88.32.100	Lien of assessment—Collection—Payment—Interest.
88.32.130	Local improvement fund—Disbursements.
88.32.140	Bonds—Issuance—Sale—Form.
88.32.160	Bonds—Execution.
88.32.170	Payment in full—Calls for bonds, notice—Bond owners' rights.
88.32.180	Improvement by counties jointly.
88.32.190	Improvement by counties jointly—Procedure.
88.32.200	Improvement by counties jointly—Joint board of equalization.
88.32.210	Improvement by counties jointly—Joint assessment roll—Filing, appeals, subsequent proceedings.
88.32.220	Improvement by counties jointly—Expenses of joint board.
88.32.230	Joint aid river and harbor improvements—Bonds—Election.
88.32.235	Joint aid river and harbor improvements—Declared county purpose.
88.32.240	Joint planning for improvement of navigable river—Development of river valley.
88.32.250	Joint planning for improvement of navigable river—Contract—Joint board to control and direct work.
88.32.260	Liability of county or counties for acts relating to river improvement for navigation purposes.

*Construction projects in state waters: Chapter 77.55 RCW.*

*Flood control: Title 86 RCW.*

*Harbor improvement fund abolished: RCW 43.79.330.*

*Harbor improvements in port districts: Chapters 53.08 and 53.20 RCW.*

*Harbor line commission: State Constitution Art. 15 § 1 (Amendment 15); RCW 79.115.010.*

*Harbors and tide waters: State Constitution Art. 15.*

*Joint canal construction: RCW 36.64.060.*

*Port districts, powers of, as to harbor improvements: Chapters 53.08 and 53.20 RCW.*

*Powers of*

*first class cities: RCW 35.22.280.*

*noncharter code cities and charter code cities: RCW 35A.11.020.*

*second class cities: RCW 35.23.440.*

*River improvement by counties: Chapters 86.12 and 86.13 RCW.*

**88.32.010 Districts authorized.** Every county in this state is hereby authorized and empowered, by and through its county commissioners, whenever the government of the United States is intending or proposing the construction or operation of any river, lake, canal or harbor improvement, partly or wholly within such county, and whenever said board of county commissioners shall adjudge, upon a petition therefor filed with it and signed by at least one hundred freeholders of said county who each own realty of the assessed valuation of not less than five thousand dollars, situated within the limits of the improvement district sought to be created, that it is for the general benefit and welfare of the people of the county, that such river, lake, canal or harbor improvement be made and completed to define and establish an assessment district within such county and to levy an assessment upon so

much of the taxable real estate of such county as shall be specially benefited by such improvement as hereinafter provided, for the purpose of paying the expenses of such improvement, or so much thereof as said board of county commissioners shall determine, not in any instance exceeding one percent of the taxable valuations of all real and personal property in the entire county as appearing on the then last assessment roll. Such improvement shall be known as river and harbor improvement. [1907 c 236 § 1; RRS § 9669. Prior: 1903 c 143 §§ 1, 2.]

*Limitation of levies: RCW 84.52.050 through 84.52.056.*

**88.32.020 Improvement commission—Appointment—Oath.** Whenever the board of county commissioners of any such county shall have adjudged as provided in RCW 88.32.010, said board shall thereupon apply to the person, who, for the time being, shall be judge of the United States district court, for the district within which the county shall be situated, to name eleven reputable citizens and freeholders of such county and file a list thereof with said board of county commissioners. The persons so named, or a majority of them, shall act as a commission, and be known as the "river and harbor improvement commission of . . . . . county", and shall receive no compensation, except their actual necessary expenses, including necessary clerical assistance, to be audited by the board of county commissioners; and they shall be deemed the agents of the county in the performance of the duties imposed upon them by RCW 88.32.010 through 88.32.220. Each member of such commission shall, before entering upon his duties, take and subscribe an oath, substantially as follows:

"State of Washington  
County of . . . . . } ss.

I, the undersigned, a member of the river and harbor improvement commission of . . . . . county, to define and establish the assessment district and assess the costs of the following improvement (here give the general description of the improvement), do solemnly swear (or affirm, as the case may be), that I will well and truly discharge my duties as a member of said commission." In case the person who is United States judge shall be unable or decline to act, the board of county commissioners shall name the eleven persons to act as such commission. [1907 c 236 § 2; RRS § 9670.]

**88.32.030 Improvement commission—Notification of appointment—Organization.** The board of county commissioners of the county, or of the oldest county in case of counties joining, shall cause the persons named for the commission to be notified of their appointment in a notice that shall name all such persons and shall designate the time and place of the first meeting of the commission. The commission, having come together pursuant to such notice, and its members having taken the oath hereinbefore prescribed, shall have full powers to organize and proceed with its business as a deliberative body. [1907 c 236 § 18; RRS § 9686.]

(2006 Ed.)

**88.32.040 Establishment of assessment district—Assessments—State lands.** It shall be the duty of such commission to define and establish an assessment district, within such county, comprising all the taxable real property, and also (with the limitations hereinafter expressed) the state shorelands, which shall be specially benefited by said river, lake, canal or harbor improvement, and to apportion and assess the amount of separate, special and particular benefits against each lot, block, parcel or tract of land or shoreland within such district, by reason of such improvement. The commission in making the assessment shall include in the properties upon [which] the assessment is laid, all shorelands of the state, whether unsold or under contract of sale and subject to sale by it and as against all purchasers from the state or under contract to purchase such lands, the assessment shall be a charge upon such land and the purchaser's interest therein. The county auditor shall certify to the state commissioner of public lands a schedule of the state shorelands so assessed and of the assessment thereon, and the purchaser shall from time to time pay to the proper county treasurer the sums due and unpaid under such assessment, and at the time of such payment the county treasurer shall give him, in addition to a regular receipt for such payment, a certificate that such payment has been made, which certificate the purchaser shall immediately file with the commissioner of public lands, and no patent from the state nor deed shall issue to such purchaser, nor shall any assignment of his contract to purchase be approved by the commissioner of public lands until every matured installment of such assessment shall have first been fully paid and satisfied: PROVIDED, HOWEVER, That no such assessment shall create any charge against such shoreland or affect the title thereof as against the state, and the state shall be as free to forfeit or annul such contract and again sell such land as if the assessment had never been made, and in case of such forfeiture or annulment the state shall be free to sell again such land entirely disencumbered and unencumbered of all right and claim of such former purchaser, and such purchaser shall have no right, interest or claim upon or against such land or the state or such new purchaser or at all, but every such sum paid by such former purchaser upon such assessment shall be utterly forfeited as against him, his personal representatives and assigns, and shall inure to the benefit of such new purchaser. [1907 c 236 § 3; RRS § 9671. Formerly RCW 88.32.040 and 88.32.050.]

**88.32.060 Assessment roll.** Such commission shall also make, or cause to be made, an assessment roll, in which shall appear the names of the owners of the property assessed, so far as known, the description of each lot, block, parcel or tract of land within such assessment district, and the amount assessed against the same, as separate, special or particular benefits, and certify such assessment roll to the board of county commissioners, of such county, within ten weeks after their appointment, or within such further time as may be allowed by the board of county commissioners of such county. [1907 c 236 § 4; RRS § 9672. Prior: 1905 c 104 § 1; 1903 c 143 § 21.]

**88.32.070 Hearing on roll—Date—Notice.** After the return of the assessment roll to the county legislative authority it shall make an order setting a day for the hearing upon

any objections to the assessment roll by any parties affected thereby who shall be heard by the county legislative authority as a board of equalization, which date shall be at least twenty days after the filing of such roll. It shall be the duty of the county legislative authority to give, or cause to be given, notice of such assessment, and of the day fixed for the hearing, as follows:

(1) They shall send or cause to be sent, by mail, to each owner of premises assessed, whose name and place of residence is known to them, a notice, substantially in this form, to wit:

" .....  
"Your property (here describe the property) is assessed \$. . . . . for river and harbor improvement to be made in this county.  
"Hearing on the assessment roll will be had before the undersigned, at the office of the county commissioners, on the . . . . day of . . . . 19. . .  
.....  
.....  
.....  
"Board of county commissioners."

But failure to send, or cause to be sent, such notice, shall not be fatal to the proceedings herein prescribed.

(2) They shall cause at least ten days' notice of the hearing to be given by posting notice in at least ten public places in the county, three of which shall be in the neighborhood of the proposed improvement, and by publishing the same at least once a week for two consecutive weeks in the official newspaper of the county which notice shall be signed by the county legislative authority, and shall state the day and place of the hearing of objections to the assessment roll, and the nature of the improvement, and that all interested parties will be heard as to any objections to said assessment roll. [1985 c 469 § 95; 1907 c 236 § 5; RRS § 9673.]

**88.32.080 Hearing on roll—Objections—Certification for collection.** Any person interested in any real estate affected by such assessment may appear and file objections to the assessment roll, and the board of county commissioners may make an order regarding the time of filing such objections, as to them seems proper. As to all parcels, lots or blocks as to which no objections are filed within the time so fixed, the assessment thereon shall be confirmed. On the hearing, each party may offer proof and the board shall then have authority to affirm, modify, change and determine the assessment in such sum as to them appears just and right. When the assessment is finally equalized and fixed by the board of county commissioners, the clerk thereof shall certify the same to the county treasurer for collection, or if appeal has been taken from any part thereof, then so much thereof, as has not been appealed from, shall be certified. [1907 c 236 § 6; RRS § 9674.]

**88.32.090 Appeal from final assessment.** Any person who feels aggrieved by the final assessment made against any lot, block or parcel of land owned by him may appeal therefrom to the superior court of such county. Such appeal shall be taken within the time, and substantially in the manner pre-

scribed by the laws of this state for appeals from justice's courts. All notices of appeal shall be filed with the board of county commissioners, and served upon the prosecuting attorney of the county. The clerk of the board of county commissioners shall at appellant's expense certify to the superior court so much of the record, as appellant may request, and the cause shall be tried in the superior court de novo.

Any person aggrieved by any final order or judgment, made by the superior court concerning any assessment authorized by RCW 88.32.010 through 88.32.220, may seek appellate review of the order or judgment in accordance with the laws of this state relative to such review, except that review shall be sought within thirty days after the entry of such judgment. [1988 c 202 § 90; 1971 c 81 § 175; 1907 c 236 § 7; RRS § 9675.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**88.32.100 Lien of assessment—Collection—Payment—Interest.** The final assessment shall be a lien, paramount to all other liens, except liens for taxes and other special assessments, upon the property assessed, from the time the assessment roll shall be approved by said board of county commissioners and placed in the hands of the county treasurer, as collector. After said roll shall have been delivered to the county treasurer for collection, he shall proceed to collect the same, in the manner as other taxes are collected: PROVIDED, That such treasurer shall give at least ten days' notice in the official newspaper (and shall mail a copy of such notice to the owner of the property assessed, when the post office address of such owner is known, but failure to mail such notice shall not be fatal when publication thereof is made), that such roll has been certified to him for collection, and that unless payment be made within thirty days from the date of such notice, that the sum charged against each lot or parcel of land shall be paid in not more than ten equal annual payments, with interest upon the whole sum so charged at a rate not to exceed seven percent per annum. Said interest shall be paid semiannually, and the county treasurer shall proceed to collect the amount due each year by the publication of notice as hereinabove provided. [1907 c 236 § 8; RRS § 9676. Formerly RCW 88.32.100 and 88.32.110.]

**88.32.130 Local improvement fund—Disbursements.** All moneys paid or collected on account of any assessments made pursuant to RCW 88.32.010 through 88.32.220, shall be kept by the county treasurer in the county depository separate and apart from the other funds of the county, in a fund to be established by the board of county commissioners and to be known as "Local Improvement Fund, District No. . . . . of . . . . . County"; and said money shall at all times be subject to the order of the United States government engineer, having said river and harbor improvement in said county in charge, and the county treasurer shall pay said money out upon drafts, drawn upon said fund, for the cost of said improvement, by said United States government engineer. If such government engineer is unable or unauthorized to act in the premises, then the county treasurer shall pay out said money for the costs of said improvement, upon the order of the board of county commissioners. [1907 c 236 § 9; RRS § 9677.]

88.32.140 Bonds—Issuance—Sale—Form. (1) In all cases, the county, as the agent of the local improvement district, shall, by resolution of its county legislative authority, cause to be issued in the name of the county, the bonds for such local improvement district for the whole estimated cost of such improvement, less such amounts as shall have been paid within the thirty days provided for redemption, as hereinabove specified. Such bonds shall be called "Local Improvement Bonds, District No. . . . ., County of . . . . ., State of Washington", and shall be payable not more than ten years after date, and shall be subject to annual call by the county treasurer, in such manner and amounts as he may have cash on hand to pay the same in the respective local improvement fund from which such bonds are payable, interest to be paid at the office of the county treasurer. Such bonds shall be issued and delivered to the contractor for the work from month to month in such amounts as the engineer of the government, in charge of the improvement, shall certify to be due on account of work performed, or, if said county legislative authority resolves so to do, such bonds may be offered for sale after thirty days public notice thereof given, to be delivered to the highest bidder therefor, but in no case shall such bonds be sold for less than par, the proceeds to be applied in payment for such improvement: PROVIDED, That unless the contractor for the work shall agree to take such bonds in payment for his work at par, such work shall not be begun until the bonds shall have been sold and the proceeds shall have been paid into a fund to be called "Local Improvement Fund No. . . . ., County of . . . . .", and the owner or owners of such bonds shall look only to such fund for the payment of either the principal or interest of such bonds.

Such bonds shall be issued in denominations of one hundred dollars each, and shall be substantially in the following form:

"Local Improvement Bond, District Number . . . . of the County of . . . . ., State of Washington.  
No. . . . . N.B. . . . . \$ . . . . .

This bond is not a general debt of the county of . . . . . and has not been authorized by the voters of said county as a part of its general indebtedness. It is issued in pursuance of an act of the legislature of the state of Washington, passed the . . . . day of . . . . . A.D. 1907, and is a charge against the fund herein specified and its issuance and sale is authorized by the resolution of the county legislative authority, passed on the . . . . day of . . . . . A.D. 1907. The county of . . . . ., a municipal corporation of the state of Washington, hereby promises to pay to . . . . ., or bearer, one hundred dollars, lawful money of the United States of America, out of the fund established by resolution of the county legislative authority on the . . . . day of . . . . ., A.D. 19. . . ., and known as local improvement fund district number . . . . of . . . . . county, and not otherwise.

"This bond is payable ten years after date, and is subject to annual call by the county treasurer at the expiration of any year before maturity in such manner and amounts as he may have cash on hand to pay the same in the said fund from which the same is payable, and shall bear interest at the rate of . . . . percent per annum, payable semiannually; both principal and interest payable at the office of the county treasurer. The county legislative authority of said county, as the agent

of said local improvement district No. . . . ., established by resolution No. . . . ., has caused this bond to be issued in the name of said county, as the bond of said local improvement district, the proceeds thereof to be applied in part payment of so much of the cost of the improvement of the rivers, lakes, canals or harbors of . . . . . county, under resolution No. . . . ., as is to be borne by the owners of property in said local improvement district, and the said local improvement fund, district No. . . . . of . . . . . county, has been established by resolution for said purpose; and the owner or owners of this bond shall look only to said fund for the payment of either the principal or interest of this bond.

"The call for the payment of this bond or any bond, issued on account of said improvement, may be made by the county treasurer by publishing the same in an official newspaper of the county for ten consecutive issues, beginning not more than twenty days before the expiration of any year from date hereof, and if such call be made, interest on this bond shall cease at the date named in such call.

"This bond is one of a series of . . . . . bonds, aggregating in all the principal sum of . . . . . dollars, issued for said local improvement district, all of which bonds are subject to the same terms and conditions as herein expressed.

"In witness whereof the said county of . . . . . has caused these presents to be signed by its chairman of its county legislative authority, and countersigned by its county auditor and sealed with its corporate seal, attested by its county clerk, this . . . . day of . . . . ., in the year of our Lord one thousand nine hundred and . . . . .

The County of . . . . .  
By . . . . .  
Chairman County Legislative Authority.

Countersigned, . . . . . County Auditor.  
Attest, . . . . . Clerk."

The bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 245; 1970 ex.s. c 56 § 101; 1969 ex.s. c 232 § 60; 1907 c 236 § 10; RRS § 9678. Formerly RCW 88.32.140 and 88.32.150.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**88.32.160 Bonds—Execution.** Each and every bond issued for any such improvement shall be signed by the chairman of the county legislative authority and the county auditor, sealed with the corporate seal of the county, and attested by the county clerk. The bonds issued for each local improvement district shall be in the aggregate for such an amount as authorized by the resolution of the county legislative authority with reference to such river, lake, canal or harbor improvement, and each issue of such bonds shall be numbered consecutively, beginning with number 1. [1983 c 167 § 246; 1907 c 236 § 11; RRS § 9679.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**88.32.170 Payment in full—Calls for bonds, notice—Bond owners' rights.** The owner of any lot or parcel of land charged with any assessment as provided for hereinabove, may redeem the same from all liability by paying the entire assessment charged against such lot or parcel of land, or part thereof, without interest, within thirty days after notice to him of such assessment, as herein provided, or may redeem the same at any time after the bonds above specified shall have been issued, by paying the full amount of all the principal and interest to the end of the interest year then expiring, or next to expire. The county treasurer shall pay the interest on the bonds authorized to be issued under RCW 88.32.010 through 88.32.220 out of the respective local improvement funds from which they are payable, and whenever there shall be sufficient money in any local improvement fund, against which bonds have been issued under the provisions of RCW 88.32.010 through 88.32.220, over and above the amount necessary for the payment of interest on all unpaid bonds, and sufficient to pay the principal of one or more bonds, the county treasurer shall call in and pay such bonds, provided that such bonds shall be called in and paid in their numerical order: PROVIDED, FURTHER, That such call shall be made by publication in the county official newspaper, on the day following the delinquency of the installment of the assessment, or as soon thereafter as practicable, and shall state that bonds numbers . . . . . (giving the serial number or numbers of the bonds called), will be paid on the day the interest payment on said bonds shall become due, and interest upon such bonds shall cease upon such date. If the county shall fail, neglect or refuse to pay said bonds or promptly to collect any of said assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall recover in addition to the amount of such bonds and interest thereon, five percent, together with the costs of such suit. Any number of owners of such bonds for any single improvement, may join as plaintiffs and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. [1983 c 167 § 247; 1907 c 236 § 12; RRS § 9680. Formerly RCW 88.32.120 and 88.32.170.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**88.32.180 Improvement by counties jointly.** Two or more adjoining counties, in which are lands to be benefited by any such improvement as is hereinbefore mentioned, and as will be partly or wholly within one or more of them, may jointly take advantage of the provisions of RCW 88.32.010 through 88.32.220, and the procedure in such cases shall, as nearly as may be, conform to the procedure above prescribed, but with the modifications hereinafter expressed. [1907 c 236 § 13; RRS § 9681.]

**88.32.190 Improvement by counties jointly—Procedure.** In every case of such joint action, the preliminary procedure of RCW 88.32.010 having been first had in each county severally, the board of county commissioners of the several counties proposing to join shall unite in such an application as is prescribed in RCW 88.32.020, and the application shall be made to any person, who, for the time being, shall be

a judge of the United States district court in any district in which such counties, or any of them, may lie, and the list mentioned in RCW 88.32.020 shall be made in as many counterparts as there are counties so joining, and one counterpart shall be filed with the board of county commissioners of each county, and if the person who is such United States judge shall decline or be unable to act, then, the board of such counties shall meet in joint session, at the county seat of such one of the counties as shall be agreed upon and shall organize as a joint board by appointing a chairman and clerk, and by resolution in which a majority of all the commissioners present, and at least one commissioner from each county, shall concur, name the eleven persons for the commission, which eleven in such case shall be citizens of the counties concerned, and as nearly as may be the same number from each county. A counterpart of such resolution shall be recorded in the minutes of the proceedings of the board of each county. The commission shall make as many assessment rolls as there are counties joining and one counterpart roll shall be certified by such chairman and clerk of the joint board, and by such clerk filed with the board of each of such counties. [1907 c 236 § 14; RRS § 9682.]

**88.32.200 Improvement by counties jointly—Joint board of equalization.** For purposes of a board of equalization, said boards shall from time to time meet as a joint board as aforesaid, and have a chairman and clerk as aforesaid, and for all purposes under RCW 88.32.070 and 88.32.080, in case of counties joining, the word board wherever occurring in said sections shall be interpreted to mean such joint board, and the word clerk shall be deemed to mean the clerk of such joint board, and the posting of notices shall be in at least ten public places in each county, and the publication of the same shall be in a newspaper of each county, and the objections mentioned in RCW 88.32.080 shall be filed with the clerk of the joint board, who shall cause a copy thereof, certified by him to be filed with the clerk of the board of county commissioners of the county where the real estate of the party objecting is situated. [1907 c 236 § 15; RRS § 9683.]

**88.32.210 Improvement by counties jointly—Joint assessment roll—Filing, appeals, subsequent proceedings.** The minutes of the proceedings of the joint board and the assessment roll as finally settled by such board shall be made up in as many counterparts as there are counties joining as aforesaid, and shall be signed by the chairman and clerk of said board, and one of said counterparts so signed shall be filed by said clerk with the clerk of the board of county commissioners of each of said counties, and any appeals and subsequent proceedings under RCW 88.32.090 to 88.32.170, inclusive, as far as relates to real estate in any individual county, shall be as nearly as may be the same as if the local improvement district and bond issue concerned that county only. [1907 c 236 § 16; RRS § 9684.]

**88.32.220 Improvement by counties jointly—Expenses of joint board.** The joint board shall keep careful account of its necessary expenses and shall apportion and charge the same to the counties joining, and certify to the board of county commissioners of each such county an item-

ized statement of the entire account and of the proportionate part of such expense charged to such county and the board of county commissioners of such county shall cause the same to be paid out of the general fund of the county. [1907 c 236 § 17; RRS § 9685.]

*County current expense fund: RCW 36.33.010.*

**88.32.230 Joint aid river and harbor improvements—Bonds—Election.** Whenever the county legislative authority of any county with a population of one hundred twenty-five thousand or more deems it for the interest of the county to engage in or to aid the United States of America, the state of Washington, or any adjoining county or any city of this state, or any of them, in construction, enlargement, improvement, modification, repair or operation of any harbor, canal, waterway, river channel, slip, dock, wharf, or other public improvement, or any of the same, for the purposes of commerce, navigation, sanitation and drainage, or any thereof, or to acquire or operate wharf sites, dock sites, or other properties, rights or interests, or any thereof, necessary or proper to be acquired or operated for public enjoyment of any such public improvement, and to incur indebtedness to meet the cost thereof and expenses connected therewith, and issue bonds of the county for the payment of such indebtedness, or any thereof, such county is hereby authorized and empowered, by and through its county legislative authority, to engage in or aid in any such public work or works, operation or acquisition, as aforesaid, and to incur indebtedness for such purpose or purposes to an amount, which, together with the then existing indebtedness of such county, shall not exceed two and one-half percent of the value of the taxable property in said county, as the term "value of the taxable property" is defined in RCW 39.36.015, and to issue the negotiable bonds of the county for all or any of such indebtedness and for the payment thereof, in the manner and form and as provided in chapter 39.46 RCW, and other laws of this state which shall then be in force, and to make part or all of such payment in bonds or in moneys derived from sale or sales thereof, or partly in such bonds and partly in such money: PROVIDED, That the county legislative authority shall have first submitted the question of incurring such indebtedness to the voters of the county at a general or special election, and three-fifths of the voters voting upon the question shall have voted in favor of incurring the same. [1991 c 363 § 161; 1970 ex.s. c 42 § 37; 1911 c 3 § 1; RRS § 9666. FORMER PART OF SECTION: 1911 c 3 § 2 now codified as RCW 88.32.235.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

*Bonds, generally as to form, etc.: Chapter 39.44 RCW.*

**88.32.235 Joint aid river and harbor improvements—Declared county purpose.** Any and every such purpose as is mentioned in the foregoing section is hereby declared to be a county purpose. [1911 c 3 § 2; RRS § 9667. Formerly RCW 88.32.230, part.]

(2006 Ed.)

**88.32.240 Joint planning for improvement of navigable river—Development of river valley.** Any county together with any port district therein and first class city in such county may participate jointly in surveys, investigations and studies for determining the location, type and design, with cost estimates, of a project plan for the improvement of any section or sections, within or without the limits of such city, of any navigable river emptying into tidal waters in such city, in aid of commerce and navigation and in aid of the comprehensive land use and development of such river valley, including present and future industrial and manufacturing uses. [1951 c 33 § 1.]

**88.32.250 Joint planning for improvement of navigable river—Contract—Joint board to control and direct work.** The joint participation shall be under a contract in writing made in the names of the county, port district, and city, under ordinance or resolution that provides the nature and extent of the work, the extent of the participation of the parties, the division of the costs, and method of payment. The costs shall be paid from any funds of the county, city, or port district designated in the contract.

The control and direction of the work shall be under a joint board consisting of one or more representatives of each party to the contract, as may be agreed upon by the parties. The representatives of the respective parties shall be appointed by the governing body of the respective parties. The joint board shall employ such help and services as may be required and fix the compensation to be paid for the services. The joint board shall consult with the corps of engineers, department of the army, and with the state secretary of transportation and the state director of ecology in furtherance of federal and state of Washington interests in the purposes of RCW 88.32.240 and 88.32.250. [1984 c 7 § 383; 1951 c 33 § 2.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**88.32.260 Liability of county or counties for acts relating to river improvement for navigation purposes.** See RCW 86.12.037.

## Chapter 88.40 RCW

### TRANSPORT OF PETROLEUM PRODUCTS— FINANCIAL RESPONSIBILITY

#### Sections

88.40.005	Intent.
88.40.011	Definitions.
88.40.020	Evidence of financial responsibility for vessels.
88.40.025	Evidence of financial responsibility for onshore or offshore facilities.
88.40.030	Establishing evidence of financial responsibility—Documentation.
88.40.040	Entry or operation on state waters—Financial responsibility required—Enforcement of federal oil pollution act.
88.40.900	Severability—1989 1st ex.s. c 2.

*Ocean resources management act: Chapter 43.143 RCW.*

*Oil or gas exploration in marine waters: RCW 90.58.550.*

**88.40.005 Intent.** The legislature recognizes that oil and hazardous substance spills and other forms of incremental pollution present serious danger to the fragile marine environment of Washington state. It is the intent and purpose of

this chapter to define and prescribe financial responsibility requirements for vessels that transport petroleum products as cargo or as fuel across the waters of the state of Washington and for facilities that store, handle, or transfer oil or hazardous substances in bulk on or near the navigable waters. [1991 c 200 § 701; 1990 c 116 § 29; 1989 1st ex.s. c 2 § 1.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**88.40.011 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Barge" means a vessel that is not self-propelled.

(2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, fishing vessel, or a passenger vessel, of three hundred or more gross tons.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(5) "Department" means the department of ecology.

(6) "Director" means the director of the department of ecology.

(7)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from any vessel with an oil carrying capacity over two hundred fifty barrels or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(8) "Fishing vessel" means a self-propelled commercial vessel of three hundred or more gross tons that is used for catching or processing fish.

(9) "Gross tons" means tonnage as determined by the United States coast guard under 33 C.F.R. section 138.30.

(10) "Hazardous substances" means any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

(a) Wastes listed as F001 through F028 in Table 302.4; and

(b) Wastes listed as K001 through K136 in Table 302.4.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have

been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Oil" or "oils" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(18) "Spill" means an unauthorized discharge of oil into the waters of the state.

(19) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(20) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington. [2003 c 56 § 2; 2000 c 69 § 30; 1992 c 73 § 12; 1991 c 200 § 702.]

**Finding—Intent—2003 c 56:** "The legislature finds that the current financial responsibility laws for vessels are in need of update and revision. The legislature intends that, whenever possible, the standards set for Washington state provide the highest level of protection consistent with other western states and to ultimately achieve a more uniform system of financial responsibility on the Pacific Coast." [2003 c 56 § 1.]

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**88.40.020 Evidence of financial responsibility for vessels.** (1) Any barge that transports hazardous substances in bulk as cargo, using any port or place in the state of Washington or the navigable waters of the state shall establish evidence of financial responsibility in the amount of the greater of five million dollars, or three hundred dollars per gross ton of such vessel.

(2)(a) Except as provided in (b) or (c) of this subsection, a tank vessel that carries oil as cargo in bulk shall demonstrate financial responsibility to pay at least five hundred million dollars. The amount of financial responsibility required under this subsection is one billion dollars after January 1, 2004.

(b) The director by rule may establish a lesser standard of financial responsibility for tank vessels of three hundred gross tons or less. The standard shall set the level of financial responsibility based on the quantity of cargo the tank vessel is capable of carrying. The director shall not set the standard for tank vessels of three hundred gross tons or less below that required under federal law.

(c) The owner or operator of a tank vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The director may require the owner or operator of a tank vessel to prove membership in such an organization.

(3)(a) A cargo vessel or passenger vessel that carries oil as fuel shall demonstrate financial responsibility to pay at least three hundred million dollars. However, a passenger vessel that transports passengers and vehicles between Washington state and a foreign country shall demonstrate financial responsibility to pay the greater of at least six hundred dollars per gross ton or five hundred thousand dollars.

(b) The owner or operator of a cargo vessel or passenger vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The director may require the owner or operator of a cargo vessel or passenger vessel to prove membership in such an organization.

(4) A fishing vessel while on the navigable waters of the state must demonstrate financial responsibility in the following amounts: (a) For a fishing vessel carrying predominantly nonpersistent product, one hundred thirty-three dollars and forty cents per incident, for each barrel of total oil storage capacity, persistent and nonpersistent product, on the vessel or one million three hundred thirty-four thousand dollars, whichever is greater; or (b) for a fishing vessel carrying predominantly persistent product, four hundred dollars and twenty cents per incident, for each barrel of total oil storage capacity, persistent product and nonpersistent product, on the vessel or six million six hundred seventy thousand dollars, whichever is greater.

(5) The documentation of financial responsibility shall demonstrate the ability of the document holder to meet state and federal financial liability requirements for the actual

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costs for removal of oil spills, for natural resource damages, and for necessary expenses.

(6) This section shall not apply to a covered vessel owned or operated by the federal government or by a state or local government. [2003 c 91 § 3; 2003 c 56 § 3; 2000 c 69 § 31; 1992 c 73 § 13; 1991 c 200 § 703; 1990 c 116 § 31; 1989 1st ex.s. c 2 § 3.]

**Reviser's note:** This section was amended by 2003 c 56 § 3 and by 2003 c 91 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Finding—Intent—2003 c 56:** See note following RCW 88.40.011.

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**88.40.025 Evidence of financial responsibility for onshore or offshore facilities.** An onshore or offshore facility shall demonstrate financial responsibility in an amount determined by the department as necessary to compensate the state and affected counties and cities for damages that might occur during a reasonable worst case spill of oil from that facility into the navigable waters of the state. The department shall consider such matters as the amount of oil that could be spilled into the navigable waters from the facility, the cost of cleaning up the spilled oil, the frequency of operations at the facility, the damages that could result from the spill and the commercial availability and affordability of financial responsibility. This section shall not apply to an onshore or offshore facility owned or operated by the federal government or by the state or local government. [1991 c 200 § 704.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**88.40.030 Establishing evidence of financial responsibility—Documentation.** Financial responsibility required by this chapter may be established by any one of, or a combination of, the following methods acceptable to the department of ecology: (1) Evidence of insurance; (2) surety bonds; (3) qualification as a self-insurer; or (4) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. Documentation of such financial responsibility shall be kept on any covered vessel and filed with the department at least twenty-four hours before entry of the vessel into the navigable waters of the state. A covered vessel is not required to file documentation of financial responsibility twenty-four hours before entry of the vessel into the navigable waters of the state, if the vessel has filed documentation of financial responsibility with the federal government, and the level of financial responsibility required by the federal government is the same as or exceeds state requirements. The owner or operator of the vessel may file with the department a certificate evidencing compliance with the requirements of another state's or federal financial responsibility requirements if the state or federal government requires a level of financial responsibility the same as or greater than that

required under this chapter. [2000 c 69 § 32; 1991 c 200 § 705; 1990 c 116 § 32; 1989 1st ex.s. c 2 § 4.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**88.40.040 Entry or operation on state waters—Financial responsibility required—Enforcement of federal oil pollution act.** (1) It is unlawful for any vessel required to have financial responsibility under this chapter to enter or operate on Washington waters without meeting the requirements of this chapter or rules adopted under this chapter, except when necessary to avoid injury to the vessel's crew or passengers. Any vessel owner or operator that does not meet the financial responsibility requirements of this chapter and any rules prescribed thereunder or the federal oil pollution act of 1990 shall be reported by the department to the United States coast guard.

(2) The department shall enforce section 1016 of the federal oil pollution act of 1990 as authorized by section 1019 of the federal act. [2003 c 56 § 4; 2000 c 69 § 33; 1992 c 73 § 14; 1991 c 200 § 706; 1989 1st ex.s. c 2 § 5.]

**Finding—Intent—2003 c 56:** See note following RCW 88.40.011.

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**88.40.900 Severability—1989 1st ex.s. c 2.** See RCW 43.143.902.

## Chapter 88.46 RCW

### VESSEL OIL SPILL PREVENTION AND RESPONSE

#### Sections

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**88.46.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(4) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(5) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(6) "Department" means the department of ecology.

(7) "Director" means the director of the department of ecology.

(8) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(9)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(10) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Oil" or "oils" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(18) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(19) "Spill" means an unauthorized discharge of oil into the waters of the state.

(20) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(21) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(22) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions. [2000 c 69 § 1; 1992 c 73 § 18; 1991 c 200 § 414.]

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**88.46.020 Coordination with federal law.** In carrying out the purposes of this chapter, including the adoption of rules for contingency plans, the director shall to the greatest extent practicable implement this chapter in a manner consistent with federal law. [2000 c 69 § 2; 1991 c 200 § 415.]

**88.46.030 Tank vessel inspection programs.** (1) All tank vessels entering the navigable waters of the state shall be subject to inspection to assure that they comply with all applicable federal and state standards.

(2) The department shall review the tank vessel inspection programs conducted by the United States coast guard and other federal agencies to determine if the programs as actually operated by those agencies provide the best achievable protection to the waters of the state. If the department determines that the tank vessel inspection programs conducted by these agencies are not adequate to protect the state's waters, it shall adopt rules for a state tank vessel inspection program. The department shall adopt rules providing for a random review of individual tank vessel inspections conducted by federal agencies. The department may accept a tank vessel inspection report issued by another state if that state's tank vessel inspection program is determined by the department to be at least as protective of the public health and the environment as the program adopted by the department.

(3) The state tank vessel inspection program shall ensure that all tank vessels entering state waters are inspected at least annually. To the maximum extent feasible, the state program shall consist of the monitoring of existing tank vessel inspection programs conducted by the federal government. The department shall consult with the coast guard regarding the tank vessel inspection program. Any tank vessel inspection conducted pursuant to this section shall be performed during the vessel's scheduled stay in port.

(4) Any violation of coast guard or other federal regulations uncovered during a state tank vessel inspection shall be immediately reported to the appropriate agency. [2000 c 69 § 3; 1991 c 200 § 416.]

**88.46.040 Prevention plans.** (1) The owner or operator for each tank vessel shall prepare and submit to the department an oil spill prevention plan in conformance with the requirements of this chapter. The plans shall be submitted to the department in the time and manner directed by the department. The spill prevention plan may be consolidated with a spill contingency plan submitted pursuant to RCW 88.46.060. The department may accept plans prepared to comply with other state or federal law as spill prevention plans to the extent those plans comply with the requirements of this chapter. The department, by rule, shall establish standards for spill prevention plans.

(2) The spill prevention plan for a tank vessel or a fleet of tank vessels operated by the same operator shall:

(a) Establish compliance with the federal oil pollution act of 1990 and state and federal financial responsibility requirements, if applicable;

(b) State all discharges of oil of more than twenty-five barrels from the vessel within the prior five years and what measures have been taken to prevent a reoccurrence;

(c) Describe all accidents, collisions, groundings, and near miss incidents in which the vessel has been involved in the prior five years, analyze the causes, and state the measures that have been taken to prevent a reoccurrence;

(d) Describe the vessel operations with respect to staffing standards;

(e) Describe the vessel inspection program carried out by the owner or operator of the vessel;

(f) Describe the training given to vessel crews with respect to spill prevention;

(g) Establish compliance with federal drug and alcohol programs;

(h) Describe all spill prevention technology that has been incorporated into the vessel;

(i) Describe the procedures used by the vessel owner or operator to ensure English language proficiency of at least one bridge officer while on duty in waters of the state;

(j) Describe relevant prevention measures incorporated in any applicable regional marine spill safety plan that have not been adopted and the reasons for that decision; and

(k) Include any other information reasonably necessary to carry out the purposes of this chapter required by rules adopted by the department.

(3) The department shall only approve a prevention plan if it provides the best achievable protection from damages caused by the discharge of oil into the waters of the state and if it determines that the plan meets the requirements of this section and rules adopted by the department.

(4) Upon approval of a prevention plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the department determines should be included.

(5) The approval of a prevention plan shall be valid for five years. An owner or operator of a tank vessel shall notify the department in writing immediately of any significant change of which it is aware affecting its prevention plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a prevention plan as a result of these changes.

(6) The department by rule shall require prevention plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(7) Approval of a prevention plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

(8) This section does not authorize the department to modify the terms of a collective bargaining agreement. [2000 c 69 § 4; 1991 c 200 § 417.]

**88.46.050 Vessel screening.** (1) In order to ensure the safety of marine transportation within the navigable waters of the state and to protect the state's natural resources, the department shall adopt rules for determining whether cargo vessels and passenger vessels entering the navigable waters

of the state pose a substantial risk of harm to the public health and safety and the environment.

(2) The rules may include:

(a) Examining available information sources for evidence that a cargo or passenger vessel may pose a substantial risk to safe marine transportation or the state's natural resources. Information sources may include: Vessel casualty lists, United States coast guard casualty reports, maritime insurance ratings, the index of contingency plans compiled by the department of ecology, other data gathered by the maritime commission, or any other resources;

(b) Requesting the United States coast guard to deny a cargo vessel or passenger vessel entry into the navigable waters of the state, if the vessel poses a substantial environmental risk;

(c) Notifying the state's spill response system that a cargo or passenger vessel entering the state's navigable waters poses a substantial environmental risk;

(d) Inspecting a cargo or passenger vessel that may pose a substantial environmental risk, to determine whether the vessel complies with applicable state or federal laws. Any vessel inspection conducted pursuant to this section shall be performed during the vessel's scheduled stay in port; and

(e) Enforcement actions. [2000 c 69 § 5; 1992 c 73 § 19; 1991 c 200 § 418.]

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**88.46.060 Contingency plans.** (1) Each covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the covered vessel into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any vessel which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department, removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, fish and wild-

life, and natural resources, and the \*office of archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

(h) State the means of protecting and mitigating effects on the environment, including fish, shellfish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Establish guidelines for the use of equipment by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and only when vessel safety is assured, contain and clean up the spilled oil;

(j) Provide arrangements for the repositioning of spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(k) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(l) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(m) Until a spill prevention plan has been submitted pursuant to RCW 88.46.040, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a vessel, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(n) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; and

(o) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.

(2)(a) The owner or operator of a tank vessel of three thousand gross tons or more shall submit a contingency plan to the department within six months after the department adopts rules establishing standards for contingency plans under subsection (1) of this section.

(b) Contingency plans for all other covered vessels shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period.

(3)(a) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo, or a Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member, shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the department, the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility.

(b) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the

cargo vessel or passenger vessel, by the agent for the vessel resident in this state, or by a Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member. Subject to conditions imposed by the department, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(c) A person who has contracted with a covered vessel to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one covered vessel.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife, shellfish beds, and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a covered vessel shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law. [2005 c 78 § 2; 2000 c 69 § 6; 1995 c 148 § 3; 1992 c 73 § 20; 1991 c 200 § 419.]

**\*Reviser's note:** Powers, duties, and functions of the office of archaeology and historic preservation were transferred to the department of archaeology and historic preservation pursuant to 2005 c 333 § 12.

**Effective date—1995 c 148 §§ 1-3:** "Sections 1 through 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 27, 1995]." [1995 c 148 § 6.]

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**88.46.062 Nonprofit corporation providing contingency plan—Findings—Termination of maritime commission.** (1) The legislature finds that there is a need to continue to provide oil spill response and contingency plan coverage for vessels that do not have their own contingency plans that transit the waters of this state. A nonprofit corporation shall be established for the sole purpose of providing oil spill response and contingency plan coverage in compliance with RCW 88.46.060.

(2) The maritime commission may conduct activities and make expenditures necessary for the transition of services presently provided by the commission and its contractors to the nonprofit corporation established pursuant to this section.

(3) Once the nonprofit corporation is established and the transfers under RCW 88.46.063 are completed, the maritime commission may cease operation. [1995 c 148 § 1.]

**Effective date—1995 c 148 §§ 1-3:** See note following RCW 88.46.060.

**88.46.063 Nonprofit corporation providing contingency plan—Transfer of functions and assets from maritime commission.** All reports, documents, surveys, books, records, files, papers, written materials, tangible property, and assets, including contracts and assessment moneys held by the maritime commission shall be transferred to the nonprofit corporation created under RCW 88.46.062. Funds transferred under this section shall be used for the sole purpose of providing oil spill response and contingency plan coverage and related activities in compliance with RCW 88.46.060. No funds may be transferred under this section until all liabilities of the maritime commission have been provided for or satisfied. All liabilities not provided for or satisfied by the maritime commission before cessation of its operations shall be transferred to the nonprofit corporation at the time the maritime commission's assets are transferred to the corporation. [1995 c 148 § 2.]

**Effective date—1995 c 148 §§ 1-3:** See note following RCW 88.46.060.

**88.46.065 Nonprofit corporation providing contingency plan—Liability limited.** A nonprofit corporation established for the sole purpose of providing contingency plan coverage for any vessel in compliance with RCW 88.46.060 is entitled to liability protection as provided in this section. Obligations incurred by the corporation and any other liabilities or claims against the corporation may be enforced only against the assets of the corporation, and no liability for the debts or actions of the corporation exists against a director, officer, member, employee, incident commander, agent, contractor, or subcontractor of the corporation in his or her individual or representative capacity. Except as otherwise provided in this chapter, neither the directors, officers, members, employees, incident commander[s], or agents of the corporation, nor the business entities by whom they are regularly employed may be held individually responsible for discretionary decisions, errors in judgment, mistakes, or other acts, either of commission or omission, that are directly related to the operation or implementation of contingency plans, other than for acts of gross negligence or willful or wanton misconduct. The corporation may insure and defend and indemnify the directors, officers, members, employees, incident commanders, and agents to the extent permitted by chapters 23B.08 and 24.03 RCW. This section does not alter or limit the responsibility or liability of any person for the operation of a motor vehicle. [1994 sp.s. c 9 § 853.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**88.46.068 Adequacy of contingency plans—Practice drills—Rules.** The department shall by rule adopt procedures to determine the adequacy of contingency plans approved under RCW 88.46.060. The rules shall require random practice drills without prior notice that will test the adequacy of the responding entities. The rules may provide for unannounced practice drills of individual contingency plans. The department shall review and publish a report on the drills, including an assessment of response time and available equipment and personnel compared to those listed in the contingency plans relying on the responding entities, and requirements, if any, for changes in the plans or their implementation. The department may require additional drills and changes in arrangements for implementing approved plans which are necessary to ensure their effective implementation. [2006 c 316 § 4.]

**Severability—2006 c 316:** See note following RCW 88.46.167.

**88.46.070 Enforcement of prevention plans and contingency plans—Determination of violation—Order or directive—Notice.** (1) The provisions of prevention plans and contingency plans approved by the department pursuant to this chapter shall be legally binding on those persons submitting them to the department and on their successors, assigns, agents, and employees. The superior court shall have jurisdiction to restrain a violation of, compel specific performance of, or otherwise to enforce such plans upon application by the department. The department may issue an order

pursuant to chapter 34.05 RCW requiring compliance with a contingency plan or a prevention plan and may impose administrative penalties for failure to comply with a plan.

(2) If the director believes a person has violated or is violating or creates a substantial potential to violate the provisions of this chapter, the director shall notify the person of the director's determination by registered mail. The determination shall not constitute an order or directive under RCW 43.21B.310. Within thirty days from the receipt of notice of the determination, the person shall file with the director a full report stating what steps have been and are being taken to comply with the determination of the director. The director shall issue an order or directive, as the director deems appropriate under the circumstances, and shall notify the person by registered mail.

(3) If the director believes immediate action is necessary to accomplish the purposes of this chapter, the director may issue an order or directive, as appropriate under the circumstances, without first issuing a notice or determination pursuant to subsection (2) of this section. An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed. [2000 c 69 § 7; 1992 c 73 § 21; 1991 c 200 § 420.]

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**88.46.073 Violations of rules—Enforcement.** If the director believes a person has violated or is violating or creates a substantial potential to violate the provisions of any rules adopted under this chapter, the director may institute such actions as authorized under RCW 88.46.070 (2) and (3). [2006 c 316 § 3.]

**Severability—2006 c 316:** See note following RCW 88.46.167.

**88.46.080 Unlawful operation of a covered vessel—Penalties—Evidence of approved contingency plan or prevention plan.** (1) Except as provided in subsection (3) of this section, it shall be unlawful for the owner or operator to knowingly and intentionally operate in this state or on the waters of this state a covered vessel without an approved contingency plan or an approved prevention plan as required by this chapter, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

(2)(a) The first conviction under this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) A second or subsequent conviction is a class C felony under chapter 9A.20 RCW.

(3) It shall not be unlawful for the owner or operator to operate a covered vessel if:

(a) The covered vessel is not required to have a contingency plan, spill prevention plan, or financial responsibility;

(b) All required plans have been submitted to the department as required by this chapter and rules adopted by the department and the department is reviewing the plan and has not denied approval; or

(c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress.

(4) A person may rely on a copy of the statement issued by the department pursuant to RCW 88.46.060 as evidence that a vessel has an approved contingency plan and the state-

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ment issued pursuant to RCW 88.46.040 that a vessel has an approved prevention plan.

(5) Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of the director or a court in pursuance thereof is guilty of a gross misdemeanor, as provided in chapter 9A.20 RCW, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation. [2003 c 53 § 417; 2000 c 69 § 8; 1992 c 73 § 22; 1991 c 200 § 421.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**88.46.090 Unlawful acts—Civil penalty.** (1) Except as provided in subsection (4) of this section, it shall be unlawful for a covered vessel to enter the waters of the state without an approved contingency plan required by RCW 88.46.060, a spill prevention plan required by RCW 88.46.040, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990. The department may deny entry onto the waters of the state to any covered vessel that does not have a required contingency or spill prevention plan or financial responsibility.

(2) Except as provided in subsection (4) of this section, it shall be unlawful for a covered vessel to transfer oil to or from an onshore or offshore facility that does not have an approved contingency plan required under RCW 90.56.210, a spill prevention plan required by RCW 90.56.200, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

(3) The director may assess a civil penalty of up to one hundred thousand dollars against the owner or operator of a vessel who is in violation of subsection (1) or (2) of this section. Each day that the owner or operator of a covered vessel is in violation of this section shall be considered a separate violation.

(4) It shall not be unlawful for a covered vessel to operate on the waters of the state if:

(a) A contingency plan, a prevention plan, or financial responsibility is not required for the covered vessel;

(b) A contingency plan and prevention plan has been submitted to the department as required by this chapter and rules adopted by the department and the department is reviewing the plan and has not denied approval; or

(c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress.

(5) Any person may rely on a copy of the statement issued by the department to RCW 88.46.060 as evidence that the vessel has an approved contingency plan and the statement issued pursuant to RCW 88.46.040 as evidence that the vessel has an approved spill prevention plan.

(6) Except for violations of subsection (1) or (2) of this section, any person who violates the provisions of this chapter or rules or orders adopted or issued pursuant thereto, shall

incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for each violation. Each violation is a separate offense, and in case of a continuing violation, every day's continuance is a separate violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this subsection and subject to penalty. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the violation's impact on public health and the environment in addition to other relevant factors. The penalty shall be imposed pursuant to the procedures set forth in RCW 43.21B.300. [2000 c 69 § 9; 1992 c 73 § 23; 1991 c 200 § 422.]

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**88.46.100 Notification of accidents and near miss incidents.** (1) In order to assist the state in identifying areas of the navigable waters of the state needing special attention, the owner or operator of a covered vessel shall notify the coast guard within one hour:

(a) Of the disability of the covered vessel if the disabled vessel is within twelve miles of the shore of the state; and

(b) Of a collision or a near miss incident within twelve miles of the shore of the state.

(2) The state military department and the department shall request the coast guard to notify the state military department as soon as possible after the coast guard receives notice of a disabled covered vessel or of a collision or near miss incident within twelve miles of the shore of the state. The department shall negotiate an agreement with the coast guard governing procedures for coast guard notification to the state regarding disabled covered vessels and collisions and near miss incidents.

(3) The department shall prepare a summary of the information collected under this section and provide the summary to the regional marine safety committees, the coast guard, and others in order to identify problems with the marine transportation system.

(4) For the purposes of this section:

(a) A tank vessel or cargo vessel is considered disabled if any of the following occur:

(i) Any accidental or intentional grounding;

(ii) The total or partial failure of the main propulsion or primary steering or any component or control system that causes a reduction in the maneuvering capabilities of the vessel;

(iii) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including but not limited to, fire, flooding, or collision with another vessel;

(iv) Any other occurrence that creates the serious possibility of an oil spill or an occurrence that may result in such a spill.

(b) A barge is considered disabled if any of the following occur:

(i) The towing mechanism becomes disabled;

(ii) The towboat towing the barge becomes disabled through occurrences defined in (a) of this subsection.

(c) A near miss incident is an incident that requires the pilot or master of a covered vessel to take evasive actions or

make significant course corrections in order to avoid a collision with another ship or to avoid a grounding as required by the international rules of the road.

(5) Failure of any person to make a report under this section shall not be used as the basis for the imposition of any fine or penalty. [2000 c 69 § 10; 1995 c 391 § 9; 1991 c 200 § 423.]

**Effective date—1995 c 391:** See note following RCW 38.52.005.

**88.46.120 Tank vessel response equipment standards.** The department may adopt rules including but not limited to standards for spill response equipment to be maintained on tank vessels. The standards adopted under this section shall be consistent with spill response equipment standards adopted by the United States coast guard. [2000 c 69 § 11; 1991 c 200 § 425.]

**88.46.130 Emergency response system.** An emergency response system for the Strait of Juan de Fuca shall be established by July 1, 1992. In establishing the emergency response system, the \*administrator shall consider the recommendations of the regional marine safety committees. The \*administrator shall also consult with the province of British Columbia regarding its participation in the emergency response system. [1991 c 200 § 426.]

**\*Reviser's note:** The powers, duties, and functions of the administrator were transferred to the director of ecology by 1991 c 200 § 430, effective July 1, 1997.

**88.46.160 Refueling, bunkering, or lightering operations—Availability of containment and recovery equipment—Rules.** Any person or facility conducting ship refueling and bunkering operations, or the lightering of petroleum products, and any person or facility transferring oil between an onshore or offshore facility and a tank vessel shall have containment and recovery equipment readily available for deployment in the event of the discharge of oil into the waters of the state and shall deploy the containment and recovery equipment in accordance with standards adopted by the department. All persons conducting refueling, bunkering, or lightering operations, or oil transfer operations shall be trained in the use and deployment of oil spill containment and recovery equipment. The department shall adopt rules as necessary to carry out the provisions of this section by June 30, 2006. The rules shall include standards for the circumstances under which containment equipment should be deployed including standards requiring deployment of containment equipment prior to the transfer of oil when determined to be safe and effective by the department. The department may require a person or facility to employ alternative measures including but not limited to automatic shutoff devices and alarms, extra personnel to monitor the transfer, or containment equipment that is deployed quickly and effectively. The standards adopted by rule must be suitable to the specific environmental and operational conditions and characteristics of the facilities that are subject to the standards, and the department must consult with the United States coast guard with the objective of developing state standards that are compatible with federal requirements applicable to the activities covered by this section. An onshore or offshore facility shall include the procedures used to contain and

recover discharges in the facility's contingency plan. It is the responsibility of the person providing bunkering, refueling, or lightering services to provide any containment or recovery equipment required under this section. This section does not apply to a person operating a ship for personal pleasure or for recreational purposes. [2004 c 226 § 3; 2000 c 69 § 12; 1991 c 200 § 438; 1987 c 479 § 2. Formerly RCW 90.48.510.]

**88.46.165 Oil transfers—Scope of rules—Reporting volumes of oil transferred.** (1) The department's rules authorized under RCW 88.46.160 and this section shall be scaled to the risk posed to people and to the environment, and be categorized by type of transfer, volume of oil, frequency of transfers, and such other risk factors as identified by the department.

(2) The rules may require prior notice be provided before an oil transfer, regulated under this chapter, occurs in situations defined by the department as posing a higher risk. The notice may include the time, location, and volume of the oil transfer. The rules may not require prior notice when marine fuel outlets are transferring less than three thousand gallons of oil in a single transaction to a ship that is not a covered vessel and the transfers are scheduled less than four hours in advance.

(3) The department may require semiannual reporting of volumes of oil transferred to ships by a marine fuel outlet.

(4) The rules may require additional measures to be taken in conjunction with the deployment of containment equipment or with the alternatives to deploying containment equipment. However, these measures must be scaled appropriately to the risks posed by the oil transfer.

(5) The rules shall include regulations to enhance the safety of oil transfers over water originating from vehicles transporting oil over private roads or highways of the state. [2006 c 316 § 1.]

**Severability—2006 c 316:** See note following RCW 88.46.167.

**88.46.167 Inspection authority.** In addition to other inspection authority provided for in this chapter and chapter 90.56 RCW, the department may conduct inspections of oil transfer operations regulated under RCW 88.46.160 or 88.46.165. [2006 c 316 § 2.]

**Severability—2006 c 316:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 316 § 5.]

**88.46.170 Field operations program—Coordination with United States coast guard.** (1) The department shall establish a field operations program to enforce the provisions of this chapter. The field operations program shall include, but is not limited to, the following elements:

- (a) Education and public outreach;
- (b) Review of lightering and bunkering operations to prevent oil spills;
- (c) Evaluation and boarding of tank vessels for compliance with prevention plans prepared pursuant to this chapter;
- (d) Evaluation and boarding of covered vessels that may pose a substantial risk to the public health, safety, and the environment;

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(e) Evaluation and boarding of covered vessels for compliance with rules adopted by the department to implement recommendations of regional marine safety committees; and

(f) Collection of vessel information to assist in identifying vessels which pose a substantial risk to the public health, safety, and the environment.

(2) The department shall coordinate the field operations program with similar activities of the United States coast guard. To the extent feasible, the department shall coordinate its boarding schedules with those of the United States coast guard to reduce the impact of boardings on vessel operators, to more efficiently use state and federal resources, and to avoid duplication of United States coast guard inspection operations.

(3) In developing and implementing the field operations program, the department shall give priority to activities designed to identify those vessels which pose the greatest risk to the waters of the state. The department shall consult with the marine transportation industry, individuals concerned with the marine environment, other state and federal agencies, and the public in developing and implementing the program required by this section. [2000 c 69 § 13; 1993 c 162 § 1.]

**Severability—1993 c 162:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 162 § 4.]

**Effective date—1993 c 162:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 162 § 5.]

**88.46.200 Advisory marine safety committees—Recommendations.** The director may appoint ad hoc, advisory marine safety committees to solicit recommendations and technical advice concerning vessel traffic safety. The department may implement recommendations made in regional marine safety plans that are approved by the department and over which the department has authority. If federal authority or action is required to implement the recommendations, the department may petition the appropriate agency or the congress. [2000 c 69 § 14; 1994 sp.s. c 9 § 854.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**88.46.900 Captions not law.** Section headings as used in this chapter do not constitute any part of the law. [1991 c 200 § 427.]

**88.46.901 Effective dates—Severability—1991 c 200.** See RCW 90.56.901 and 90.56.904.

**88.46.921 Office of marine safety abolished.** The office of marine safety is hereby abolished and its powers, duties, and functions are hereby transferred to the department of ecology. All references to the administrator or office of marine safety in the Revised Code of Washington shall be construed to mean the director or department of ecology. [1991 c 200 § 430.]

**Expiration date—1995 2nd sp.s. c 14 §§ 511-523 and 528-533:** See note following RCW 43.105.017.

**Effective dates—1995 2nd sp.s. c 14:** See note following RCW 43.105.017.

**Effective date—1991 c 200 §§ 430-436:** "Sections 430 through 436 of this act shall take effect July 1, 1997." [(1995 2nd sp.s. c 14 § 521 expired June 30, 1997); 1991 c 200 § 1120.]

**88.46.926 Apportionments of budgeted funds.** If apportionments of budgeted funds are required because of the transfers directed by \*RCW 88.46.922 through 88.46.925, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification. [1991 c 200 § 435.]

**\*Reviser's note:** (1) RCW 88.46.922 was repealed by 2000 c 69 § 37.

(2) RCW 88.46.924 and 88.46.925 were decodified by 2000 c 69 § 36.

**Effective date—1991 c 200 §§ 430-436:** See note following RCW 88.46.921.

# Title 89

## RECLAMATION, SOIL CONSERVATION, AND LAND SETTLEMENT

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### Chapter 89.08 RCW CONSERVATION DISTRICTS

#### Sections

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*State participation in soil conservation district—Limit: RCW 86.26.100.*

**89.08.005 Short title.** This chapter shall be known and cited as the conservation districts law. [1973 1st ex.s. c 184 § 1; 1961 c 240 § 1; 1939 c 187 § 1; RRS § 10726-1.]

**89.08.010 Preamble.** It is hereby declared, as a matter of legislative determination:

(1) That the lands of the state of Washington are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the lands of this state by wind and water; that the breaking of natural grass, plant and forest cover have interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed off of lands; that there has been an accelerated washing of sloping lands; that these processes of erosion by wind and water speed up with removal of absorptive

topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands may cause a washing and blowing of soil from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible, and that extensive denuding of land for development creates critical erosion areas that are difficult to effectively regenerate and the resulting sediment causes extensive pollution of streams, ponds, lakes and other waters.

(2) That the consequences of such soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors, and loading the air with soil particles; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, buildings, and other property from floods and from dust storms; and losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming and grazing.

(3) That to conserve soil resources and control and prevent soil erosion and prevent flood water and sediment damages, and further agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices, and works of improvement for flood prevention of agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, desilting basins, flood water retarding structures, channel floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilizations with trees, grasses, legumes, and other thick-growing, soil-holding crops, retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(4) Whereas, there is a pressing need for the conservation of renewable resources in all areas of the state, whether

urban, suburban, or rural, and that the benefits of resource practices, programs, and projects, as carried out by the state conservation commission and by the conservation districts, should be available to all such areas; therefore, it is hereby declared to be the policy of the legislature to provide for the conservation of the renewable resources of this state, and for the control and prevention of soil erosion, and for the prevention of flood water and sediment damages, and for furthering agricultural and nonagricultural phases of conservation, development, utilization, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state. To this end all incorporated cities and towns heretofore excluded from the boundaries of a conservation district established pursuant to the provisions of the state conservation district law, as amended, may be approved by the conservation commission as being included in and deemed a part of the district upon receiving a petition for annexation signed by the governing authority of the city or town and the conservation district within the exterior boundaries of which it lies in whole or in part or to which it lies closest. [1973 1st ex.s. c 184 § 2; 1939 c 187 § 2; RRS § 10726-2.]

**89.08.020 Definitions.** Unless the context clearly indicates otherwise, as used in this chapter:

"Commission" and "state conservation commission" means the agency created hereunder. All former references to "state soil and water conservation committee", "state committee" or "committee" shall be deemed to be references to the "state conservation commission";

"District", or "conservation district" means a governmental subdivision of this state and a public body corporate and politic, organized in accordance with the provisions of chapter 184, Laws of 1973 1st ex. sess., for the purposes, with the powers, and subject to the restrictions set forth in this chapter. All districts created under chapter 184, Laws of 1973 1st ex. sess. shall be known as conservation districts and shall have all the powers and duties set out in chapter 184, Laws of 1973 1st ex. sess. All references in chapter 184, Laws of 1973 1st ex. sess. to "districts", or "soil and water conservation districts" shall be deemed to be reference to "conservation districts";

"Board" and "supervisors" mean the board of supervisors of a conservation district;

"Land occupier" or "occupier of land" includes any person, firm, political subdivision, government agency, municipality, public or private corporation, copartnership, association, or any other entity whatsoever which holds title to, or is in possession of, any lands lying within a district organized under the provisions of chapter 184, Laws of 1973 1st ex. sess., whether as owner, lessee, renter, tenant, or otherwise;

"District elector" or "voter" means a registered voter in the county where the district is located who resides within the district boundary or in the area affected by a petition;

"Due notice" means a notice published at least twice, with at least six days between publications, in a publication of general circulation within the affected area, or if there is no such publication, by posting at a reasonable number of public

places within the area, where it is customary to post notices concerning county and municipal affairs. Any hearing held pursuant to due notice may be postponed from time to time without a new notice;

"Renewable natural resources", "natural resources" or "resources" includes land, air, water, vegetation, fish, wildlife, wild rivers, wilderness, natural beauty, scenery and open space;

"Conservation" includes conservation, development, improvement, maintenance, preservation, protection and use, and alleviation of floodwater and sediment damages, and the disposal of excess surface waters.

"Farm and agricultural land" means either (a) land in any contiguous ownership of twenty or more acres devoted primarily to agricultural uses; (b) any parcel of land five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to one hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter; or (c) any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income of one thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter. Agricultural lands shall also include farm woodlots of less than twenty and more than five acres and the land on which appurtenances necessary to production, preparation or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands". [1999 c 305 § 1; 1973 1st ex.s. c 184 § 3; 1961 c 240 § 2; 1955 c 304 § 1; 1939 c 187 § 3; RRS § 10726-3.]

**89.08.030 Conservation commission.** There is hereby established to serve as an agency of the state and to perform the functions conferred upon it by law, the state conservation commission, which shall succeed to all powers, duties and property of the state soil and water conservation committee.

The commission shall consist of ten members, five of whom are ex officio. Two members shall be appointed by the governor, one of whom shall be a landowner or operator of a farm. At least two of the three elected members shall be landowners or operators of a farm and shall be elected as herein provided. The appointed members shall serve for a term of four years.

The three elected members shall be elected for three-year terms, one shall be elected each year by the district supervisors at their annual statewide meeting. One of the members shall reside in eastern Washington, one in central Washington and one in western Washington, the specific boundaries to be determined by district supervisors. At the first such election, the term of the member from western Washington shall be one year, central Washington two years and eastern Washington three years, and successors shall be elected for three years.

Unexpired term vacancies in the office of appointed commission members shall be filled by appointment by the governor in the same manner as full-term appointments.

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Unexpired terms of elected commission members shall be filled by the regional vice president of the Washington association of conservation districts who is serving that part of the state where the vacancy occurs, such term to continue only until district supervisors can fill the unexpired term by electing the commission member.

The director of the department of ecology, the director of the department of agriculture, the commissioner of public lands, the president of the Washington association of conservation districts, and the dean of the college of agriculture at Washington State University shall be ex officio members of the commission. An ex officio member of the commission shall hold office so long as he or she retains the office by virtue of which he or she is a member of the commission. Ex officio members may delegate their authority.

The commission may invite appropriate officers of cooperating organizations, state and federal agencies to serve as advisers to the conservation commission. [1987 c 180 § 1; 1983 c 248 § 13; 1973 1st ex.s. c 184 § 4; 1967 c 217 § 1; 1961 c 240 § 3; 1955 c 304 § 3. Prior: 1951 c 216 § 3; 1949 c 106 § 1, part; 1939 c 187 § 4, part; Rem. Supp. 1949 § 10726-4, part.]

**89.08.040 Members—Compensation and travel expenses—Records, rules, hearings, etc.** Members shall be compensated in accordance with RCW 43.03.240 and shall be entitled to travel expenses in accordance with RCW 43.03.050 and 43.03.060 incurred in the discharge of their duties.

The commission shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under chapter 184, Laws of 1973 1st ex. sess. The state department of ecology is empowered to pay the travel expenses of the elected and appointed members of the state conservation commission, and the salaries, wages and other expenses of such administrative officers or other employees as may be required under the provisions of this chapter. [1984 c 287 § 112; 1975-'76 2nd ex.s. c 34 § 179; 1973 1st ex.s. c 184 § 5; 1961 c 240 § 4; 1955 c 304 § 4. Prior: 1951 c 216 § 4; 1949 c 106 § 1, part; 1939 c 187 § 4, part; Rem. Supp. 1949 § 10726-4, part.]

**Legislative findings—Severability—Effective date—1984 c 287:** See notes following RCW 43.03.220.

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**89.08.050 Employees—Delegation—Quorum.** The commission may employ an administrative officer, and such technical experts and such other agents and employees, permanent and temporary as it may require, and shall determine their qualifications, duties, and compensation. The commission may call upon the attorney general for such legal services as it may require.

It shall have authority to delegate to its chairman, to one or more of its members, to one or more agents or employees such duties and powers as it deems proper. It shall be supplied with suitable office accommodations at the central office of the department of ecology, and shall be furnished the necessary supplies and equipment.

The commission shall organize annually and select a chairman from among its members, who shall serve for one year from the date of his selection. A majority of the commission shall constitute a quorum and all actions of the commission shall be by a majority vote of the members present and voting at a meeting at which a quorum is present. [1973 1st ex.s. c 184 § 6; 1961 c 240 § 5; 1955 c 304 § 5. Prior: 1949 c 106 § 1, part; 1939 c 187 § 4, part; Rem. Supp. 1949 § 10726-4, part.]

**89.08.060 Assistance of other state agencies and institutions.** Upon request of the commission, for the purpose of carrying out any of its functions, the supervising officer of any state agency or state institution of learning may, insofar as may be possible under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the commission, members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the commission may request. [1973 1st ex.s. c 184 § 7; 1955 c 304 § 6. Prior: 1949 c 106 § 1, part; 1939 c 187 § 4, part; Rem. Supp. 1949 § 10726-4, part.]

**89.08.070 General duties of commission.** In addition to the duties and powers hereinafter conferred upon the commission, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of conservation districts organized under the provisions of chapter 184, Laws of 1973 1st ex. sess., in the carrying out of any of their powers and programs:

(a) to assist and guide districts in the preparation and carrying out of programs for resource conservation authorized under chapter 184, Laws of 1973 1st ex. sess.;

(b) to review district programs;

(c) to coordinate the programs of the several districts and resolve any conflicts in such programs;

(d) to facilitate, promote, assist, harmonize, coordinate, and guide the resource conservation programs and activities of districts as they relate to other special purpose districts, counties, and other public agencies.

(2) To keep the supervisors of each of the several conservation districts organized under the provisions of chapter 184, Laws of 1973 1st ex. sess. informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To review agreements, or forms of agreements, proposed to be entered into by districts with other districts or with any state, federal, interstate, or other public or private agency, organization, or individual, and advise the districts concerning such agreements or forms of agreements.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state in the work of such districts.

(5) To recommend the inclusion in annual and longer term budgets and appropriation legislation of the state of Washington of funds necessary for appropriation by the legislature to finance the activities of the commission and the conservation districts; to administer the provisions of any law hereinafter enacted by the legislature appropriating funds for

expenditure in connection with the activities of conservation districts; to distribute to conservation districts funds, equipment, supplies and services received by the commission for that purpose from any source, subject to such conditions as shall be made applicable thereto in any state or federal statute or local ordinance making available such funds, property or services; to issue regulations establishing guidelines and suitable controls to govern the use by conservation districts of such funds, property and services; and to review all budgets, administrative procedures and operations of such districts and advise the districts concerning their conformance with applicable laws and regulations.

(6) To encourage the cooperation and collaboration of state, federal, regional, interstate and local public and private agencies with the conservation districts, and facilitate arrangements under which the conservation districts may serve county governing bodies and other agencies as their local operating agencies in the administration of any activity concerned with the conservation of renewable natural resources.

(7) To disseminate information throughout the state concerning the activities and programs of the conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable; to make available information concerning the needs and the work of the conservation district and the commission to the governor, the legislature, executive agencies of the government of this state, political subdivisions of this state, cooperating federal agencies, and the general public.

(8) Pursuant to procedures developed mutually by the commission and other state and local agencies that are authorized to plan or administer activities significantly affecting the conservation of renewable natural resources, to receive from such agencies for review and comment suitable descriptions of their plans, programs and activities for purposes of coordination with district conservation programs; to arrange for and participate in conferences necessary to avoid conflict among such plans and programs, to call attention to omissions, and to avoid duplication of effort.

(9) To compile information and make studies, summaries and analysis of district programs in relation to each other and to other resource conservation programs on a statewide basis.

(10) To assist conservation districts in obtaining legal services from state and local legal officers.

(11) To require annual reports from conservation districts, the form and content of which shall be developed by the commission.

(12) To establish by regulations, with the assistance and advice of the state auditor's office, adequate and reasonably uniform accounting and auditing procedures which shall be used by conservation districts. [1973 1st ex.s. c 184 § 8; 1961 c 240 § 6; 1955 c 304 § 7. Prior: 1949 c 106 § 1, part; 1939 c 187 § 4, part; Rem. Supp. 1949 § 10726-4, part.]

**89.08.080 Petition to form district—Contents.** To form a conservation district, twenty percent of the voters within the area to be affected may file a petition with the commission asking that the area be organized into a district.

The petition shall give the name of the proposed district, state that it is needed in the interest of the public health,

safety, and welfare, give a general description of the area proposed to be organized and request that the commission determine that it be created, and that it define the boundaries thereof and call an election on the question of creating the district.

If more than one petition is filed covering parts of the same area, the commission may consolidate all or any of them. [1999 c 305 § 2; 1973 1st ex.s. c 184 § 9; 1961 c 240 § 7; 1961 c 17 § 1. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

**89.08.090 Notice of hearing—Hearing.** Within thirty days after a petition is filed, the commission shall give due notice of the time and place of a public hearing thereon. At the hearing all interested persons shall be heard.

If it appears to the commission that additional land should be included in the district, the hearing shall be adjourned and a new notice given covering the entire area and a new date fixed for further hearing, unless waiver of notice by the owners of the additional land is filed with the commission.

No district shall include any portion of a railroad right of way, or another similar district. The lands included in a district need not be contiguous. [1973 1st ex.s. c 184 § 10; 1955 c 304 § 9. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

**89.08.100 Findings—Order.** After the hearing, if the commission finds that the public health, safety, and welfare warrant the creation of the district, it shall enter an order to that effect and define the boundaries thereof by metes and bounds or by legal subdivisions.

In making its findings the commission shall consider the topography of the particular area and of the state generally; the composition of the soil; the distribution of erosion; the prevailing land use practices; the effects upon and benefits to the land proposed to be included; the relation of the area to existing watersheds and agricultural regions and to other similar districts organized or proposed; and consider such other physical, geographical, and economic factors as are relevant.

If the commission finds there is no need for the district, it shall enter an order denying the petition, and no petition covering the same or substantially the same area may be filed within six months thereafter. [1973 1st ex.s. c 184 § 11; 1955 c 304 § 10. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

**89.08.110 Election—How conducted.** If the commission finds that the district is needed, it shall then determine whether it is practicable. To assist the commission in determining this question, it shall, within a reasonable time, submit the proposition to a vote of the district electors in the proposed district.

The commission shall fix the date of the election, designate the polling places, fix the hours for opening and closing the polls, and appoint the election officials. The election shall be conducted, the vote counted and returns canvassed and the results published by the commission. [1999 c 305 § 3; 1973 1st ex.s. c 184 § 12; 1955 c 304 § 11. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

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**89.08.120 Ballots.** The commission shall provide the ballots for the election which shall contain the words

" For creation of a conservation district of the lands below described and lying in the county or counties of . . . . . and . . . . .," and

" Against creation of a conservation district of the lands below described and lying in the county or counties of . . . . . and . . . . ."

The ballot shall set forth the boundaries of the proposed district, and contain a direction to insert an X in the square of the voter's choice. [1973 1st ex.s. c 184 § 13; 1961 c 240 § 8; 1955 c 304 § 12. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

**89.08.130 Notice of election.** The commission shall give due notice of the election, which shall state generally the purpose of the election, the date thereof, the place and hours of voting, and set forth the boundaries of the proposed district.

Only qualified district electors within the proposed district as determined by the commission may vote at the election. Each voter shall vote in the polling place nearest the voter's residence. [1999 c 305 § 4; 1973 1st ex.s. c 184 § 14; 1955 c 304 § 13. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

**89.08.140 Expense of hearing and election.** The commission shall bear all expense of giving the notices and conducting the hearings and election, and shall issue regulations governing all hearings and elections and supervise the conduct thereof. It shall provide for registration of eligible voters or prescribe the procedure to determine the eligible voters. No informality in connection with the election shall invalidate the results, if the notice thereof was substantially given, and the election fairly conducted. [1973 1st ex.s. c 184 § 15; 1955 c 304 § 14. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

**89.08.150 Procedure after canvass.** If a majority of the votes cast at the election are against the creation of the district, the commission shall deny the petition. If a majority favor the district, the commission shall determine the practicability of the project.

In making such determination, the commission shall consider the attitude of the voters of the district; the number of eligible voters who voted at the election; the size of the majority vote; the wealth and income of the land occupiers; the probable expense of carrying out the project; and any other economic factors relevant thereto.

If the commission finds that the project is impracticable it shall enter an order to that effect and deny the petition. When the petition has been denied, no new petition covering the same or substantially the same area may be filed within six months therefrom. [1999 c 305 § 5; 1973 1st ex.s. c 184 § 16; 1955 c 304 § 15. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

**89.08.160 Appointment of supervisors—Application to secretary of state.** If the commission finds the project

practicable, it shall appoint two supervisors, one of whom shall be a landowner or operator of a farm, who shall be qualified by training and experience to perform the specialized skilled services required of them. They, with the three elected supervisors, two of whom shall be landowners or operators of a farm, shall constitute the governing board of the district.

The two appointed supervisors shall file with the secretary of state a sworn application, reciting that a petition was filed with the commission for the creation of the district; that all required proceedings were had thereon; that they were appointed by the commission as such supervisors; and that the application is being filed to complete the organization of the district. It shall contain the names and residences of the applicants, a certified copy of their appointments, the name of the district, the location of the office of the supervisors and the term of office of each applicant.

The application shall be accompanied by a statement of the commission, reciting that a petition was filed, notice issued, and hearing held thereon as required; that it determined the need for the district and defined the boundaries thereof; that notice was given and an election held on the question of creating the district; that a majority vote favored the district, and that the commission had determined the district practicable; and shall set forth the boundaries of the district. [1973 1st ex.s. c 184 § 17; 1955 c 304 § 16. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

**89.08.170 Secretary of state's certificate—Change of name.** If the secretary of state finds that the name of the proposed district is such as will not be confused with that of any other district, he shall enter the application and statement in his records. If he finds the name may be confusing, he shall certify that fact to the commission, which shall submit a new name free from such objections, and he shall enter the application and statement as modified, in his records. Thereupon the district shall be considered organized into a body corporate.

The secretary of state shall then issue to the supervisors a certificate of organization of the district under the seal of the state, and shall record the certificate in his office. Proof of the issuance of the certificate shall be evidence of the establishment of the district, and a certified copy of the certificate shall be admissible as evidence and shall be proof of the filing and contents thereof. The name of a conservation district may be changed upon recommendation by the supervisors of a district and approval by the state conservation commission and the secretary of state. The new name shall be recorded by the secretary of state following the same general procedure as for the previous name. [1973 1st ex.s. c 184 § 18; 1961 c 240 § 9; 1955 c 304 § 17. Prior: 1951 c 216 § 1; 1939 c 187 § 5, part; RRS § 10726-5, part.]

**89.08.180 Annexation of territory—Boundary change—Combining two or more districts.** Territory may be added to an existing district upon filing a petition as in the case of formation with the commission by twenty percent of the voters of the affected area to be included. The same procedure shall be followed as for the creation of the district.

As an alternate procedure, the commission may upon the petition of a majority of the voters in any one or more districts

or in unorganized territory adjoining a conservation district change the boundaries of a district, or districts, if such action will promote the practical and feasible administration of such district or districts.

Upon petition of the boards of supervisors of two or more districts, the commission may approve the combining of all or parts of such districts and name the district, or districts, with the approval of the name by the secretary of state. A public hearing and/or a referendum may be held if deemed necessary or desirable by the commission in order to determine the wishes of the voters.

When districts are combined, the joint boards of supervisors will first select a chairman, secretary and other necessary officers and select a regular date for meetings. All elected supervisors will continue to serve as members of the board until the expiration of their current term of office, and/or until the election date nearest their expiration date. All appointed supervisors will continue to serve until the expiration of their current term of office, at which time the commission will make the necessary appointments. In the event that more than two districts are combined, a similar procedure will be set up and administered by the commission.

When districts are combined or territory is moved from one district to another, the property, records and accounts of the districts involved shall be distributed to the remaining district or districts as approved by the commission. A new certificate of organization, naming and describing the new district or districts, shall be issued by the secretary of state. [1999 c 305 § 6; 1973 1st ex.s. c 184 § 19; 1961 c 240 § 10; 1955 c 304 § 18. Prior: 1951 c 216 § 2; 1939 c 187 § 5, part; RRS § 10726-5, part.]

**89.08.185 Petition to withdraw from district—Approval or rejection—Disputed petitions.** The local governing body of any city or incorporated town within an existing district may approve by majority vote a petition to withdraw from the district. The petition shall be submitted to the district for its approval. If approved by the district, the petition shall be sent to the commission. The commission shall approve the petition and forward it to the secretary of state and the boundary of the district shall be adjusted accordingly. If the petition is not approved by the district, the district shall adopt a resolution specifying the reasons why the petition is not approved. The petition and the district's resolution shall be sent to the commission for its review. The commission shall approve or reject the petition based upon criteria it has adopted for the evaluation of petitions in dispute. If the commission approves the petition, it shall forward the petition to the secretary of state and the boundaries of the district shall be adjusted accordingly. The criteria used by the commission to evaluate petitions which are in dispute shall be adopted as rules by the commission under chapter 34.05 RCW, the administrative procedure act. [1999 c 305 § 7.]

**89.08.190 Nomination and election of supervisors—Annual meeting of voters.** Within thirty days after the issuance of the certificate of organization, unless the time is extended by the commission, petitions shall be filed with the commission to nominate candidates for the three elected supervisors. The petition shall be signed by not less than

twenty-five district electors, and a district elector may sign petitions nominating more than one person.

In the case of a new district, the commission shall give due notice to elect the three supervisors. All provisions pertaining to elections on the creation of a district shall govern this election so far as applicable. The names of all nominees shall appear on the ballot in alphabetical order, together with instructions to vote for three. The three candidates receiving the most votes shall be declared elected supervisors, the one receiving the most being elected for a three-year term, the next for two and the last for one year. An alternate method of dividing the district into three zones may be used when requested by the board of supervisors and approved by the commission. In such case, instructions will be to vote for one in each zone. The candidate receiving the most votes in a zone shall be declared elected.

Each year after the creation of the first board of supervisors, the board shall by resolution and by giving due notice, set a date during the first quarter of each calendar year at which time it shall conduct an election, except that for elections in 2002 only, the board shall set the date during the second quarter of the calendar year at which time it shall conduct an election. Names of candidates nominated by petition shall appear in alphabetical order on the ballots, together with an extra line wherein may be written in the name of any other candidate. The commission shall establish procedures for elections, canvass the returns and announce the official results thereof. Election results may be announced by polling officials at the close of the election subject to official canvass of ballots by the commission. Supervisors elected shall take office at the first board meeting following the election. [2002 c 43 § 3; 1973 1st ex.s. c 184 § 20; 1967 c 217 § 2; 1961 c 240 § 11; 1955 c 304 § 19; 1939 c 187 § 6; RRS § 10726-6.]

**Intent—Effective date—2002 c 43:** See notes following RCW 29A.04.330.

**89.08.200 Supervisors—Term, vacancies, removal, etc.—Compensation.** The term of office of each supervisor shall be three years and until his successor is appointed or elected and qualified, except that the supervisors first appointed shall serve for one and two years respectively from the date of their appointments, as designated in their appointments.

In the case of elected supervisors, the term of office of each supervisor shall be three years and until his successor is elected and qualified, except that for the first election, the one receiving the largest number of votes shall be elected for three years; the next largest two years; and the third largest one year. Successors shall be elected for three-year terms.

Vacancies in the office of appointed supervisors shall be filled by the state conservation commission. Vacancies in the office of elected supervisors shall be filled by appointment made by the remaining supervisors for the unexpired term.

A majority of the supervisors shall constitute a quorum and the concurrence of a majority is required for any official action or determination.

Supervisors shall serve without compensation, but they shall be entitled to expenses, including traveling expenses, necessarily incurred in discharge of their duties. A supervisor may be removed by the state conservation commission upon

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notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The governing board shall designate a chairman from time to time. [1973 1st ex.s. c 184 § 21; 1961 c 240 § 12; 1955 c 304 § 21. Prior: 1949 c 106 § 2, part; 1939 c 187 § 7, part; Rem. Supp. 1949 § 10726-7, part.]

**89.08.210 Powers and duties of supervisors.** The supervisors may employ a secretary, treasurer, technical experts, and such other officers, agents, and employees, permanent and temporary, as they may require, and determine their qualifications, duties, and compensation. It may call upon the attorney general for legal services, or may employ its own counsel and legal staff. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees such powers and duties as it deems proper. The supervisors shall furnish to the commission, upon request, copies of such internal rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as the commission may require in the performance of its duties under chapter 184, Laws of 1973 1st ex. sess. The supervisors shall provide for the execution of surety bonds for officers and all employees who shall be entrusted with funds or property.

The supervisors shall provide for the keeping of a full and accurate record of all proceedings, resolutions, regulations, and orders issued or adopted. The supervisors shall provide for an annual audit of the accounts of receipts and disbursements in accordance with procedures prescribed by regulations of the commission.

The board may invite the legislative body of any municipality or county near or within the district, to designate a representative to advise and consult with it on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. The governing body of a district shall appoint such advisory committees as may be needed to assure the availability of appropriate channels of communication to the board of supervisors, to persons affected by district operations, and to local, regional, state and interstate special-purpose districts and agencies responsible for community planning, zoning, or other resource development activities. The district shall keep such committees informed of its work, and such advisory committees shall submit recommendations from time to time to the board of supervisors. [2000 c 45 § 1; 1973 1st ex.s. c 184 § 22; 1955 c 304 § 22. Prior: 1949 c 106 § 2, part; 1939 c 187 § 7, part; Rem. Supp. 1949 § 10726-7, part.]

**89.08.215 Treasurer—Powers and duties—Bond.** The treasurer of the county in which a conservation district is located is ex officio treasurer of the district. However, the board of supervisors by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the conservation district. The board of supervisors shall require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the board of supervisors by resolution from time to time finds will protect the dis-

tract against loss. The premium on this bond shall be paid by the district.

All district funds shall be paid to the treasurer and disbursed only on warrants issued by an auditor appointed by the board of supervisors, upon orders or vouchers approved by it. The treasurer shall establish a conservation district fund into which shall be paid all district funds. The treasurer shall maintain any special funds created by the board of supervisors for the placement of all money as the board of supervisors may, by resolution, direct.

If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositories under the same restrictions, contracts, and security as provided for county depositories. If the treasurer of the district is some other person, all funds shall be deposited in a bank or banks authorized to do business in this state as the board of supervisors, by resolution, designates.

A district may provide and require a reasonable bond of any other person handling moneys or securities of the district, if the district pays the premium. [2000 c 45 § 2.]

**89.08.220 Corporate status and powers of district.** A conservation district organized under the provisions of chapter 184, Laws of 1973 1st ex. sess. shall constitute a governmental subdivision of this state, and a public body corporate and politic exercising public powers, but shall not levy taxes or issue bonds and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of chapter 184, Laws of 1973 1st ex. sess.:

(1) To conduct surveys, investigations, and research relating to the conservation of renewable natural resources and the preventive and control measures and works of improvement needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures and works of improvement: PROVIDED, That in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct educational and demonstrational projects on any lands within the district upon obtaining the consent of the occupier of such lands and such necessary rights or interests in such lands as may be required in order to demonstrate by example the means, methods, measures, and works of improvement by which the conservation of renewable natural resources may be carried out;

(3) To carry out preventative and control measures and works of improvement for the conservation of renewable natural resources, within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of lands, and the measures listed in RCW 89.08.010, on any lands within the district upon obtaining the consent of the occupier of such lands and such necessary rights or interests in such lands as may be required;

(4) To cooperate or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of preventive and control measures

and works of improvement for the conservation of renewable natural resources within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of chapter 184, Laws of 1973 1st ex. sess. For purposes of this subsection only, land occupiers who are also district supervisors are not subject to the provisions of RCW 42.23.030;

(5) To obtain options upon and to acquire in any manner, except by condemnation, by purchase, exchange, lease, gift, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of chapter 184, Laws of 1973 1st ex. sess.; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of chapter 184, Laws of 1973 1st ex. sess.;

(6) To make available, on such terms, as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, seedlings, and such other equipment and material as will assist them to carry on operations upon their lands for the conservation of renewable natural resources;

(7) To prepare and keep current a comprehensive long-range program recommending the conservation of all the renewable natural resources of the district. Such programs shall be directed toward the best use of renewable natural resources and in a manner that will best meet the needs of the district and the state, taking into consideration, where appropriate, such uses as farming, grazing, timber supply, forest, parks, outdoor recreation, potable water supplies for urban and rural areas, water for agriculture, minimal flow, and industrial uses, watershed stabilization, control of soil erosion, retardation of water run-off, flood prevention and control, reservoirs and other water storage, restriction of developments of flood plains, protection of open space and scenery, preservation of natural beauty, protection of fish and wildlife, preservation of wilderness areas and wild rivers, the prevention or reduction of sedimentation and other pollution in rivers and other waters, and such location of highways, schools, housing developments, industries, airports and other facilities and structures as will fit the needs of the state and be consistent with the best uses of the renewable natural resources of the state. The program shall include an inventory of all renewable natural resources in the district, a compilation of current resource needs, projections of future resource requirements, priorities for various resource activities, projected timetables, descriptions of available alternatives, and provisions for coordination with other resource programs.

The district shall also prepare an annual work plan, which shall describe the action programs, services, facilities, materials, working arrangements and estimated funds needed to carry out the parts of the long-range programs that are of the highest priorities.

The districts shall hold public hearings at appropriate times in connection with the preparation of programs and plans, shall give careful consideration to the views expressed and problems revealed in hearings, and shall keep the public informed concerning their programs, plans, and activities. Occupiers of land shall be invited to submit proposals for consideration to such hearings. The districts may supplement

such hearings with meetings, referenda and other suitable means to determine the wishes of interested parties and the general public in regard to current and proposed plans and programs of a district. They shall confer with public and private agencies, individually and in groups, to give and obtain information and understanding of the impact of district operations upon agriculture, forestry, water supply and quality, flood control, particular industries, commercial concerns and other public and private interests, both rural and urban.

Each district shall submit to the commission its proposed long-range program and annual work plans for review and comment.

The long-range renewable natural resource program, together with the supplemental annual work plans, developed by each district under the foregoing procedures shall have official status as the authorized program of the district, and it shall be published by the districts as its "renewable resources program". Copies shall be made available by the districts to the appropriate counties, municipalities, special purpose districts and state agencies, and shall be made available in convenient places for examination by public land occupier or private interest concerned. Summaries of the program and selected material therefrom shall be distributed as widely as feasible for public information;

(8) To administer any project or program concerned with the conservation of renewable natural resources located within its boundaries undertaken by any federal, state, or other public agency by entering into a contract or other appropriate administrative arrangement with any agency administering such project or program;

(9) Cooperate with other districts organized under chapter 184, Laws of 1973 1st ex. sess. in the exercise of any of its powers;

(10) To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, from this state or any of its agencies, or from any other source, and to use or expend such moneys, services, materials, or any contributions in carrying out the purposes of chapter 184, Laws 1973 1st ex. sess.;

(11) To sue and be sued in the name of the district; to have a seal which shall be judicially noticed; have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to borrow money and to pledge, mortgage and assign the income of the district and its real or personal property therefor; and to make, amend rules and regulations not inconsistent with chapter 184, Laws of 1973 1st ex. sess. and to carry into effect its purposes;

(12) Any two or more districts may engage in joint activities by agreement between or among them in planning, financing, constructing, operating, maintaining, and administering any program or project concerned with the conservation of renewable natural resources. The districts concerned may make available for purposes of the agreement any funds, property, personnel, equipment, or services available to them under chapter 184, Laws of 1973 1st ex. sess.;

Any district may enter into such agreements with a district or districts in adjoining states to carry out such purposes if the law in such other states permits the districts in such states to enter into such agreements.

The commission shall have authority to propose, guide, and facilitate the establishment and carrying out of any such agreement;

(13) Every district shall, through public hearings, annual meetings, publications, or other means, keep the general public, agencies and occupiers of land within the district, informed of the works and activities planned and administered by the district, of the purposes these will serve, of the income and expenditures of the district, of the funds borrowed by the district and the purposes for which such funds are expended, and of the results achieved annually by the district; and

(14) The supervisors of conservation districts may designate an area, state, and national association of conservation districts as a coordinating agency in the execution of the duties imposed by this chapter, and to make gifts in the form of dues, quotas, or otherwise to such associations for costs of services rendered, and may support and attend such meetings as may be required to promote and perfect the organization and to effect its purposes. [1999 c 305 § 8; 1973 1st ex.s. c 184 § 23; 1963 c 110 § 1; 1961 c 240 § 13; 1955 c 304 § 23. Prior: (i) 1939 c 187 § 8; RRS § 10726-8. (ii) 1939 c 187 § 13; RRS § 10726-13.]

**89.08.341 Intergovernmental cooperation—Authority.** Any agency of the government of this state and any local political subdivision of this state is hereby authorized to make such arrangements with any district, through contract, regulation or other appropriate means, wherever it believes that such arrangements will promote administrative efficiency or economy.

In connection with any such arrangements, any state or local agency or political subdivision of this state is authorized, within the limits of funds available to it, to contribute funds, equipment, property or services to any district; and to collaborate with a district in jointly planning, constructing, financing or operating any work or activity provided for in such arrangements and in the joint acquisition, maintenance and operation of equipment or facilities in connection therewith.

State agencies, the districts, and other local agencies are authorized to make available to each other maps, reports and data in their possession that are useful in the preparation of their respective programs and plans for resource conservation. The districts shall keep the state and local agencies fully informed concerning the status and progress of the preparation of their resource conservation programs and plans.

The state conservation commission and the counties of the state may provide respective conservation districts such administrative funds as will be necessary to carry out the purpose of chapter 184, Laws of 1973 1st ex. sess. [1973 1st ex.s. c 184 § 24.]

**89.08.350 Petition to dissolve district—Election.** At any time after five years from the organization of a district, twenty percent of the voters in the district may file with the commission a petition, praying that the district be dissolved. The commission may hold public hearings thereon, and within sixty days from receipt of the petition, shall give due notice of an election on the question of dissolution. It shall

provide appropriate ballots, conduct the election, canvass the returns, and declare the results in the same manner as for elections to create a district.

All district electors may vote at the election. No informality relating to the election shall invalidate it if notice is substantially given and the election is fairly conducted. [1999 c 305 § 9; 1973 1st ex.s. c 184 § 25; 1955 c 304 § 25. Prior: 1939 c 187 § 15, part; RRS § 10726-15, part.]

**89.08.360 Result of election—Dissolution.** If a majority of the votes cast at the election are for dissolution, the district shall be dissolved. [1999 c 305 § 10; 1973 1st ex.s. c 184 § 26; 1955 c 304 § 26. Prior: 1939 c 187 § 15, part; RRS § 10726-15, part.]

**89.08.370 Disposition of affairs upon dissolution.** If the district is ordered dissolved, the supervisors shall forthwith terminate the affairs of the district and dispose of all district property at public auction, and pay the proceeds therefrom to pay any debts of the district and any remaining balance to the state treasurer.

They shall then file a verified application with the secretary of state for the dissolution of the district, accompanied by a certificate of the commission reciting the determination that further operation of the district is impracticable. The application shall recite that the property of the district has been disposed of, that the proceeds therefrom have been used to pay any debts of the district and any remaining balance paid to the treasurer, and contain a full accounting of the property and proceeds. Thereupon the secretary shall issue to the supervisors a certificate of dissolution and file a copy thereof in his or her records. [1999 c 305 § 11; 1973 1st ex.s. c 184 § 27; 1955 c 304 § 27. Prior: 1939 c 187 § 15, part; RRS § 10726-15, part.]

**89.08.390 Water rights preserved—1939 c 187.** Insofar as any of the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling: PROVIDED, HOWEVER, That none of the provisions of this chapter shall be construed so as to impair water rights appurtenant to lands within or without the boundaries of any district or districts organized hereunder. [1939 c 187 § 17; RRS § 10726-17.]

**89.08.391 Water rights preserved—1973 1st ex.s. c 184.** Insofar as any of the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling: PROVIDED, HOWEVER, That none of the provisions of this chapter shall be construed so as to impair water rights appurtenant to lands within or without the boundaries of any district or districts organized hereunder. [1973 1st ex.s. c 184 § 30.]

**89.08.400 Special assessments for natural resource conservation.** (1) Special assessments are authorized to be imposed for conservation districts as provided in this section. Activities and programs to conserve natural resources, including soil and water, are declared to be of special benefit to lands and may be used as the basis upon which special assessments are imposed.

(2) Special assessments to finance the activities of a conservation district may be imposed by the county legislative authority of the county in which the conservation district is located for a period or periods each not to exceed ten years in duration.

The supervisors of a conservation district shall hold a public hearing on a proposed system of assessments prior to the first day of August in the year prior to which it is proposed that the initial special assessments be collected. At that public hearing, the supervisors shall gather information and shall alter the proposed system of assessments when appropriate, including the number of years during which it is proposed that the special assessments be imposed.

On or before the first day of August in that year, the supervisors of a conservation district shall file the proposed system of assessments, indicating the years during which it is proposed that the special assessments shall be imposed, and a proposed budget for the succeeding year with the county legislative authority of the county within which the conservation district is located. The county legislative authority shall hold a public hearing on the proposed system of assessments. After the hearing, the county legislative authority may accept, or modify and accept, the proposed system of assessments, including the number of years during which the special assessments shall be imposed, if it finds that both the public interest will be served by the imposition of the special assessments and that the special assessments to be imposed on any land will not exceed the special benefit that the land receives or will receive from the activities of the conservation district. The findings of the county legislative authority shall be final and conclusive. Special assessments may be altered during this period on individual parcels in accordance with the system of assessments if land is divided or land uses or other factors change.

Notice of the public hearings held by the supervisors and the county legislative authority shall be posted conspicuously in at least five places throughout the conservation district, and published once a week for two consecutive weeks in a newspaper in general circulation throughout the conservation district, with the date of the last publication at least five days prior to the public hearing.

(3) A system of assessments shall classify lands in the conservation district into suitable classifications according to benefits conferred or to be conferred by the activities of the conservation district, determine an annual per acre rate of assessment for each classification of land, and indicate the total amount of special assessments proposed to be obtained from each classification of lands. Lands deemed not to receive benefit from the activities of the conservation district shall be placed into a separate classification and shall not be subject to the special assessments. An annual assessment rate shall be stated as either uniform annual per acre amount, or an annual flat rate per parcel plus a uniform annual rate per acre amount, for each classification of land. The maximum annual per acre special assessment rate shall not exceed ten cents per acre. The maximum annual per parcel rate shall not exceed five dollars, except that for counties with a population of over one million five hundred thousand persons, the maximum annual per parcel rate shall not exceed ten dollars.

Public land, including lands owned or held by the state, shall be subject to special assessments to the same extent as

privately owned lands. The procedures provided in chapter 79.44 RCW shall be followed if lands owned or held by the state are subject to the special assessments of a conservation district.

Forest lands used solely for the planting, growing, or harvesting of trees may be subject to special assessments if such lands benefit from the activities of the conservation district, but the per acre rate of special assessment on benefited forest lands shall not exceed one-tenth of the weighted average per acre assessment on all other lands within the conservation district that are subject to its special assessments. The calculation of the weighted average per acre special assessment shall be a ratio calculated as follows: (a) The numerator shall be the total amount of money estimated to be derived from the imposition of per acre special assessments on the nonforest lands in the conservation district; and (b) the denominator shall be the total number of nonforest land acres in the conservation district that receive benefit from the activities of the conservation district and which are subject to the special assessments of the conservation district. No more than ten thousand acres of such forest lands that is both owned by the same person or entity and is located in the same conservation district may be subject to the special assessments that are imposed for that conservation district in any year. Per parcel charges shall not be imposed on forest land parcels. However, in lieu of a per parcel charge, a charge of up to three dollars per forest landowner may be imposed on each owner of forest lands whose forest lands are subject to a per acre rate of assessment.

(4) A conservation district shall prepare an assessment roll that implements the system of assessments approved by the county legislative authority. The special assessments from the assessment roll shall be spread by the county assessor as a separate item on the tax rolls and shall be collected and accounted for with property taxes by the county treasurer. The amount of a special assessment shall constitute a lien against the land that shall be subject to the same conditions as a tax lien, collected by the treasurer in the same manner as delinquent real property taxes, and subject to the same interest rate and penalty as for delinquent property taxes. The county treasurer shall deduct an amount from the collected special assessments, as established by the county legislative authority, to cover the costs incurred by the county assessor and county treasurer in spreading and collecting the special assessments, but not to exceed the actual costs of such work. All remaining funds collected under this section shall be transferred to the conservation district and used by the conservation district in accordance with this section.

(5) The special assessments for a conservation district shall not be spread on the tax rolls and shall not be collected with property tax collections in the following year if, after the system of assessments has been approved by the county legislative authority but prior to the fifteenth day of December in that year, a petition has been filed with the county legislative authority objecting to the imposition of such special assessments, which petition has been signed by at least twenty percent of the owners of land that would be subject to the special assessments to be imposed for a conservation district. [2005 c 466 § 1; 1992 c 70 § 1; 1989 c 18 § 1.]

(2006 Ed.)

**89.08.410 Grants to conservation districts—Rules—Report to the legislature.** The state conservation commission may authorize grants to conservation districts from monies appropriated to the commission for such purposes as provided in this section. Such grants shall be awarded annually on or before the last day of June of each year and shall be made only to those conservation districts that apply for the grants. The conservation commission may adopt rules pertaining to eligibility and distribution of these funds. The conservation commission shall submit a report on the distribution of these funds to the appropriate committees of the legislature by September 30, 2007. [2005 c 31 § 1; 1989 c 18 § 2.]

**Effective date—2005 c 31:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 13, 2005]." [2005 c 31 § 2.]

**89.08.440 Best management practices for fish and wildlife habitat, water quality, and water quantity property tax exemption—List—Forms—Certification of claims.** (1) For the purpose of identifying property that may qualify for the exemption provided under RCW 84.36.255, each conservation district shall develop and maintain a list of best management practices that qualify for the exemption.

(2) Each conservation district shall ensure that the appropriate forms approved by the department of revenue are made available to property owners who may qualify for the exemption under RCW 84.36.255 and shall certify claims for exemption as provided in RCW 84.36.255(3). [1997 c 295 § 3.]

**Purpose—1997 c 295:** See note following RCW 84.36.255.

**89.08.450 Watershed restoration projects—Intent.** The legislature declares that it is the goal of the state of Washington to preserve and restore the natural resources of the state and, in particular, fish and wildlife and their habitat. It is further the policy of the state insofar as possible to utilize the volunteer organizations who have demonstrated their commitment to these goals.

To this end, it is the intent of the legislature to minimize the expense and delays caused by unnecessary bureaucratic process in securing permits for projects that preserve or restore native fish and wildlife habitat. [1995 c 378 § 1.]

**89.08.460 Watershed restoration projects—Definitions.** Unless the context clearly requires otherwise, the definitions in this section shall apply throughout RCW 89.08.450 through 89.08.510.

(1) "Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district, that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed, and for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the state environmental policy act. If the implementation measures or actions would have a probable

significant, adverse environmental impact, a detailed statement under RCW 43.21C.031 must be prepared on the plan.

(2) "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

(a) A project that involves less than ten miles of stream-reach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed, or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

(b) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(c) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure other than a bridge or culvert or instream habitat enhancement structure associated with the project is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream. [1995 c 378 § 2.]

**89.08.470 Watershed restoration projects—Consolidated permit application process—Fish habitat enhancement project.** (1) By January 1, 1996, the Washington conservation commission shall develop, in consultation with other state agencies, tribes, and local governments, a consolidated application process for permits for a watershed restoration project developed by an agency or sponsored by an agency on behalf of a volunteer organization. The consolidated process shall include a single permit application form for use by all responsible state and local agencies. The commission shall encourage use of the consolidated permit application process by any federal agency responsible for issuance of related permits. The permit application forms to be consolidated shall include, at a minimum, applications for: (a) Approvals related to water quality standards under chapter 90.48 RCW; (b) hydraulic project approvals under chapter 77.55 RCW; and (c) section 401 water quality certifications under 33 U.S.C. Sec. 1341 and chapter 90.48 RCW.

(2) If a watershed restoration project is also a fish habitat enhancement project that meets the criteria of \*RCW 77.55.290(1), the project sponsor shall instead follow the permit review and approval process established in \*RCW 77.55.290 with regard to state and local government permitting requirements. The sponsor shall so notify state and local permitting authorities. [2003 c 39 § 47; 1998 c 249 § 13; 1995 c 378 § 3.]

**\*Reviser's note:** RCW 77.55.290 was recodified as RCW 77.55.181 pursuant to 2005 c 146 § 1001.

**Findings—Purpose—Report—Effective date—1998 c 249:** See notes following RCW 77.55.181.

**89.08.480 Watershed restoration projects—Designated recipients of project applications—Notice to commission.** Each agency of the state and unit of local government that claims jurisdiction or the right to require permits, other approvals, or fees as a condition of allowing a water-

shed restoration project to proceed shall designate an office or official as a designated recipient of project applications and shall inform the conservation commission of the designation. [1995 c 378 § 4.]

**89.08.490 Watershed restoration projects—Acceptance of applications—Permit decisions.** All agencies of the state and local governments shall accept the single application developed under RCW 89.08.470. Unless the procedures under RCW 89.08.500 are invoked, the application shall be processed without charge and permit decisions shall be issued within forty-five days of receipt of a complete application. [1995 c 378 § 5.]

**89.08.500 Watershed restoration projects—Appointment of project facilitator by \*permit assistance center—Coordinated process for permit decisions.** The applicant or any state agency, tribe, or local government with permit processing responsibility may request that the \*permit assistance center created by chapter 347, Laws of 1995 appoint a project facilitator to develop in consultation with the applicant and permit agencies a coordinated process for permit decisions on the application. The process may incorporate procedures for coordinating state permits under chapter 347, Laws of 1995. The \*center shall adopt a target of completing permit decisions within forty-five days of receipt of a complete application.

If \*\*House Bill No. 1724 is not enacted by June 30, 1995, this section shall be null and void. [1995 c 378 § 6.]

**Reviser's note:** \*(1) The permit assistance center and its powers and duties were terminated effective June 30, 1999, pursuant to 1995 c 347 § 617.

\*\* (2) House Bill No. 1724 [1995 c 347] was enacted.

**89.08.510 Watershed restoration projects—General permits—Cooperative permitting agreements.** State agencies, tribes, and local governments responsible for permits or other approvals of watershed restoration projects as defined in RCW 89.08.460 may develop general permits or permits by rule to address some or all projects required by an approved watershed restoration plan, or for types of watershed restoration projects. Nothing in chapter 378, Laws of 1995 precludes local governments, state agencies, and tribes from working out other cooperative permitting agreements outside the procedures of chapter 378, Laws of 1995. [1995 c 378 § 7.]

**89.08.520 Water quality and habitat protection grant programs—Statement of environmental benefits—Development of outcome-focused performance measures.** In administering grant programs to improve water quality and protect habitat, the commission shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the commission shall utilize the statement of environmental benefit[s] in its grant prioritization and selection process. The commission shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant program. The commission shall work with the districts to develop uniform performance measures across participating districts. To the extent possible, the commission

should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The commission shall consult with affected interest groups in implementing this section. [2001 c 227 § 3.]

**Findings—Intent—2001 c 227:** See note following RCW 43.41.270.

**89.08.530 Agricultural conservation easements program.** (1) The agricultural conservation easements program is created. The state conservation commission shall manage the program and adopt rules as necessary to implement the legislature's intent.

(2) The commission shall report to the legislature on an on-going basis regarding potential funding sources for the purchase of agricultural conservation easements under the program and recommend changes to existing funding authorized by the legislature.

(3) All funding for the program shall be deposited into the agricultural conservation easements account created in RCW 89.08.540. Expenditures from the account shall be made to local governments and private nonprofits on a match or no match required basis at the discretion of the commission.

(4) Easements purchased with money from the agricultural conservation easements account run with the land. [2002 c 280 § 2.]

**Intent—2002 c 280:** "Among the rising costs that are increasingly driving Washington farmers out of business is the cost of land. Many of our oldest, well-established farms, often on the fringes of established communities, are under growing pressure to be sold for uses other than agriculture. In the face of these rising land costs, new farmers are finding it increasingly difficult to be able to afford to purchase farmland.

At the same time, the conversion of these prime farmlands to development costs our communities open and green space, reduces our access to local quality food, diminishes our cultural and historic roots, often represents a fiscal loss for governments, and frequently results in environmental costs including reduced flood detention, loss of surface water filtration, diminished aquifer recharge, loss of habitat and connective wildlife migration corridors, and loss of opportunities to protect riparian lands.

These concerns, among others, are leading the federal government and local jurisdictions around our state to provide funding for local programs to purchase agricultural conservation easements that help keep farmers in farming and farmland in agriculture. It is the intent of the legislature to create a Washington purchase of agricultural conservation easements program that will facilitate the use of federal funds, ease the burdens of local governments launching similar programs at the local level, and help local governments fight the conversion of agricultural lands they have not otherwise protected through their planning processes." [2002 c 280 § 1.]

**89.08.540 Agricultural conservation easements account.** (1) The agricultural conservation easements account is created in the custody of the state treasurer. All receipts from legislative appropriations, other sources as directed by the legislature, and gifts, grants, or endowments from public or private sources must be deposited into the account. Expenditures from the account may be used only for the purchase of easements under the agricultural conservation easements program. Only the state conservation commission, or the executive director of the commission on the commission's behalf, may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) The commission is authorized to receive and expend gifts, grants, or endowments from public or private sources that are made available, in trust or otherwise, for the use and

benefit of the agricultural conservation easements program. [2002 c 280 § 3.]

**Intent—2002 c 280:** See note following RCW 89.08.530.

**89.08.550 Conservation assistance revolving account.**

(1) The conservation assistance revolving account is created in the custody of the state treasurer. Moneys from the account may only be spent after appropriation. Moneys placed in the account shall include principal and interest from the repayment of any loans granted under this section, and any other moneys appropriated to the account by the legislature. Expenditures from the account may be used only to make loans to landowners for projects enrolled in the conservation reserve enhancement program and the continuous conservation reserve program.

(2) In order to aid the financing of conservation reserve enhancement program projects and continuous conservation reserve program projects, the conservation commission, through the conservation districts, may make interest-free loans to these enrollees from the conservation assistance revolving account. The conservation commission may require such terms and conditions as it deems necessary to carry out the purposes of this section. Loans to landowners shall be for costs associated with the installation of conservation improvements eligible for and secured by federal farm service agency practice incentive payment reimbursement. Loans under this program promote critical habitat protection and restoration by bridging the financing gap between project implementation and federal funding. The conservation commission shall give loan preferences to those projects expected to generate the greatest environmental benefits and that occur in basins with critical or depressed salmonid stocks. Money received from landowners in loan repayments made under this section shall be paid into the conservation assistance revolving account for uses consistent with this section. [2005 c 30 § 1; 2004 c 277 § 901.]

**Severability—2004 c 277:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 277 § 919.]

**Effective dates—2004 c 277:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2004], except for sections 117 and 202 of this act, which take effect April 16, 2004." [2004 c 277 § 920.]

**89.08.560 Farm plans—Disclosure of information.**

(1) Conservation districts, before developing a farm plan, shall inform the landowner or operator in writing of the types of information that is [are] subject to disclosure to the public under chapter 42.56 RCW. Before completion of the final draft of a farm plan, the district shall send the final draft farm plan to the requesting landowner or operator for verification of the information. The final farm plan shall not be disclosed by the conservation district until the requesting owner or operator confirms the information in the farm plan and a signed copy of the farm plan is received by the conservation district.

(2) For the purposes of this section and RCW 42.56.270, "farm plan" means a plan prepared by a conservation district in cooperation with a landowner or operator for the purpose

of conserving, monitoring, or enhancing renewable natural resources. Farm plans include, but are not limited to, provisions pertaining to:

- (a) Developing and prioritizing conservation objectives;
- (b) Taking an inventory of soil, water, vegetation, livestock, and wildlife;
- (c) Implementing conservation measures, including technical assistance provided by the district;
- (d) Developing and implementing livestock nutrient management measures;
- (e) Developing and implementing plans pursuant to business and financial objectives; and
- (f) Recording, or records of, decisions. [2006 c 369 § 1.]

**89.08.900 Severability—1939 c 187.** If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby. [1939 c 187 § 16; RRS § 10726-16.]

**89.08.901 Severability—1973 1st ex.s. c 184.** If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby. [1973 1st ex.s. c 184 § 31.]

**89.08.902 Severability—1989 c 18.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 18 § 3.]

## Chapter 89.12 RCW

### RECLAMATION AND IRRIGATION DISTRICTS IN RECLAMATION AREAS

#### Sections

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**89.12.010 Preamble.** It is the policy of the state of Washington in connection with lands within the scope of this chapter which may be irrigated through works of federal reclamation projects, to assist the United States in the reduction or prevention of speculation in such lands and in limiting the size of the holdings thereof entitled to receive water by means of the works of such projects, and otherwise to cooperate with the United States with respect thereto. [1957 c 165 § 1; 1943 c 275 § 1; Rem. Supp. 1943 § 7525-20.]

**Severability—1943 c 275:** "Each section and provision of this act shall be considered separable from every other section and provision of the act, and should any section or provision thereof be held unconstitutional, the unconstitutionality of such section or provision shall not affect or impair the validity of the remainder of the act, but in that event the unconstitutional section or provision shall be eliminated and the remainder of the act remain in full force and effect." [1943 c 275 § 16.]

**89.12.020 Definitions.** As used in this chapter,

The term "secretary" shall mean the secretary of the interior of the United States, or his duly authorized representative.

The term "appraised value" shall mean the value of lands within the scope of this chapter appraised or reappraised by the secretary without reference to or increment on account of the irrigation works built or to be built by the United States.

The term "district" shall mean an irrigation or reclamation district governed by this chapter as provided in RCW 89.12.030.

The term "federal reclamation laws" shall mean the act of congress of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplemental thereto including the act of congress entitled "An Act to amend the Act approved May 27, 1937 (Ch. 269, 50 Stat. 208), by providing substitute and additional authority for the prevention of speculation in lands of the Columbia Basin project, and substitute an additional authority related to the settlement and development of the project, and for other purposes, enacted and approved in the Seventy-Eighth Session."

The term "lands" shall mean, unless otherwise indicated, lands within the boundaries of a district contracting or intending to contract with the United States under the terms of this chapter.

The term "owner," "landowner," and "any one landowner" shall mean any person, corporation, joint stock association or family owning lands that are within the scope of this chapter.

The term "family" shall mean a group consisting of either or both husband and wife, together with their children under eighteen years of age, or all of such children if both parents are dead, the term "their children" including the issue and lawfully adopted children of either or both husband and wife. Within the meaning of this chapter, lands shall be deemed to be held by a family if held as separate property of husband or wife, or if held as a part or all of their community property, or if they are the property of any or all of their children under eighteen years of age. [1943 c 275 § 3; Rem. Supp. 1943 § 7525-22.]

**89.12.030 Applicability and purpose of chapter.** The provisions of this chapter shall be applicable to any irrigation or reclamation district organized under the laws of this state contracting or intending to contract with the United States under the federal reclamation laws with respect to a water supply for irrigation from the Columbia Basin project or from any project or division of a project hereafter undertaken in this state by the United States under those laws, and shall govern as to any lands which are now or may hereafter be included in any such district and as to the relationship between any such district and any such lands. The prospect of the construction of the irrigation features of the Columbia Basin project and of other works under the federal reclamation laws for the irrigation of lands in this state requires the granting of authority to irrigation and reclamation districts and to state and county officers to assist the United States, in accordance with the policy of this enactment, in meeting the problems of land speculation and in limiting the size of holdings of lands that may be benefited by such works, and otherwise to cooperate with the United States in connection with the irrigation of lands in this state. The provisions of this chapter, however, are supplemental to other provisions of the law of the state, not inconsistent herewith, which pertain to such districts. [1943 c 275 § 2; Rem. Supp. 1949 § 7525-21.]

**89.12.040 Units and legal subdivisions authorized—Size—Plats—Excess land.** In connection with a district contracting or intending to contract with the United States under this chapter, the secretary for the purpose of administering the federal reclamation laws and of providing for the delivery of water thereto, the method thereof, and the turnout therefor may segregate such lands, or any part thereof, into units and/or legal subdivisions, having in mind the character of soil, topography, method or methods of irrigation best suited therefor, location with respect to the irrigation system, type of irrigation system, and such other relevant factors as enter into the determination of the area and boundaries thereof and the method or methods of irrigating the same. Plats or revisions thereof showing the units and/or the legal subdivisions and the exclusive method or methods of irrigating such units and/or legal subdivisions or portions thereof when approved, may be filed by the United States for record with the auditor of the county in which the land is located. Lands in excess of the acreage in the amount specified by applicable federal law as not being excess lands held by any one landowner shall be deemed excess land. [1970 ex.s. c 71 § 1; 1963 c 3 § 1; 1957 c 165 § 2; 1943 c 275 § 4; Rem. Supp. 1943 § 7525-23.]

**89.12.050 Contracts with United States—Permissible provisions.** A district may enter into repayment and other contracts with the United States under the terms of the federal reclamation laws in matters relating to federal reclamation projects, and may with respect to lands within its boundaries include in the contract, among others, an agreement that:

(1) The district will not deliver water by means of the project works provided by the United States to or for excess lands not eligible therefor under applicable federal law.

(2) As a condition to receiving water by means of the project works, each excess landowner in the district, unless his excess lands are otherwise eligible to receive water under

applicable federal law, shall be required to execute a recordable contract covering all of his excess lands within the district.

(3) All excess lands within the district not eligible to receive water by means of the project works shall be subject to assessment in the same manner and to the same extent as lands eligible to receive water, subject to such provisions as the secretary may prescribe for postponement in payment of all or part of the assessment but not beyond a date five years from the time water would have become available for such lands had they been eligible therefor.

(4) The secretary is authorized to amend any existing contract, deed, or other document to conform to the provisions of applicable federal law as it now exists. Any such amendment may be filed for record under RCW 89.12.080. [1963 c 3 § 2; 1957 c 165 § 3; 1951 c 200 § 1; 1943 c 275 § 5; Rem. Supp. 1943 § 7525-24.]

**89.12.060 Covenants running with the land—Contract provisions to govern.** Any or all of the provisions which may be required to be included in recordable contracts may be made covenants running with any tract of land covered by the contract by expressly so providing therein. Recordable contracts expressly providing that any or all of such provisions shall be covenants running with the land covered thereby shall not be destroyed or extinguished by any tax or assessment foreclosure or deed issued pursuant thereto.

Such of the limitations and provisions of RCW 89.12.050 as are included in the repayment contract between the district and the United States, shall govern all the lands within the district unless otherwise provided in such contract and shall govern notwithstanding any other provisions of the laws of this state. [1963 c 3 § 3; 1953 c 148 § 1; 1943 c 275 § 6; Rem. Supp. 1943 § 7525-25.]

**89.12.071 Fraudulent and unlawful conveyances—Preservation of rights acquired prior to repeal of RCW 89.12.070.** The rights of any vendee or grantee as defined in section 7(b), chapter 275, Laws of 1943 as amended by section 2(b), chapter 200, Laws of 1951 and in RCW 89.12.070(2) are hereby preserved as to any transactions that were consummated by contract or deed prior to the repeal of said sections by this chapter. [1963 c 3 § 6.]

**89.12.080 Instruments may be filed—Filing imparts notice.** There may be filed for record in the office of the county auditor in the county in which the land lies any of the following: (1) Copies of any plat of established farm units approved by the secretary as provided in RCW 89.12.040, when authenticated in the manner authorized by law; (2) copies of any instrument, action, determination, rule or regulation of the secretary made in connection with the provisions of RCW 89.12.050 or otherwise under the federal reclamation laws and which is or may be determinative of title to lands or interest in lands, when authenticated in the manner authorized by law; and (3) any contract or instrument required to be executed by an owner, land purchaser or other person in connection with provisions incorporated in repayment contracts between a district and the United States as authorized by RCW 89.12.050. Such filing shall impart legal

notice to the public of the matters and things set out therein. [1943 c 275 § 8; Rem. Supp. 1943 § 7525-27.]

**89.12.090 State lands in district—State consent to assessment, conditions.** Whenever a district to which this chapter applies is organized or in process of organization, the state of Washington, by and through its proper officials, is authorized and directed to have any state lands within the exterior boundaries of such district included as a part of the lands of such district. The state hereby consents to the assessment by the district of such state lands so included in any such irrigation district, and to the enforcement of the payment of such assessments in like manner and to the same extent as applicable to private lands in such districts, except that the payment of such assessment against such state lands shall not be enforced by transfer of title, by tax sale, tax foreclosure or otherwise, until the state has sold or transferred such lands to a private party. [1943 c 275 § 9; Rem. Supp. 1943 § 7525-28.]

**89.12.100 State lands—Terms and conditions of sale.** If state lands within a district have been segregated into farm units and the appraised value thereof established, the state shall recognize and accept the appraisal as determining the market value of such lands, and shall offer the state lands for sale for cash on the following terms and conditions:

(1) Sales shall be made only at the appraised value; (2) only the number of farm units or acreage specified by applicable federal law as not being excess lands shall be sold to any person or family; (3) applicants for the purchase of a farm unit shall be selected, as nearly as practicable, in accordance with the provisions of subsection (C) of section 4 of the act of congress of December 5, 1924 (43 Stat. 702); and (4) each applicant shall be required to execute a recordable contract within six months from the date the state's conveyance or contract to convey is made, whichever is the earlier, if such a contract is required as a condition to the delivery of water under the terms of the district's repayment contract with the United States; except as the carrying out of any such terms or conditions as to particular state lands may be precluded by provisions of the state Constitution.

The state shall cooperate with the secretary in carrying out the purposes of this chapter and in connection therewith, may execute recordable contracts covering any state lands and such other agreements as are necessary in connection with the administration of this chapter. [1957 c 165 § 4; 1951 c 200 § 3; 1943 c 275 § 10; Rem. Supp. 1943 § 7525-29.]

**89.12.110 County lands—Contracts with United States.** In the case of any county owned land within any district has been segregated into farm units as provided in RCW 89.12.040 and the appraised value thereof established, the board of county commissioners of the county shall have authority at its option of entering into a contract with the United States to bring any of such county lands as the county board shall determine under the provisions of the recordable contracts provided for in RCW 89.12.040, whenever such contracts are required as a condition to the delivery of water under the terms of the contract between the district and the United States, upon such terms as shall be agreed upon

between the county and the United States: PROVIDED, That such contract shall not obligate the county to pay any district assessments levied against such lands except such, if any, as the board of county commissioners of said county shall elect to pay: PROVIDED FURTHER, That nothing herein contained shall be construed to deprive the district of the right to assess such lands, if otherwise assessable and to enforce the collection of the same in the manner provided by law. [1943 c 275 § 11; Rem. Supp. 1943 § 7525-30.]

**89.12.120 Acceptance of federal act—Assessment and taxation authorized.** The provisions and limitations of subsection 5(b) and 5(c) of the act of congress, as above entitled in RCW 89.12.020, concerning assessment and taxation of lands within the Columbia Basin project while legal title remains vested in the United States are hereby accepted; and assessment and taxation by the state, political subdivisions thereof, and districts are hereby authorized to be made in accordance with such provisions and limitations. [1943 c 275 § 14; Rem. Supp. 1943 § 7525-33.]

**89.12.131 Adoption of Columbia Basin project—Revocation of state's consent.** Section 15, chapter 275, Laws of 1943 as amended by section 4, chapter 200, Laws of 1951 and RCW 89.12.130 are each repealed and any adoption, enactment, or consent of this state to the provisions of the federal act, as amended, cited therein are hereby revoked. [1963 c 3 § 5.]

**89.12.140 Subdivision and sale of state lands in reclamation project.** The commissioner of public lands of the state of Washington is authorized to cooperate with the secretary of the interior of the United States with a view to facilitate the execution of plans approved by the secretary of the interior for subdivision and disposal of lands under federal reclamation projects constructed or to be constructed under the provisions of the act of congress of June 17, 1902, (32 Stat., 388) and acts amendatory thereof or supplementary thereto in farm units bounded by lines considered more economical and convenient for irrigation and reclamation than the lines of legal subdivisions and for such purpose is authorized to cause to be prepared and filed a plat or plats of any state lands in any such federal reclamation project showing said state lands subdivided into blocks, lots or farm units, with boundary lines other than those of legal subdivisions, and located with a view to greater convenience, economy or efficiency in irrigation and reclamation, and such subdivision into lots, blocks or farm units may be made in harmony with any general plan approved by the secretary of the interior for subdivision of the lands of any such federal reclamation project or any part or division of any such project into blocks, lots or farm units with boundary lines other than the boundary lines of legal subdivisions and designed for more convenient, economical or efficient reclamation and irrigation. And the commissioner of public lands is authorized to offer for sale and to sell such state lands, in the lots, blocks or farm units designated on such plat or plats instead of offering and selling the same in the legal subdivisions of the U.S. public land surveys. [1927 c 246 § 1; RRS § 7402-280.]

**Severability—1927 c 246:** "Sections 1 and 2 of this act are each declared to be separable from the remainder of the act, and, should either of said sections be held unconstitutional or void, the remainder of the act shall nevertheless remain effective and in such event such unconstitutional section shall be eliminated without affecting the remainder of the act." [1927 c 246 § 3.]

**89.12.150 Exchange of state and federal lands.** From and after the date that the consent of the United States shall be given thereto by act of congress, the department of natural resources is authorized, upon request from the secretary of the interior, to cause an appraisal to be made by the board of natural resources of state lands in any division of any federal reclamation project which the secretary of the interior shall advise the department that he desires to have subdivided into farm units of class referred to in RCW 89.12.140, and also to cause to be appraised by the board of natural resources such public lands of the United States on the same project, or elsewhere in the state of Washington, as the secretary of the interior may propose to exchange for such state land, and when the secretary of the interior shall have secured from congress authority to make such exchange the department is authorized to exchange such state lands in any federal reclamation project for public lands of the United States on the same project or elsewhere in the state of Washington of approximately equal appraised valuation, and in making such exchange is authorized to execute suitable instruments in writing conveying or relinquishing to the United States such state lands and accepting in lieu thereof such public land of approximately equal appraised valuation. [1988 c 128 § 75; 1927 c 246 § 2; RRS § 7402-281.]

**89.12.160 Establishment of county road system.** See RCW 36.81.140.

**89.12.170 Columbia basin project—Authorization for agreements to allocate water—Conditions.** The department of ecology is authorized to enter into agreements with the United States for the allocation of ground waters that exist as a result of the Columbia basin project. The agreements and any allocation of water pursuant to the agreements must be consistent with authorized project purposes, federal and state reclamation laws, including federal rate requirements, and provisions of United States' repayment contracts pertaining to the project. The agreements must provide that the department grant an application to beneficially use such water only if the department determines that the application will not impair existing water rights or project operations or harm the public interest. Use of water allocated pursuant to the terms of the agreements must be contingent upon issuance of licenses by the United States to approved applicants. This section is not intended to alter or affect any ownership interest or rights in ground waters that are not allocated pursuant to the agreements. Before implementing any such agreements, the department, with the concurrence of the United States, shall adopt a rule setting forth the procedures for implementing the agreements and the priorities for processing of applications. The department is authorized to accept funds for administrative and staff expenses that it incurs in connection with entering into or implementing the agreements. [2002 c 330 § 3.]

(2006 Ed.)

**Finding—2002 c 330:** "The legislature finds that delivery of Columbia basin project water through canals and its application to land through irrigation over approximately the past fifty years has dramatically affected ground water in the Pasco basin, located in western Franklin county, along the Columbia river and north of the city of Pasco. According to studies conducted by the United States geological survey, the volume of ground water has increased by about five million acre-feet. About eighty-five percent of this increase is the result of percolation following irrigation and seepage from the distribution system. Ground water levels have also risen as a result of reservoirs formed behind the dams on the Columbia and Snake rivers. As a result of drainage management, the system is reported to be at equilibrium. The studies provide the information needed to determine which ground water is a result of the project and which is naturally occurring. Potential problems associated with the raised ground water levels include landslides and loss of arable land through ponding. Benefits include dilution of concentrations of nitrate and increase in volume of water potentially available for beneficial use over the naturally occurring volume otherwise available." [2002 c 330 § 1.]

**Intent—2002 c 330:** "It is the intent of the legislature to grant authority to the department of ecology to enter into agreements with the United States for allocation of ground waters that exist as a result of the Columbia basin project, adopt rules for implementing the agreements and establishing priorities for processing applications, and accept funds for expenses incurred, consistent with applicable state and federal law. Inasmuch as rules adopted by the department will be significant legislative rules, the legislature intends to assure that it will be able to properly carry out its responsibility to both give direction and review the rules after their adoption by requiring periodic reports by the department." [2002 c 330 § 2.]

**89.12.180 Reports to legislature regarding activities under RCW 89.12.170.** The department of ecology shall report annually to the standing committees of the legislature with jurisdiction over water resources regarding the activities authorized by RCW 89.12.170, beginning December 1, 2002, and ending December 1, 2007. [2002 c 330 § 4.]

**Finding—Intent—2002 c 330:** See notes following RCW 89.12.170.

**89.12.190 Columbia basin project—Findings—Source of surface water—Management of groundwater depletions.** (1) The legislature finds that conserved water from the developed portions of the federal Columbia basin project can provide an immediate source of surface water to offset a limited portion of ground water depletions within the undeveloped portions of the federal project extending the availability of ground water for domestic, municipal, industrial, and agricultural uses. The department of ecology has adopted rules establishing ground water management subareas within the federal Columbia basin project. A primary purpose of some of the rules was to manage ground water depletions that are occurring as a result of the department's decision to allow continued deep well agricultural irrigation in anticipation that development of the federal Columbia basin project would continue at its historic pace and that project water would replace ground water and recharge the depleted aquifer.

(2) The legislature also finds that recent studies have documented water conservation in areas served by project irrigation districts as a result of distribution system lining and piping and use of more efficient conveyance system technology. [2004 c 195 § 1.]

**89.12.200 Columbia basin project—Intent—Allocation of conserved waters to deep well irrigated lands.** It is the intent of the legislature that the department of ecology enter into agreements with the United States and Columbia basin project irrigation districts regarding the allocation of

water conserved from within areas currently served by project waters to deep well irrigated lands within the federal Columbia basin project and for other authorized project beneficial uses. The department may provide the irrigation districts data identifying areas with the most serious ground water depletions. The irrigation districts shall consider and may rely on the department's data and recommendations in making allocation decisions to offset ground water withdrawals consistent with the operational constraints of the distribution system. [2004 c 195 § 2.]

### Chapter 89.16 RCW

#### RECLAMATION BY STATE

##### Sections

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89.16.130	Severability—1919 c 158.
89.16.131	Severability—1972 ex.s. c 51.

**Reviser's note:** Throughout this chapter several references are made to the "reclamation fund" and "reclamation revolving fund"; such fund was abolished and the moneys therein transferred to the "reclamation revolving account" in the general fund. See 1955 c 370 § 1; RCW 43.79.330. As to the references to officers and agencies, see note following title digest.

**89.16.005 Short title.** This chapter shall be known and cited as the "State Reclamation Act". [1919 c 158 § 1; RRS § 3004.]

**89.16.010 Declaration of purpose.** The object of this chapter is to provide for the reclamation and development of such lands in the state of Washington as shall be determined to be suitable and economically available for reclamation and development as agricultural lands, and the state of Washington in the exercise of its sovereign and police powers declares the reclamation of such lands to be a state purpose and necessary to the public health, safety and welfare of its people. [1972 ex.s. c 51 § 1; 1919 c 158 § 2; RRS § 3005.]

**89.16.020 Reclamation account created—Composition.** For the purpose of carrying out the provisions of this chapter the state reclamation revolving account, heretofore established and hereinafter called the reclamation account, shall consist of all sums appropriated thereto by the legislature; all gifts made to the state therefor and the proceeds of the sale thereof; the proceeds of the sale or redemption of and the interest earned by securities acquired with the moneys thereof; and all reimbursements for moneys advanced for the payment of assessments upon public lands of the state for the improvement thereof. [1973 1st ex.s. c 40 § 1; 1972 ex.s. c 51 § 2; 1959 c 104 § 2. Prior: 1919 c 158 § 4, part; RRS § 3007, part.]

**89.16.040 Payments from account—Reclamation districts specified—Rehabilitation of existing projects.** From the moneys appropriated from the reclamation account there shall be paid, upon vouchers approved by the director of ecology, the administrative expenses of the director under this chapter and such amounts as are found necessary for the investigation and survey of reclamation projects proposed to be financed in whole or in part by the director, and such amounts as may be authorized by him for the reclamation of lands in diking, diking improvement, drainage, drainage improvement, diking and drainage, diking and drainage improvement, irrigation and irrigation improvement districts, and such other districts as are authorized by law for the reclamation or development of waste or undeveloped lands or the rehabilitation of existing reclamation projects, and all such districts and improvement districts shall, for the purposes of this chapter be known as reclamation districts. [1981 c 216 § 2; 1972 ex.s. c 51 § 3; 1959 c 104 § 4. Prior: 1919 c 158 § 4, part; RRS § 3007, part.]

**89.16.045 Loans from account—Contracts—Repayment.** Notwithstanding any other provisions of this chapter, the director of ecology may, by written contract with a reclamation district, loan moneys from the reclamation account to said district for use in financing a project of construction, reconstruction or improvement of district facilities, or a project of additions to such facilities. No such contract shall exceed fifty thousand dollars per project or a term of ten years, or provide for an interest rate of more than eight percent per annum. The director shall not execute any contract as provided in this section until he determines that the project for which the moneys are furnished is within the scope of the district's powers to undertake, that the project is feasible, that its construction is in the best interest of the state and the district, and that the district proposing the project is in a sound financial condition and capable of repaying the loan with interest in not more than ten annual payments. Any district is empowered to enter into a contract, as provided for in this section, and to levy assessments based on the special benefits accruing to lands within the district as are necessary to satisfy the contract, when a resolution of the governing body of the reclamation district authorizing its execution is approved by the body: PROVIDED, That no district shall be empowered to execute with the director any such contract during the term of any previously executed contract authorized by this section. [1972 ex.s. c 51 § 4; 1967 c 181 § 1.]

**89.16.050 Powers and duties of director of ecology.** In carrying out the purposes of this chapter, the director of the department of ecology of the state of Washington shall be authorized and empowered:

To make surveys and investigations of the wholly or partially unreclaimed and undeveloped lands in this state and to determine the relative agricultural values, productiveness and uses, and the feasibility and cost of reclamation and development thereof;

To formulate and adopt a sound policy for the reclamation and development of the agricultural resources of the state, and from time to time select for reclamation and development such lands as may be deemed advisable, and the director may in his discretion advise as to the formation and

assist in the organization of reclamation districts under the laws of this state;

To purchase the bonds of any reclamation district whose project is approved by the director and which is found to be upon a sound financial basis, to contract with any such district for making surveys and furnishing engineering plans and supervision for the construction of its project, or for constructing or completing its project and to advance money to the credit of the district for any or all of such purposes, and to accept the bonds, notes or warrants of such district in payment therefor, and to expend the moneys appropriated from the reclamation account in the purchase of such bonds, notes or warrants or in carrying out such contracts: PROVIDED, That interest not to exceed the annual rate provided for in the bonds, notes or warrants agreed to be purchased, shall be charged and received for all moneys advanced to the district prior to the delivery of the bonds, notes or warrants and the amount of such interest shall be included in the purchase price of such bonds, notes or warrants: PROVIDED FURTHER, That no district, the bonds, notes or warrants of which have been purchased by the state under the provisions of the state reclamation act, shall thereafter during the life of said bonds, notes or warrants make expenditures of any kind from the bond or warrant funds of the district or incur obligations chargeable against such funds or issue any additional notes without previous written approval of the director of ecology of the state of Washington, and any obligations incurred without such approval shall be void;

To sell and dispose of any reclamation district bonds acquired by the director, at public or private sale, and to pay the proceeds of such sale into the reclamation account: PROVIDED, That such bonds shall not be sold for less than the purchase price plus accrued interest, except in case of a sale to an agency supplied with money by the United States of America, or to the United States of America in furtherance of refunding operations of any irrigation district, diking or drainage district, or diking or drainage improvement district, now pending or hereafter carried on by such district, in which case the director shall have authority to sell any bonds of such district owned by the state of Washington under the provisions of the state reclamation act, to the United States of America, or other federal agency on such terms as said United States of America, or other federal agency shall prescribe for bonds of the same issue of such district as that held by the state of Washington in connection with such refunding operations;

To borrow money upon the security of any bonds, including refunding bonds, of any reclamation district, acquired by the director, on such terms and rate of interest and over such period of time as the director may see fit, and to hypothecate and pledge reclamation district bonds or refunding bonds acquired by the director as security for such loan. Such loans shall have, as their sole security, the bonds so pledged and the revenues therefrom, and the director shall not have authority to pledge the general credit of the state of Washington: PROVIDED, That in reloading any money so borrowed, or obtained from a sale of bonds it shall be the duty of the director to fix such rates of interest as will prevent impairment of the reclamation revolving account;

To purchase delinquent general tax or delinquent special assessment certificates chargeable against lands included

within any reclamation district obligated to the state under the provisions of the state reclamation act, and to purchase lands included in such districts and placed on sale on account of delinquent taxes or delinquent assessments with the same rights, privileges and powers with respect thereto as a private holder and owner of said certificates, or as a private purchaser of said lands: PROVIDED, That the director shall be entitled to a delinquent tax certificate upon application to the proper county treasurer therefor without the necessity of a resolution of the county legislative authority authorizing the issuance of certificates of delinquency required by law in the case of the sale of such certificates to private purchasers;

To sell said delinquent certificates or the lands acquired at sale on account of delinquent taxes or delinquent assessments at public or private sale, and on such conditions as the director shall determine;

To, whenever the director shall deem it advisable, require any district with which he may contract, to provide such safeguards as he may deem necessary to assure bona fide settlement and development of the lands within such district, by securing from the owners of lands therein agreements to limit the amount of their holdings to such acreage as they can properly farm and to sell their excess land holdings at reasonable prices;

To employ all necessary experts, assistants and employees and fix their compensation and to enter into any and all contracts and agreements necessary to carry out the purposes of this chapter;

To have the assistance, cooperation and services of, and the use of the records and files in, all the departments and institutions of the state, particularly the office of the commissioner of public lands, the state department of agriculture, Washington State University, and the University of Washington; and all state officers and the governing authorities of all state institutions are hereby authorized and directed to cooperate with the director in furthering the purpose of this chapter;

To cooperate with the United States in any plan of land reclamation, land settlement or agricultural development which the congress of the United States may provide and which may effect the development of agricultural resources within the state of Washington, and the director shall have full power to carry out the provisions of any cooperative land settlement act that may be enacted by the United States. [1983 c 167 § 248; 1977 c 75 § 93; 1972 ex.s. c 51 § 5; 1943 c 279 § 1; 1935 c 7 § 1; 1933 ex.s. c 13 § 1; 1923 c 132 § 1; 1919 c 158 § 5; RRS § 3008.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**89.16.055 Additional powers and duties enumerated—Payment for from reclamation account.** In addition to the powers provided in RCW 89.16.050, the department of ecology is authorized and empowered to:

(1) Conduct surveys, studies, investigations, and water right examinations for proposed reclamation projects or the rehabilitation of existing reclamation projects that may be funded fully or partially from the receipts of the sale of bonds issued by the state of Washington.

(2) Support the preparation for and administration of proceedings, provided in RCW 90.03.110 or 90.44.220, or

both, pertaining to river systems or other water bodies that are associated with existing or proposed reclamation projects.

(3) Conduct a regulatory program for well construction as provided in chapter 18.104 RCW.

Funds of the account established by RCW 89.16.020 may, as appropriated by the legislature, be used in relation to the powers provided in this section, notwithstanding any other provisions of chapter 89.16 RCW that may be to the contrary. [1993 c 387 § 27; 1981 c 216 § 1.]

**Effective date—1993 c 387:** See RCW 18.104.930.

**89.16.060 Contracts with United States.** The department of ecology shall have the power to cooperate and to contract with the United States for the reclamation of lands in this state by the United States, and shall have the power to contract with the United States for the handling of such reclamation work by the United States and for the repayment of such moneys as the department of ecology shall invest from the reclamation account, under such terms and conditions as the United States laws and the regulations of the interior department shall provide for the repayment of reclamation costs by the lands reclaimed. [1972 ex.s. c 51 § 6; 1919 c 158 § 6; RRS § 3009.]

**89.16.070 Contracts with districts.** A diking, drainage, diking and drainage, and irrigation district, and improvement districts thereof through the parent district, or such other district as is authorized and organized for the reclamation or development of waste or undeveloped lands, may enter into contracts with the director for the reclamation of the lands of the district in the manner provided herein, or in such manner as such districts may contract with the United States or with individuals or corporations, for making surveys and furnishing engineering plans and supervision for the construction of all works and improvements necessary for the reclamation of its lands, and for the sale or delivery of its bonds, and may issue bonds of the district for such purposes. [1959 c 104 § 5; 1923 c 132 § 2; 1919 c 158 § 7; RRS § 3010.]

**89.16.080 State lands may be included—Procedure.** Whenever in the judgment of the department of natural resources any state, school, granted, or other public lands of the state will be specially benefited by any proposed reclamation project approved by the department of ecology, it may consent that such lands be included in any reclamation district organized for the purpose of carrying out such reclamation project, and in that event the department of natural resources shall be authorized to pay, out of current appropriations, the district assessments levied as provided by law against such lands, and any such assessments paid shall be made a charge against the lands upon which they were levied, and the amount thereof, but without interest, shall be included in the appraised value of such lands when sold or leased. [1972 ex.s. c 51 § 7; 1919 c 158 § 8; RRS § 3011.]

**89.16.130 Severability—1919 c 158.** If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part

thereof not adjudged invalid or unconstitutional. [1919 c 158 § 14; RRS § 3017.]

**89.16.131 Severability—1972 ex.s. c 51.** If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1972 ex.s. c 51 § 8.]

## Chapter 89.30 RCW

### RECLAMATION DISTRICTS OF ONE MILLION ACRES

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**89.30.001 District authorized—Area not less than one million acres—No fees.** Reclamation districts including an area of not less than one million acres of land may be created and maintained in this state, as herein provided, for the reclamation and improvement of arid and semiarid lands situated in such districts, and for the generation and/or sale of hydroelectric energy: PROVIDED, That no appropriation, license, filing, recording, examination or other fee or fees, as provided in RCW 90.16.050 through 90.16.090 or in RCW 90.03.470 shall be applicable to a district or districts created under this chapter. [1933 c 149 § 1; 1927 c 254 § 1; RRS § 7402-1. Formerly RCW 89.20.020 and 89.20.040, part.]

**89.30.004 Lands in one or more counties.** Such reclamation districts may include all or part of the territory of any county and may combine the territory in two or more counties, in which any of the lands to be reclaimed and improved are situated, or in which hydroelectric energy may be generated in connection with project works. [1933 c 149 § 2; 1927 c 254 § 2; RRS § 7402-2. Formerly RCW 89.20.200.]

**89.30.007 General purposes of district.** Such reclamation districts may be organized or maintained for any or all the following general purposes:

- (1) The construction or purchase and the operation and maintenance of dams, power and pumping works, transmission power lines, reservoirs, pipe lines, and other works or parts of same for the irrigation of lands within the operation of the district or districts and for the transmission and sale of power generated by such works.
- (2) The reconstruction, repair or improvement of existing irrigation works.
- (3) The operation or maintenance of existing irrigation works.
- (4) The construction, reconstruction, repair or maintenance of a system of diverting canals or conduits, from a natural source of water supply to the point of individual distribution for irrigation purposes.
- (5) The execution and performance of any contract authorized by law with any department of the United States or any state therein for power, reclamation and irrigation purposes.
- (6) The performance of all things necessary to enable the district or districts to exercise the powers granted in this chapter.

(7) That no permits or licenses for the appropriation of water for irrigation and/or power purposes shall be granted by the state of Washington which will interfere with the irrigation and/or power requirements of the district or districts created under this chapter. [1933 c 149 § 3; 1927 c 254 § 3; RRS § 7402-3. Formerly RCW 89.20.030 and 89.20.040, part.]

**89.30.010 Petition—Filing.** Whenever fifty, or a majority of the holders of title to, or of evidence of title to, lands susceptible of irrigation in each of the several counties in which lands coming within the proposed district are located, desire to organize an irrigation [reclamation] district for any, or all, of the purposes mentioned in RCW 89.30.007, they may propose the organization of an irrigation [reclamation] district by filing a petition signed by the required number of holders of title, or evidence of title, to land within the proposed district with the board of county commissioners of the county in which the greatest portion of the land susceptible of irrigation, to be included in the proposed district, is located. [1933 c 149 § 4; 1927 c 254 § 4; RRS § 7402-4. Formerly RCW 89.20.500.]

**89.30.013 Petition—Contents.** Said petition shall describe the lands proposed to be irrigated in township and ranges and in case of smaller bodies of land, in legal subdivisions or fractions thereof, shall give the name of the county in which said respective irrigable lands are situated, and shall state all the possible sources of water supply from which said lands can be irrigated: PROVIDED, That nothing herein contained shall be construed to limit the power of any district organized under the provisions of this chapter to utilize any other source of water supply not mentioned in the petition. Said petition shall also define the boundaries of the proposed district, which said boundaries shall include all of the lands, a major portion of which can be irrigated from the proposed sources of water supply, shall give the name by which the petitioners desire the district to be designated and shall state that the petitioners desire to have the territory included within the boundaries defined, organized into a reclamation district under the provisions of this chapter. [1927 c 254 § 5; RRS § 7402-5. Formerly RCW 89.20.510.]

**89.30.016 Public lands of state may be included.** State, granted, school or other public lands of the state of Washington may be included in such districts, and may be included in any general improvement district or divisional district authorized herein within the reclamation district and subjected to special assessments for general improvement or divisional district purposes. [1927 c 254 § 6; RRS § 7402-6. Formerly RCW 89.20.210.]

**89.30.019 Interest in public lands treated as private property—Public title unaffected, liens barred.** All leases, contracts, or other form of holding any interest in any state or public land shall be treated as the private property of the lessee or owner of the contractual or possessory interest; PROVIDED, That nothing in this chapter shall be construed to affect the title of the state or other public ownership, nor shall any lien for assessments or taxes attach to the fee simple

title of the state or other public ownership. [1927 c 254 § 7; RRS § 7402-7. Formerly RCW 89.20.220.]

**89.30.022 Federal lands may be included.** Lands of the federal government may be included within such districts; and such lands may be included in any general improvement or divisional district authorized herein, in the manner and subject to the conditions specified in the statutes of the United States. [1927 c 254 § 8; RRS § 7402-8. Formerly RCW 89.20.230.]

**89.30.025 Possessory interest in federal lands—Water rent, credit for prior payment.** Lands held by private persons under possessory rights from the federal government may be included within the operation of the district, and as soon as such lands are held under title of private ownership, the owner thereof shall be entitled to receive his proportion of water as in case of other landowners upon payment by him of such sums as shall be determined by the district board and at the time to be fixed by said district board, which sum shall be such equitable amount as such lands should pay having regard to placing said lands on the basis of equality with other lands in the district as to benefits received, and giving credit if equitable for any sums paid as water rent by the occupant of said lands prior to the vesting of private ownership, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed. [1927 c 254 § 9; RRS § 7402-9. Formerly RCW 89.20.240.]

**89.30.028 Petitioners to describe their lands—Petitioners deemed owners thereof.** Persons signing said petition shall state following their respective names, in a place provided in said petition for that purpose, the legal description of the lands owned by them and the estimated irrigable acreage contained in the same: PROVIDED, That the petitioners shall be prima facie deemed to be the owners of lands susceptible of irrigation for the purposes of the petition in the absence of evidence to the contrary submitted prior to the day of the hearing hereinafter provided for on said petition. [1927 c 254 § 10; RRS § 7402-10. Formerly RCW 89.20.520.]

**89.30.031 Proof of ownership by tax roll.** The ownership of land of any of the petitioners may be shown by the county general tax roll of the county in which such land is situated, last equalized prior to the time of the filing of said petition with the county board. Any item on said assessment roll may be proved by a certificate of the county officer having the custody of said tax roll at the time of making said certificate. [1927 c 254 § 11; RRS § 7402-11. Formerly RCW 89.20.530.]

**89.30.034 Petition on separate sheets—Withdrawals.** The petition for organization of such reclamation district shall consist of any number of separate instruments of uniform similarity, numbered consecutively. For convenience, lands represented on said instruments may be grouped separately according to the county in which said lands are situated. No petitioner shall have the right to withdraw his name from the petition after the same has been filed with said

county board. [1927 c 254 § 12; RRS § 7402-12. Formerly RCW 89.20.540.]

**89.30.037 Correction of deficient petition.** If it shall appear that said petition or any part thereof does not contain the matters and things required by the statute, said county board shall make an order specifying the deficiency and shall return said petition or the part thereof found to be deficient to the persons filing the same. [1927 c 254 § 13; RRS § 7402-13. Formerly RCW 89.20.550.]

**89.30.040 Conflicting petitions—Largest territory considered first.** In the event that more than one petition for the organization of a reclamation district covering any of the same territory, is filed with the same board or with different boards of county commissioners prior to the date of the issuance of the order fixing the time and place for a hearing on one of said petitions as herein provided, the petition covering the largest territory shall first be determined and voted upon by the electors concerned. [1927 c 254 § 14; RRS § 7402-14. Formerly RCW 89.20.560.]

**89.30.043 Order for hearing—Notice.** If and when said county board finds that the petition is sufficient it shall enter an order to that effect and shall fix a time and place for a hearing on said petition which said time shall be not less than thirty days nor more than ninety days from the date of said order and shall direct the clerk of the board to publish notice of said hearing, setting forth the matters and things hereinafter required in a newspaper of general circulation published in each county in which any lands to be included in the district are situated. If there should be no newspaper of general circulation published in any county involved, then the county board shall designate some newspaper of general circulation published outside said county for the publication of said notice as to the lands situated in said county. [1927 c 254 § 15; RRS § 7402-15. Formerly RCW 89.20.570, part.]

**89.30.046 Publication of notice.** Said notice shall be published once a week for at least two weeks (three issues) before the time when the hearing on said petition is to be held. [1927 c 254 § 16; RRS § 7402-16. Formerly RCW 89.20.570, part.]

**89.30.049 Contents of notice.** Said notice shall state that a petition has been filed with said county board for the purpose of creating a reclamation district under the provisions of this chapter and may be inspected during office hours by any interested person, shall specify the boundaries of the district proposed in the petition, shall mention the time and place of hearing on said petition and shall state that all persons having or claiming any interest in said land, or any part thereof, and all persons otherwise interested are required at or before the time of said hearing to file in writing with the clerk of the county board such objections as they may have, if any, to the creation of said district. Said notice shall be signed by the clerk of the board. [1927 c 254 § 17; RRS § 7402-17. Formerly RCW 89.20.590.]

**89.30.052 Copy of notice to each member of commission.** Said clerk shall also mail a copy of said notice to each member of the commission hereinafter provided for, at least two weeks before the day of said hearing. [1927 c 254 § 18; RRS § 7402-18. Formerly RCW 89.20.580.]

**89.30.055 Commission—Creation—Composition.** Upon the giving of notice of hearing on the petition by the clerk of the county board aforesaid, there is hereby authorized and created a commission composed of the chairman of the board of county commissioners of each of the counties in which any of the lands to be included in the proposed reclamation district are situated, and of the state director of ecology, which commission shall consider and determine said petition. [1988 c 127 § 70; 1933 c 149 § 5; 1927 c 254 § 19; RRS § 7402-19. Formerly RCW 89.20.700.]

**89.30.058 Commission—Chairman—Clerk—Quorum.** The state director of ecology shall be ex officio chairman of said commission, and the clerk of the county board of the county in which the petition is filed, shall be ex officio clerk of said commission. A majority of the members of said commission shall constitute a quorum for the transaction or exercise of any of its powers, functions, duties and business. [1988 c 127 § 71; 1933 c 149 § 6; 1927 c 254 § 20; RRS § 7402-20. Formerly RCW 89.20.710, part.]

**89.30.061 Commission—Clerk not to vote unless tie.** The clerk of the commission shall not be entitled to vote on matters coming before it, except in case of a tie vote of the members thereof, in which event said clerk shall cast the deciding vote. [1927 c 254 § 21; RRS § 7402-21. Formerly RCW 89.20.710, part.]

**89.30.064 Commission—General powers.** Said commission is hereby given full authority to receive evidence, to make independent investigation, to determine and establish the boundaries of the district, to adjourn its meeting from time to time and place to place, and to do any and all things necessary or incidental to the determination of the petition and the establishment of the boundaries of the reclamation district. [1927 c 254 § 22; RRS § 7402-22. Formerly RCW 89.20.770.]

**89.30.067 Commission—Adjournments.** The period of such adjournments, however, shall not exceed ninety days in all and in case of lack of a quorum, one or more members of the commission may adjourn to a day certain and notify the absent members of the day to which said hearing was adjourned. [1927 c 254 § 23; RRS § 7402-23. Formerly RCW 89.20.740.]

**89.30.070 Commission—Expenses.** Except as otherwise herein provided the necessary expenses of the commission and of the members thereof in performing the duties and functions of said commission shall be borne by the respective counties concerned in proportion to the taxable value of the acreage of each included in the proposed reclamation district and said respective counties are hereby made liable for such expenses. The individual expenses of the state director of

ecology shall be borne by the state. [1988 c 127 § 72; 1933 c 149 § 7; 1927 c 254 § 24; RRS § 7402-24. Formerly RCW 89.20.720.]

**89.30.073 Hearing on petition—Place.** The hearing on said petition shall be held at the office of the county board of the county where the petition is filed or at such other convenient place as said county board shall designate. [1927 c 254 § 25; RRS § 7402-25. Formerly RCW 89.20.730.]

**89.30.076 Hearing on petition—Proof of notice.** At the time and place designated in said notice the commission shall meet to consider said petition. Said commission shall first determine whether notice of the hearing on said petition has been published in the manner and for the time required by this chapter and shall file the affidavits of the publishers as to the time of publication in their respective newspapers among the records of the hearing. [1927 c 254 § 26; RRS § 7402-26. Formerly RCW 89.20.750.]

**89.30.079 Hearing on petition—Consideration of petition—Evidence.** If it is determined that the notice of the hearing has been properly published, the commission shall proceed to consider the petition, and to receive any pertinent evidence that may be offered. [1927 c 254 § 27; RRS § 7402-27. Formerly RCW 89.20.760.]

**89.30.082 Hearing on petition—Boundaries to be fixed.** Said commission shall have full authority to increase or diminish and change the boundaries of the proposed district and to fix the same so as to subserve the best interests of the district and to enable it to carry out the objects of its creation, and shall establish and define said boundaries. [1927 c 254 § 28; RRS § 7402-28. Formerly RCW 89.20.780.]

**89.30.085 Hearing on petition—Name—Election to be ordered.** At said hearing the commission shall give the district a name, shall fix a day for and order an election to be held therein for the purpose of determining whether or not the district shall be created under the provisions of this chapter. [1927 c 254 § 29; RRS § 7402-29. Formerly RCW 89.20.790.]

**89.30.088 Order for election to county auditors.** The clerk of the commission shall forthwith mail by registered mail a copy of said order for an election to the county auditors of each of the counties in which any lands within the boundaries of the proposed reclamation district are located. [1927 c 254 § 30; RRS § 7402-30. Formerly RCW 89.20.870.]

**89.30.091 Records of commission to be preserved.** Upon full determination of the petition and the ordering of said election, the commission shall turn all papers and records involved in its deliberations over to the board of the county where the petition to organize the reclamation district was filed, and said papers and records shall be preserved among the records of said county board. [1927 c 254 § 31; RRS § 7402-31. Formerly RCW 89.20.800.]

**89.30.094 Election—How conducted—Qualifications of electors.** Notice of said election shall be given by the same officer in the same manner and for the same length of time, electors shall have the same qualifications, and said election shall be provided for, held and conducted by the same officers and the results thereof determined by the same officers in the same manner, and with the same force and effect as nearly as may be as that provided in this chapter for general reclamation district elections. [1927 c 254 § 32; RRS § 7402-32. Formerly RCW 89.20.890.]

**89.30.097 Election—Notice, contents—Ballots.** The notice of said election shall specify the boundaries of the proposed district as established by the commission and shall state that the object of said election is to determine whether or not said district shall be created under the provisions of this chapter, shall state that votes will be received at the regular polling places of the county precincts, except in the following new precincts for such election, (new precincts and voting places for the same shall be specified) and shall state that the polls will be open from eight o'clock a.m. to eight o'clock p.m. on said election day. The ballot for said election shall contain the words: Reclamation district—"Yes", and Reclamation district—"No". [1927 c 254 § 33; RRS § 7402-33. Formerly RCW 89.20.880.]

**89.30.100 Election—Canvass of returns.** The board of county commissioners of the county in which the petition to organize the district is filed shall receive from the several county auditors concerned their abstracts of election returns, herein provided for, shall tabulate the same and declare the result of the election. [1927 c 254 § 34; RRS § 7402-34. Formerly RCW 89.20.900.]

**89.30.103 Order organizing district.** If upon the tabulation of said abstracts of the returns of said election as herein provided, it appears that a majority of the votes cast at said election were in favor of the creation of the district, the said county board shall by order entered in the minutes of its proceedings declare the territory included within the boundaries defined in the notice of election duly organized into a reclamation district within the provisions of this chapter, under the name and style theretofore designated and thereafter no other reclamation district including any of the same territory shall be organized under the provisions of this chapter. [1927 c 254 § 35; RRS § 7402-35. Formerly RCW 89.20.910.]

**89.30.106 Order organizing district—Copy to be filed with county commissioners of other counties.** Said county board shall then cause a copy of such order, duly certified by the clerk of the board to be immediately filed for record in the office of the county commissioners of any other county in which any portion of the territory embraced in such district is situated. [1927 c 254 § 36; RRS § 7402-36. Formerly RCW 89.20.920.]

**89.30.109 Certified statement to be filed for record.** It shall be the duty of the clerk of the board of county commissioners of every county in which any lands included in the district are situated forthwith to certify and file for record in

the county auditor's office of his county, a statement to the effect that, under the provisions of this chapter, certain lands (describing them in township and range and in case of smaller bodies of land in legal subdivisions or fractions thereof) were, by order of the board of county commissioners of . . . . county (naming the county) entered on the . . . . day of . . . . (naming the day, month and year) included in the . . . . reclamation district (using the name designated in the order of the county board establishing the district). Said statement certified by the clerk of the county board shall be entitled to record in the office of the county auditor without payment of filing or recording fee. [1927 c 254 § 37; RRS § 7402-37. Formerly RCW 89.20.930.]

**89.30.112 When creation complete—Proceedings conclusive, exception.** From and after such filing the creation of the district shall be complete and its existence cannot thereafter be legally questioned by any person except the state of Washington in an appropriate court action brought within six months from the date of the order of the county board tabulating the abstracts of the returns of the organization election and creating said district. If the existence of said district is not challenged within the period above specified, the state of Washington shall thereafter be forever barred from questioning the legal existence of said district by reason of any defect in the organization thereof. [1927 c 254 § 38; RRS § 7402-38. Formerly RCW 89.20.940.]

**89.30.115 District liable for formation costs.** Any reclamation district created under the provisions of this chapter shall be liable for the necessary costs preliminary to and involved in preparing the petition for the organization of the district, in publishing any notice required and in conducting the election approving the creation of the district. [1927 c 254 § 39; RRS § 7402-39. Formerly RCW 89.20.080.]

**89.30.118 Change of name procedure—Effect.** Any reclamation district created under the provisions of this chapter may change its corporate name by filing with the board of county commissioners of each of the counties in which any of the lands included within the operation of the district are situated a certified copy of a resolution of its board of directors adopted by a unanimous vote of all the members of said board at a regular meeting thereof providing for such change of name; and thereafter all proceedings of such district shall be had under such changed name, but all existing obligations and contracts of the district entered into under its former name shall remain outstanding without change and with the validity thereof unimpaired and unaffected by such change of name. [1927 c 254 § 40; RRS § 7402-40. Formerly RCW 89.20.050.]

**89.30.121 District is political subdivision.** Reclamation districts created under this chapter shall be political subdivisions of the state and shall be held and construed to be municipal corporations within the provisions of the state Constitution relating to exemptions from taxation and within the provisions relating to the debt limits of municipal corporations: PROVIDED, That nothing herein contained shall be construed as a limitation on general improvement and divi-

sional districts, authorized herein, to contract obligations. [1967 c 164 § 10; 1927 c 254 § 41; RRS § 7402-41. Formerly RCW 89.20.070.]

**Purpose—Severability—1967 c 164:** See notes following RCW 4.96.010.

*Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.*

**89.30.124 Judgments against district—When chargeable against improvement and divisional districts.**

Any judgment obtained against the reclamation district on account of any contract or transaction, made for or on behalf of any general improvement district or divisional district herein authorized, or on account of the construction or maintenance of any improvement for such improvement district or divisional district, shall be chargeable exclusively against the improvement district or divisional district concerned and assessments may be levied against the lands therein to satisfy said judgment. [1927 c 254 § 42; RRS § 7402-42. Formerly RCW 89.24.250.]

**89.30.127 District a corporate body—Powers.** A reclamation district created under this chapter shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all powers that may now or hereafter be specifically conferred by law. [1927 c 254 § 43; RRS § 7402-43. Formerly RCW 89.20.300.]

**89.30.130 Powers—In general.** Said reclamation districts shall have full authority to carry out the objects of their creation and to that end are authorized to acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or any interest therein, to enter into and perform any and all necessary contracts, to appoint and employ the necessary officers, agents and employees, to sue and be sued, to exercise the right of eminent domain, to levy and enforce the collection of taxes and special assessments in the manner herein provided against the lands within the district, for district revenues, and to do any and all lawful acts required and expedient to carry out the purpose of this chapter. [1927 c 254 § 44; RRS § 7402-44. Formerly RCW 89.20.310.]

**89.30.133 Powers—Improvement and divisional districts, purposes.** Said reclamation districts shall have authority to create general improvement districts and divisional districts to include any or all the lands within the reclamation district, to provide for the levy and collection of special assessments against the respective lands benefited, and to issue bonds, and other evidences of indebtedness, as in this chapter provided. [1927 c 254 § 45; RRS § 7402-45. Formerly RCW 89.24.010.]

**89.30.136 Powers—Development, sale, use, etc., of water or electric energy.** Said reclamation districts shall have authority to develop and sell, lease or rent the use of water or electric energy for use or distribution within or without the district on such terms and under such regulations as may be determined by the district board or as shall be set out and prescribed in the contract between the district and the United States or the state of Washington for the construction

of the district irrigation works, and to use the income derived therefrom for district purposes. [1933 c 149 § 8; 1927 c 254 § 46; RRS § 7402-46. Formerly RCW 89.20.330.]

**89.30.139 Powers—Bonds payable from income.**

Said reclamation districts shall also have authority to issue and sell bonds of the district payable from the income derived from the sale or rental of water or electric power as in this chapter provided. [1927 c 254 § 47; RRS § 7402-47. Formerly RCW 89.26.240.]

**89.30.142 Powers—Sale or lease of water—Drains—Land settlement.** Said reclamation districts shall also have authority:

(1) To construct, repair, purchase, maintain, or lease a system or systems for the sale or lease of water to the owners of irrigated lands within the district for domestic purposes.

(2) To construct, repair, operate and maintain a system of drains as in this chapter provided.

(3) To regulate the settlement of lands within the district under the provisions of any contract with the state of Washington or the United States.

This section shall not be construed as in any manner affecting or abridging any other powers of said reclamation district conferred by law. [1927 c 254 § 48; RRS § 7402-48. Formerly RCW 89.20.320.]

**89.30.145 Powers—Fiscal agent for United States.**

Reclamation districts created under this chapter may accept appointment as fiscal agent or other authority of the United States to make collections of money for or on behalf of the United States in connection with any federal or other reclamation project whereupon the reclamation district and the county treasurer for said district shall be authorized to act and to assume the duties and liabilities incident to such action and the district board shall have full power to do any and all things required by the said statute now or hereafter enacted in connection therewith and to do all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto. [1927 c 254 § 49; RRS § 7402-49. Formerly RCW 89.20.340.]

**89.30.148 Surety bond from contractor.** Any person, firm or corporation except the state of Washington or the United States, to whom or to which a contract may have been awarded by the district for construction purposes, or for labor or material entered into when the total amount to be paid therefor exceeds one thousand dollars, shall enter into a surety bond to be approved by the district board, payable to the district for at least seventy-five percent of the contract price conditioned for the faithful performance of said contract and with such further conditions as may be required by law. [1927 c 254 § 50; RRS § 7402-50. Formerly RCW 89.24.510.]

**89.30.151 Payments under contracts—Retained percentage.** Contracts entered into by reclamation districts authorized under this chapter for construction or for services or materials, may provide that payments shall be made in

such monthly amounts or in such monthly proportion of the contract price as the board shall determine as the work progresses or as the services or materials are furnished on monthly estimates of the value thereof approved by the board; PROVIDED, That at least ten percent of each of the monthly estimates shall be retained until the contract is completed and its completion approved by the district board. [1927 c 254 § 51; RRS § 7402-51. Formerly RCW 89.24.520.]

**89.30.154 Contracts—Public bidding—Notice.** Contracts for labor or materials entering into the construction of any improvement authorized by the district shall be awarded at public bidding except as herein otherwise provided. A notice calling for sealed proposals shall be published in such newspaper or newspapers of such general circulation as the board shall designate for a period of not less than two weeks (three issues) prior to the date of the opening of the bids. Such proposals shall be accompanied by a certified check for such amount as the board shall decide upon to guarantee compliance with the bid, and shall be opened in public at the time and place designated in the notice. The contract shall be awarded to the lowest and best responsible bidder; PROVIDED, That the board shall have authority to reject any and all bids. [1927 c 254 § 52; RRS § 7402-52. Formerly RCW 89.24.500.]

**89.30.157 Contracts with United States or any state for construction, etc.** The board shall have authority to enter into any obligation or contract authorized by law with the United States or with any state therein for the supervision of the construction, for the construction, reconstruction, betterment, extension, sale or purchase, or operation or maintenance of the necessary works for the delivery and distribution of water therefrom or for any other service furthering the objects for which said reclamation district is created under the provisions of the law of the state of Washington or of the United States and all amendments or extensions thereof and the rules and regulations established thereunder. [1927 c 254 § 53; RRS § 7402-53. Formerly RCW 89.24.530.]

**89.30.160 Contracts with United States or state of Washington—Assumption of control or management.** Reclamation districts created under this chapter shall have authority to enter into contracts with the state of Washington or the United States under any act of congress for the assumption of the control and management of the works for such period as may be designated in the contract. [1933 c 149 § 9; 1927 c 254 § 54; RRS § 7402-54. Formerly RCW 89.24.540.]

**89.30.163 Contracts with United States or state of Washington—Bonds as payment or security—Levy for interest or payment.** In case a contract has been or shall be hereafter made between the district and the state of Washington and/or the United States as herein provided, bonds of any general improvement district or of any divisional district herein authorized, may be deposited with the state of Washington and/or the United States as payment or as security for future payment at not less than ninety percent of the par value, the interest on said bonds to be provided for by assess-

ment and levy as in the case of bonds of the district sold to private persons and regularly paid to the state of Washington and/or the United States to be applied as provided in such contract and if bonds of the district are not so deposited it shall be the duty of the board of directors to include as part of any levy or assessment against the lands of any general improvement district or of any divisional district concerned, an amount sufficient to meet each year all payments accruing under the terms of any such contract. [1933 c 149 § 10; 1927 c 254 § 55; RRS § 7402-55. Formerly RCW 89.24.550.]

**89.30.166 Contracts with United States or state of Washington—Submission of contracts to electors.** No contract, however, providing for the levy of such assessments shall be entered into with the state of Washington or the United States as above provided unless a proposition of entering into such a contract shall have first been submitted to the electors of the general improvement district or divisional district concerned, and by said electors approved. [1927 c 254 § 56; RRS § 7402-56. Formerly RCW 89.24.560.]

**89.30.169 Contracts with United States or state of Washington—Election procedure.** Elections held for the purpose of approving a contract with the state of Washington or the United States as herein provided, shall be called, noticed, conducted and canvassed in the same manner and with the same force and effect as in the case of bond elections held in general improvement districts or in divisional districts as authorized in this chapter. [1927 c 254 § 57; RRS § 7402-57. Formerly RCW 89.24.570.]

**89.30.172 Contracts with United States or state of Washington—Liability of district for improvement and divisional district obligations.** The reclamation district shall not be liable under any contract creating an obligation chargeable against the lands of any general improvement district or of any divisional district authorized herein unless such liability is specifically stated in such contract. [1927 c 254 § 58; RRS § 7402-58. Formerly RCW 89.24.580.]

**89.30.175 Drainage system—Authorization—Notice—Hearing.** Whenever in the judgment of the reclamation district board a system of drainage for any lands included in the operation of any general improvement or divisional district therein will be of special benefit to the lands of the general improvement or divisional district as a whole, it shall pass a resolution to that effect and call a further meeting of the board to determine the question. Notice of said meeting shall be given by the secretary for the same length of time and in the same manner as required by law for the meeting of the commission to hear the petition for the organization of the reclamation district. At the time and place mentioned in the notice the board shall meet, hear such evidence as shall be presented, and fully determine the matter by resolution, which said resolution shall be final and conclusive upon all persons as to the benefit of said system of drainage to the lands in the district. [1927 c 254 § 59; RRS § 7402-59. Formerly RCW 89.24.020.]

**89.30.178 Drainage system—Powers.** Upon the passing of said resolution, the district shall in all respects have the same power and authority as is now or may hereafter be conferred respecting irrigation, and all powers in this chapter conferred upon the reclamation district with respect to irrigation shall be construed to include drainage in conjunction therewith as herein provided. [1927 c 254 § 60; RRS § 7402-60. Formerly RCW 89.24.030.]

**89.30.181 Drainage system—Benefit to public road or city sewer system—Assessment.** Whenever any drainage improvement constructed under the provisions of this chapter results in benefit to the whole or any part of a public road, road bed or track thereof, or will facilitate the construction or maintenance of any sewer system in any city or town, the state, county, city, town or subdivision or any of them responsible for the maintenance of said public road, or sewer, shall be liable for assessment for the cost and maintenance of such drainage improvement. [1927 c 254 § 61; RRS § 7402-61. Formerly RCW 89.24.040.]

**89.30.184 Eminent domain—Authorized.** The taking and damaging of property or rights therein or thereto by a reclamation district to construct an improvement or to fully carry out the purposes of its organization are hereby declared to be for a public use, and any district organized under the provisions of this chapter, shall have and exercise the power of eminent domain to acquire any property or rights therein or thereto either inside or outside the operation of the district and outside the state of Washington if necessary, for the use of the district. [1927 c 254 § 62; RRS § 7402-62. Formerly RCW 89.22.800.]

**89.30.187 Eminent domain—Procedure.** Reclamation districts exercising the power of eminent domain shall proceed in the name of the district in the manner provided by law for the appropriation of real property or of rights therein or thereto, by private corporations, except as otherwise expressly provided herein. [1927 c 254 § 63; RRS § 7402-63. Formerly RCW 89.22.810.]

**89.30.190 Eminent domain—Joinder, consolidation of actions—Separate verdicts.** The district may at its option unite in a single action proceedings to condemn, for its use, property which is held by separate owners. Two or more condemnation suits instituted separately may also, in the discretion of the court, be consolidated upon motion of any interested party, into a single action. In such cases, the jury shall render separate verdicts for the different tracts of land. [1927 c 254 § 64; RRS § 7402-64. Formerly RCW 89.22.820.]

**89.30.193 Eminent domain—Damages and benefits—Judgment when damages exceed benefits, costs.** The jury, or the court if the jury be waived, in such condemnation proceedings shall find and return a verdict for the amount of damages sustained: PROVIDED, That the court or jury, in determining the amount of damages, shall take into consideration the special benefits, if any, that will accrue to the property damaged by reason of the improvement for which the land is sought to be condemned, and shall make special find-

ings in the verdict of the gross amount of damages to be sustained and the gross amount of special benefits that will accrue. If it shall appear by the verdict or findings, that the gross damages exceed said gross special benefits, judgment shall be entered against the district, and in favor of the owner or owners of the property damaged, in the amount of the excess of damages over said special benefits, and for the costs of the proceedings, and upon payment of the judgment to the clerk of the court for the owner or owners, a decree of appropriation shall be entered, vesting the title to the property appropriated in the district. [1927 c 254 § 65; RRS § 7402-65. Formerly RCW 89.22.830.]

**89.30.196 Eminent domain—Damages and benefits—Judgment for costs when benefits equal or exceed damages.** If it shall appear by the verdict that the gross special benefits equal or exceed the gross damages, judgment shall be entered against the district and in favor of the owner or owners for the costs only, and upon payment of the judgment for costs a decree of appropriation shall be entered, vesting the title to the property in the district. [1927 c 254 § 66; RRS § 7402-66. Formerly RCW 89.22.840.]

**89.30.199 Eminent domain—Levy on uncondemned lands unaffected.** If the damages found in any condemnation proceedings are to be paid for from funds of the reclamation district, no finding of the jury or court as to benefits or damages shall in any manner abridge the right of the district to levy and collect taxes for district purposes against the uncondemned lands situated within the reclamation district. [1927 c 254 § 67; RRS § 7402-67. Formerly RCW 89.22.850.]

**89.30.202 Eminent domain—Verdict and findings binding as to levy.** If the damages found in any condemnation proceedings are to be paid for from special assessments levied in behalf of any general improvement or divisional district, the verdict and findings of the court or jury as to damages and benefits shall be binding upon the board of directors of the district in their levy of assessments to pay the cost of the system or improvements on behalf of which the condemnation was had, as herein provided. [1927 c 254 § 68; RRS § 7402-68. Formerly RCW 89.22.860.]

**89.30.205 Eminent domain—Damages applied pro tanto to satisfy levies.** The damages thus allowed but not paid shall be applied pro tanto to the satisfaction of the levies made for such construction costs upon the lands on account of which the damages were awarded: PROVIDED, That nothing herein contained shall be construed to prevent the district from assessing the remaining lands of the owner or owners, so damaged, for deficiencies on account of the principal and interest on bonds and for other benefits not considered by the jury in the condemnation proceedings. [1927 c 254 § 69; RRS § 7402-69. Formerly RCW 89.22.870.]

**89.30.208 Eminent domain—Title acquired.** The title acquired by the reclamation district in condemnation proceedings shall be the fee simple title or such lesser estate as shall be designated in the decree of appropriation and in case

such proceedings are brought in behalf of any general improvement or divisional district, the reclamation district shall hold title to lands so acquired as trustee for said general improvement or divisional district as the case may be. [1927 c 254 § 70; RRS § 7402-70. Formerly RCW 89.22.880.]

**89.30.211 Right of entry to make surveys, etc.** The reclamation district board and its agents and employees shall have the right to enter upon any land, to make surveys and may locate the necessary irrigation works and the line for canal or canals and the necessary branches for the same or for necessary transmission power lines on any lands which may be deemed necessary for such location. [1933 c 149 § 11; 1927 c 254 § 71; RRS § 7402-71. Formerly RCW 89.20.350.]

**89.30.214 Right to construct across streams, highways, railways, etc.—Duty to restore.** The board of directors of any reclamation district authorized under this chapter, shall have power to construct district works across any stream of water, water course, street, avenue, highway, railway, canal, ditch or flume which works may intersect or cross in such manner as to afford security for life and property, but said board shall restore the same when so crossed or intersected to its former state as near as may be or in a sufficient manner not to have impaired unnecessarily its usefulness. [1933 c 149 § 12; 1929 c 254 § 72; RRS § 7402-72. Formerly RCW 89.20.360.]

**89.30.217 Right to construct across streams, highways, railways, etc.—Railroads to cooperate.** Every company whose railroad shall be intersected or crossed by district works shall unite with said board in forming said intersections and crossings and shall grant the privileges aforesaid. [1927 c 254 § 73; RRS § 7402-73. Formerly RCW 89.20.370.]

**89.30.220 Right to construct across streams, highways, railways, etc.—Disagreements, how determined.** If such railroad company and said board or the owners or controllers of said property, thing or franchise so to be crossed, cannot agree upon the amount to be paid therefor or the points or manner of said crossings or intersections, the same shall be ascertained and determined in all respects as herein provided for the taking of land under the power of eminent domain. [1927 c 254 § 74; RRS § 7402-74. Formerly RCW 89.20.380.]

**89.30.223 Right-of-way on state lands.** The right-of-way is hereby given, dedicated and set apart to locate construction and maintenance works over and through any of the lands which are now or may be the property of the state of Washington. [1927 c 254 § 75; RRS § 7402-75. Formerly RCW 89.20.390.]

**89.30.226 Board of directors—Composition.** The affairs of the district shall be managed by a board of directors composed of a number of qualified resident electors of the district equal to the number of director districts contained in said reclamation district. [1927 c 254 § 76; RRS § 7402-76. Formerly RCW 89.22.020, part.]

**89.30.229 Board of directors—Term of office.** Except as herein otherwise provided, the term of the office of director shall be six years from and after the second Monday in January next succeeding his election. [1927 c 254 § 77; RRS § 7402-77. Formerly RCW 89.22.050, part.]

**89.30.232 Director districts.** The county board at the time of making the order creating a reclamation district under the provisions of this chapter, shall divide the territory of the reclamation district into regional divisions to be known as "director districts". [1927 c 254 § 78; RRS § 7402-78. Formerly RCW 89.22.010, part.]

**89.30.235 Director districts—Geographical boundaries—Designation.** All the territory of each county included within the boundaries of the reclamation district shall constitute a director district which shall be designated by the name of the county in which it is located. [1927 c 254 § 79; RRS § 7402-79. Formerly RCW 89.22.010, part.]

**89.30.238 First board—Appointment.** The county board of the county in which each director district is located shall within ten days after receipt of the order creating the reclamation district appoint and certify to the county board of the county in which the reclamation district was affected, the appointment of a resident director from said director district to act as a member of the first board of directors of said reclamation district. [1927 c 254 § 80; RRS § 7402-80. Formerly RCW 89.22.030, part.]

**89.30.241 First board—Term.** The first members of the district board so appointed shall hold office until their successors have been elected at the time of the next general state and county election, and have been qualified. [1927 c 254 § 81; RRS § 7402-81. Formerly RCW 89.22.030, part.]

**89.30.244 First directors—Election.** At the time of the next general state and county election, an election shall be held in each of the director districts in the reclamation district for the purpose of electing directors of the district. [1927 c 254 § 82; RRS § 7402-82. Formerly RCW 89.22.600.]

**89.30.247 First directors—Nominations.** Candidates for the office of district director shall be nominated in the manner herein provided for such nominations. [1927 c 254 § 83; RRS § 7402-83.]

**89.30.250 First directors—Terms.** The terms of the first directors of the district to be elected shall be determined in relation to the amount of the taxable wealth in their respective director districts. The candidates of the wealthiest one-third of the total number of director districts shall serve for a term of six years; the candidates of the next wealthiest one-third of the total number of director districts shall serve for a term of four years; the candidates of the next wealthiest one-third or lesser number of the total number of director districts shall serve for a term of two years. [1933 c 149 § 13; 1927 c 254 § 84; RRS § 7402-84. Formerly RCW 89.22.040.]

**89.30.253 Directors—Term.** After the first terms have been served, all directors shall serve for a term of six years. [1927 c 254 § 85; RRS § 7402-85. Formerly RCW 89.22.050, part.]

**89.30.256 Directors—Vacancies.** In case of any vacancy occurring in the office of director, such vacancy shall be filled by appointment of a resident elector of the director district represented by the former incumbent by the board of directors of the reclamation district, and the person so appointed shall serve until the time of the next general state and county election when the vacancy shall be filled for the remainder of the unexpired term by an election in the director district concerned. [1927 c 254 § 86; RRS § 7402-86. Formerly RCW 89.22.070.]

**89.30.259 Directors—Oath—Bond.** Each director shall take and subscribe an official oath for the faithful discharge of the duties of his office and shall execute an official bond to the district in the sum of twenty-five hundred dollars conditioned for the faithful discharge of his office, which bond shall be approved by the judge of the superior court of the county where the organization of the district was effected, and said oath and bond shall be recorded in the office of the clerk of the superior court and filed with the secretary of the district. [1927 c 254 § 87; RRS § 7402-87. Formerly RCW 89.22.060.]

**89.30.262 Secretary's oath and bond.** The secretary of the district shall take and subscribe a written oath of office and execute an official bond in the sum of not less than twenty-five hundred dollars to be fixed by the board of directors, and said bond shall be approved and filed as in the case of the bond of a director. [1927 c 254 § 88; RRS § 7402-88. Formerly RCW 89.22.290.]

**89.30.265 Additional official bonds when fiscal agent of United States.** In case any district authorized in this chapter is appointed fiscal agent of the United States or is authorized by the United States in connection with any irrigation project in which the United States is interested to make collections of money for or on behalf of the United States, such secretary and each such director and the county treasurer of the county where the organization of the district was effected shall each execute a further additional official bond in such sum respectively as the secretary of the interior may require conditioned for the faithful discharge of the duties of his respective office and the faithful discharge by the district of its duties as fiscal or other agent of the United States in such appointment or authorization; such additional bonds to be approved, recorded, filed and paid for as herein provided for other official bonds. [1927 c 254 § 89; RRS § 7402-89. Formerly RCW 89.22.300.]

**89.30.268 Additional official bonds when fiscal agent of United States—Suit on.** Any such additional bonds required by the secretary of interior as above provided may be sued upon by the United States or any person injured by the failure of such officer or the district to fully, promptly and

completely perform their respective duties. [1927 c 254 § 90; RRS § 7402-90. Formerly RCW 89.22.310.]

**89.30.271 Official bonds, cost of.** All official bonds executed by district officers under the provisions of this chapter shall be secured at the cost of the district. [1927 c 254 § 91; RRS § 7402-91. Formerly RCW 89.22.320.]

**89.30.274 Directors—Organization—President, secretary.** The directors of the reclamation district shall organize as a board and shall elect a president from their number and appoint a secretary who shall be secretary of the district and who shall keep a record of the proceedings of the board and shall have custody of the official records of the district. [1927 c 254 § 92; RRS § 7402-92. Formerly RCW 89.22.080 and 89.22.280.]

**89.30.277 District office.** The office of the directors and principal place of business of the reclamation district shall be some place in the reclamation district to be designated by the directors. [1927 c 254 § 93; RRS § 7402-93. Formerly RCW 89.22.090.]

**89.30.280 District office—Change of location.** Said office and official place of business may be changed by passing a resolution to that effect at a previous meeting of the board entered in the minutes thereof and by posting a notice of the same in a conspicuous public place at or near the place of business which is to be changed at least ten days prior thereto, and by the previous posting of a copy of said notice for the same length of time at or near the new location of the office. [1927 c 254 § 94; RRS § 7402-94. Formerly RCW 89.22.100.]

**89.30.283 Directors—Regular meetings, change of day.** The directors shall hold a regular monthly meeting at their office on such day in each month as the board shall designate in their bylaws and may adjourn any meeting from time to time as may be required for the proper transaction of business; PROVIDED, That the day of the regular monthly meeting cannot be changed except in the manner prescribed herein for changing the place of business of the district. [1927 c 254 § 95; RRS 7402-95. Formerly RCW 89.22.110.]

**89.30.286 Directors—Special meetings—Notice—Business permissible.** Special meetings of the board may be called at any time by order of a majority of the directors. Any member not joining in said order shall be given at least a three days' notice of such meeting, unless the same is waived in writing, which notice shall also specify the business to be transacted and the board at such special meetings shall have no authority to transact any business other than that specified in the notice, unless the transaction of any other business is agreed to in writing by all the members of the board. [1927 c 254 § 96; RRS § 7402-96. Formerly RCW 89.22.120.]

**89.30.289 Directors—Meetings and records public.** All meetings of the board of directors shall be public. All records of the board shall be open for the inspection of any elector of the district during business hours of the day in

which any meeting of the board is held. [1927 c 254 § 97; RRS § 7402-97. Formerly RCW 89.22.130.]

*Meetings, minutes of governmental bodies: Chapter 42.32 RCW.*

**89.30.292 Directors—Quorum—Action by majority.**

A majority of the directors shall constitute a quorum for the transaction of business and in all matters requiring action by the board, there shall be a concurrence of at least a majority of the directors. [1927 c 254 § 98; RRS § 7402-98. Formerly RCW 89.22.180, part.]

**89.30.295 Directors—Seal, bylaws, rules.** The board shall have the power and it shall be its duty to adopt a seal of the reclamation district and to establish equitable bylaws, rules and regulations for the government and management of the affairs of the district. The bylaws, rules and regulations must be printed in convenient form for distribution in the district. [1927 c 254 § 99; RRS § 7402-99. Formerly RCW 89.22.180, part.]

**89.30.298 Compensation of directors, officers, employees.** The members of the board of directors shall each receive not to exceed five dollars per day in attending the meetings, to be determined by said board, and such compensation, not exceeding five dollars per day, for other services rendered the district as shall be fixed by resolution adopted by vote of the directors and entered in the minutes of their proceedings, and in addition thereto, said directors shall receive necessary expenses in attending meetings or when otherwise engaged in district business. The board shall fix the compensation to be paid to the secretary and all other officers, agents and employees of the district. [1927 c 254 § 100; RRS § 7402-100. Formerly RCW 89.22.140.]

**89.30.301 Interest in contracts prohibited—Penalty.**

No director or any other officer named in this chapter shall in any manner be interested, directly or indirectly in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment: PROVIDED, That nothing in this section contained shall be construed to prevent any district officer from being employed by the district as a day laborer. [1927 c 254 § 101; RRS § 7402-101. Formerly RCW 89.22.150.]

**89.30.304 Delivery of records, etc., to successor.**

Every person, upon the expiration or sooner termination of his term of office as an officer of the district, shall immediately turn over and deliver, under oath, to his successor in office, all records, books, papers and other property under his control and belonging to such office. In case of the death of any officer, his legal representative shall turn over and deliver such records, books, papers and other property to the successor in office of such deceased person. [1927 c 254 § 102; RRS § 7402-102. Formerly RCW 89.22.160.]

**89.30.307 Employees on termination to deliver records to board—Penalty.** Every person hired by the district and having in his custody or under his control, in connection with his contract of hire, any records, books, papers or other property belonging to the district shall immediately upon the expiration of his services, turn over and deliver, under oath, to the district board or any member thereof, all such records, books, papers or other property. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [1927 c 254 § 103; RRS § 7402-103. Formerly RCW 89.22.170.]

**89.30.310 County treasurer is ex officio district treasurer.** The county treasurer of the county in which the organization of the reclamation district was effected shall be and is hereby constituted ex officio district treasurer of said district and of any general improvement district or divisional district organized therein. [1927 c 254 § 104; RRS § 7402-104. Formerly RCW 89.22.400.]

**89.30.313 Liability of county treasurers.** Any county treasurer collecting or handling funds of the district shall be liable upon his official bond and to criminal prosecution for malfeasance, misfeasance or nonfeasance in office relative to any of his duties prescribed herein. [1927 c 254 § 105; RRS § 7402-105. Formerly RCW 89.22.470.]

**89.30.316 County treasurers to collect assessments.** It shall be the duty of the county treasurer of each county in which lands of the district are located to collect and receipt for all assessments and taxes levied as in this chapter provided, and he shall account to the district for all interest received on such funds from any public depository with which the same may be deposited. [1927 c 254 § 106; RRS § 7402-106. Formerly RCW 89.22.420.]

**89.30.319 Funds to be deposited with county treasurer.** There shall be deposited with the county treasurer of the county in which the organization of the reclamation district was effected, all sums collected for and on account of taxes levied by the reclamation district, also all sums collected by tolls, regular annual assessments or voted special assessments, all proceeds from bond sales and all other funds belonging to the reclamation district or collected in behalf of any general improvement district or divisional district within the reclamation district, and all said funds shall be placed by the county treasurer in the appropriate fund of the district. [1927 c 254 § 107; RRS § 7402-107. Formerly RCW 89.22.410.]

**89.30.322 Claims against district.** Any claim against the district shall be presented to the district board for allowance or rejection. Upon allowance the claim shall be attached to a voucher verified by the claimant or his agent and approved by the president and countersigned by the secretary and directed to the county auditor of the county in which the organization of the reclamation district was effected, for the issuance of a warrant against the proper fund of the district in payment of said claim. [1927 c 254 § 108; RRS § 7402-108. Formerly RCW 89.20.060.]

**89.30.325 Disbursement of funds by county treasurer.** Said county treasurer shall pay out the moneys received or deposited with him or any portion thereof upon warrants issued by the county auditor against the proper funds of the district except the sums to be paid out of the bond fund for principal and interest payments on bonds. [1983 c 167 § 249; 1927 c 254 § 109; RRS § 7402-109. Formerly RCW 89.22.450.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**89.30.328 Treasurer's monthly report.** The said treasurer shall report in writing during the first week in each month to the board of directors of the district the amount of money held by him, the amount in each fund, the amount of receipts for the month preceding in each fund and the amount or amounts paid out of each fund, and said report shall be filed with the secretary of the district. [1927 c 254 § 110; RRS § 7402-110. Formerly RCW 89.22.440.]

**89.30.331 Secretary's monthly report of expenditures.** The secretary shall also report to the board in writing during the first week in each month, the amount and items of expenditures during the preceding month and said report shall be filed in the office of the board. [1927 c 254 § 111; RRS § 7402-111. Formerly RCW 89.22.330.]

**89.30.334 Elections—When general held.** General elections may be held in the reclamation district at the same time that general state and county elections are held to determine any proposition that may be legally submitted to the electors. [1927 c 254 § 112; RRS § 7402-112. Formerly RCW 89.22.570.]

**89.30.337 Elections—When special held.** Special elections may be held at any time upon resolution of the district board. [1927 c 254 § 113; RRS § 7402-113. Formerly RCW 89.22.580.]

**89.30.340 Elections—How noticed and conducted.** Notice of any general or special reclamation district election held under the provisions of this chapter shall be given by the same officials in the same manner and for the same length of time, and said election shall be provided for, held and conducted by the same officials and the results thereof determined by the same officials in the same manner and with the same force and effect as nearly as may be as that provided by the general laws of the state of Washington relating to state and county elections. [1927 c 254 § 114; RRS § 7402-114. Formerly RCW 89.22.590.]

**89.30.343 Elections—Voting precincts.** All county voting precincts lying wholly within the reclamation district shall also constitute the voting precincts of such district. In any instance where the county voting precinct lies only partly within the district, that part of the county voting precinct lying within the reclamation district shall constitute the voting precinct of such district. [1927 c 254 § 115; RRS § 7402-115. Formerly RCW 89.22.660.]

**89.30.346 Elections—Polling places.** The polling places for the county voting precincts shall also be the polling places for all voting precincts of the reclamation district, which coincide with or are a part of said county voting precincts. [1927 c 254 § 116; RRS § 7402-116. Formerly RCW 89.22.670.]

**89.30.349 Elections—Polls outside district precinct.** No reclamation district election, otherwise regular, shall be invalid by reason of the fact that some of the polling places for said election were located outside the district voting precinct. [1927 c 254 § 117; RRS § 7402-117. Formerly RCW 89.22.680.]

**89.30.352 Elections—List of registered voters.** The registration clerk of any county voting precinct, partially included in a reclamation district voting precinct, is hereby authorized and it shall be his duty to prepare and certify at the expense of the district a poll list of all registered voters of said reclamation district voting precinct and to attach the same to the poll books for his county voting precinct. [1927 c 254 § 118; RRS § 7402-118. Formerly RCW 89.22.690.]

**89.30.355 Elections—Certification of propositions.** At least thirty days prior to any general district election, the secretary of the reclamation district shall certify to the county auditor of each county in which the election is to be held, any proposition to be voted on in such precincts. [1927 c 254 § 119; RRS § 7402-119. Formerly RCW 89.22.710.]

**89.30.358 Elections—Ballots to be separate.** The reclamation district ballot for any district election shall be separate from that for any other election held at the same time and place and shall be printed by the county auditor of each county concerned. [1927 c 254 § 120; RRS § 7402-120. Formerly RCW 89.22.720.]

**89.30.361 Elections—Checking names of voters against registration list.** In any case where the reclamation district voting precinct includes only part of the county voting precinct, the precinct election officials for said precinct shall check the names of the electors offering to vote the district election against the registered poll list attached to the registration book, and any said elector whose name appears on said poll list shall receive a district ballot and shall be entitled to vote at said district election. [1927 c 254 § 121; RRS § 7402-121. Formerly RCW 89.22.700.]

**89.30.364 Elections—Returns—Canvassing boards.** Precinct election officials shall make return of reclamation district elections to their respective county canvassing boards, which boards are hereby constituted canvassing boards for all district voting precincts in their respective counties. [1927 c 254 § 122; RRS § 7402-122. Formerly RCW 89.22.730.]

**89.30.367 Elections—Abstract of result.** Immediately upon conclusion of the canvass of the returns of the reclamation district election held in the precincts located in his county, the county auditor shall mail to the chairman of said

district board, an abstract of the result of said district election in his county. [1927 c 254 § 123; RRS § 7402-123. Formerly RCW 89.22.740, part.]

**89.30.370 Elections—District board to tabulate abstracts and declare result.** Upon receipt of all the required abstracts of any said reclamation district election, the district board shall meet and tabulate the same, and by resolution declare the result of the district election. [1927 c 254 § 124; RRS § 7402-124. Formerly RCW 89.22.740, part.]

**89.30.373 Director district to be represented on board.** Each director district shall be entitled to representation on the reclamation district board. [1927 c 254 § 125; RRS § 7402-125. Formerly RCW 89.22.020, part.]

**89.30.376 Election of subsequent directors.** At the time of the general state and county election next prior to the expiration of the term of office of any director representing a director district on the reclamation district board, a candidate for such position shall be elected from such director district by the electors of such district. [1927 c 254 § 126; RRS § 7402-126. Formerly RCW 89.22.610.]

**89.30.379 Director district elections.** Director district elections shall be provided for, noticed, conducted, canvassed and abstracts of the returns mailed to the reclamation district board, by the same respective officials and in the same manner substantially, the voters thereat shall have the same qualifications and shall vote at the same respective polling places, as that provided herein for general reclamation district elections held in said director districts. [1927 c 254 § 127; RRS § 7402-127. Formerly RCW 89.22.640.]

**89.30.382 Declaration of candidacy for board—Fee.** Any qualified resident elector of any director district which is entitled at that time to elect a candidate for the office of reclamation district director may become a candidate for such office by filing, at least thirty days prior to the election, his declaration of candidacy with the county auditor of his county and by paying a fee of one dollar for said filing. [1927 c 254 § 128; RRS § 7402-128. Formerly RCW 89.22.620.]

**89.30.385 Ballots for director.** The ballots for the election of any reclamation district director shall contain the names of all candidates for such office, who have filed and paid the fee for their respective declarations as aforesaid. [1927 c 254 § 129; RRS § 7402-129. Formerly RCW 89.22.630.]

**89.30.388 District elections—Primary law not to apply.** The provisions of the law of the state relating to primary elections shall not apply to district elections authorized in this chapter. [1927 c 254 § 130; RRS § 7402-130.]

**89.30.391 Annual tax—Authorization.** For the purpose of raising revenue for any of the purposes of the reclamation district, an annual tax shall be levied on all the taxable real and personal property within the district: PROVIDED,

That no such tax shall be levied without the approval of the electors of said district at a general election, or at a special election called for that purpose. [1933 c 149 § 14; 1927 c 254 § 131; RRS § 7402-131. Formerly RCW 89.26.010.]

**89.30.394 Annual tax—How equalized and levied.** Said taxes shall be assessed by the county assessors of each county in which any land within the reclamation district is situated, the valuations of the property assessed shall be equalized by the board of equalization of each said respective county, and the levy made on estimates furnished by the district board, by the board of county commissioners of each said respective county, at the same time general state and county taxes are assessed, property values equalized and taxes levied respectively. [1927 c 254 § 132; RRS § 7402-132. Formerly RCW 89.26.020.]

**89.30.397 Annual tax—How collected.** Taxes so levied shall become a part of the general tax roll of the county and shall be collected and the property charged therewith sold in the same manner, at the same time, with the same penalties attached in case of delinquency, as the general state and county tax, and the proceeds thereof credited to the reclamation district in the office of the county treasurer of the county in which the organization of the reclamation district was effected, as herein provided. [1927 c 254 § 133; RRS § 7402-133. Formerly RCW 89.26.030.]

**89.30.400 Debt limit—General.** Reclamation districts created under the provisions of this chapter are hereby authorized and empowered to contract indebtedness for district purposes in any manner, when they deem it advisable, not exceeding an amount, together with the existing nonvoter approved indebtedness of such district, of three-fourths of one percent of the value of the taxable property in such district, as the term "value of the taxable property" is defined in RCW 39.36.015. [1984 c 186 § 63; 1970 ex.s. c 42 § 38; 1927 c 254 § 134; RRS § 7402-134. Formerly RCW 89.26.060.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

**89.30.403 Exceeding debt limit—Procedure.** Such reclamation districts may contract indebtedness for strictly district purposes in excess of the amount specified in the preceding section, but not exceeding in amount, together with existing indebtedness, two and one-half percent of the value of the taxable property, as the term "value of the taxable property" is defined in RCW 39.36.015, whenever three-fifths of the voters therein voting at an election held for that purpose assent thereto. Elections shall be held as provided in RCW 39.36.050. [1984 c 186 § 64; 1970 ex.s. c 42 § 39; 1927 c 254 § 135; RRS § 7402-135. Formerly RCW 89.26.070.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

**89.30.412 General obligation bonds—Authorized.**

The reclamation district board shall have authority to evidence district indebtedness by the issuance and sale of negotiable general obligation bonds of the district. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 65; 1983 c 167 § 250; 1927 c 254 § 138; RRS § 7402-138. Formerly RCW 89.26.200.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**89.30.427 Special fund from fixed income—Bonds payable from special fund—Contract to purchase or lease electricity—Powers of reclamation district conferred.** (1)

In any instance where the district, general improvement or divisional district is selling, renting or leasing water or electric energy under the provisions of this chapter and there is reasonable certainty of a permanent fixed income from this source, the district board shall have authority to create a special fund derived from a fixed proportion of the gross income thus obtained and to issue bonds of the district payable from such special fund and to sell the same to raise revenue for the payment or amortization of the cost of the construction and/or the operation and maintenance of the reclamation district or general improvement or divisional district works and for such other purposes as the state of Washington and/or the United States may require: PROVIDED, That the state of Washington may, through the director of ecology, enter into a contract with the reclamation district, improvement or divisional district or districts or the United States to purchase, rent or lease and to sell or resell and/or distribute all or any part of the electric energy developed or to be developed at the reclamation, improvement or divisional district works at a price sufficient to amortize the cost of power development over a period of fifty years after the completion of such power development and to provide a surplus sufficient to reduce the cost of reclaiming the lands of the district or districts within economic limits: AND PROVIDED FURTHER, That no contract or contracts as in this section provided shall be finally consummated or become binding in any way whatsoever until the legislature of the state of Washington in special or regular session shall approve the same, and provided further in such sale and/or distribution of power by the director of ecology preference in the purchase and/or distribution thereof shall be given to municipal corporations and cooperative associations: AND PROVIDED FURTHER, That general improvement and divisional districts shall have (in addition to the powers granted them in chapter 254 of the Session Laws of 1927 and in this act) the same powers as are given to the reclamation districts under RCW 89.30.007.

(2) Such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 254; 1933 c 149 § 15; 1927 c 254 § 143; RRS § 7402-143. Formerly RCW 89.24.270, 89.24.590 and 89.26.250.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**89.30.430 Special fund from fixed income—Contents—Pledge of income—Not district obligation.** Bonds payable from such special fund shall not be an obligation of the reclamation district and they shall state on their face that

they are payable solely from a special fund derived from a certain fixed proportion (naming it) of the gross income derived by the district from the sale, rent or lease of water or power, as the case may be, and such fixed proportion of such gross income shall be irrevocably devoted to the payment of such bonds until the same are fully paid. [1927 c 254 § 144; RRS § 7402-144. Formerly RCW 89.26.260.]

**89.30.433 Special fund from fixed income—Maturity—Form—Interest rates.** Said bonds shall mature in series amortized in a definite schedule during a period not to exceed sixty years from the date of their issuance, shall be in such denominations and form including bearer bonds or registered bonds as provided in RCW 39.46.030, and shall be payable, with annual or semiannual interest at a rate or rates the board shall provide: PROVIDED, That such bonds may also be issued in accordance with chapter 39.46 RCW. [1983 c 167 § 255; 1981 c 156 § 33; 1933 c 149 § 16; 1927 c 254 § 145; RRS § 7402-145. Formerly RCW 89.26.270.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**89.30.436 General improvement districts—Authorized.** In any instance where the construction, reconstruction, betterment or extension of power and/or irrigation works or the acquisition of property and rights therein appropriate for the purpose of carrying out the provisions of this chapter, will specially benefit any or all the lands within the reclamation district susceptible of irrigation, the district board shall have authority to organize said lands into a general improvement district and to provide for the levy and collection of special assessments against said lands to raise revenue in support of any or all of said purposes. [1933 c 149 § 17; 1927 c 254 § 146; RRS § 7402-146. Formerly RCW 89.24.050.]

**89.30.439 General improvement districts—Resolution, survey and investigation.** For the purpose of organizing such an improvement district, the district board shall pass a resolution outlining in general terms the proposed improvement to be constructed or property or rights to be acquired, finding that the same will be of special benefit to any or all the lands susceptible of irrigation within the reclamation district, and ordering a survey and investigation with respect to the matter. [1927 c 254 § 147; RRS § 7402-147. Formerly RCW 89.24.060.]

**89.30.442 General improvement districts—Cost of survey and investigation—Limitation of levy.** The cost of making said survey and investigation shall be paid from any funds available for the purpose in the treasury of the reclamation district; PROVIDED, That the annual tax levy made by the reclamation district for such purpose shall not exceed one mill in any year. [1927 c 254 § 148; RRS § 7402-148. Formerly RCW 89.24.070.]

**89.30.445 General improvement districts—Board may make survey and investigation.** The district board shall have full authority to make such survey and investigation as in its judgment shall be necessary to obtain reliable

information upon which to determine whether the proposed improvement shall be made or property or rights acquired, and for this purpose the district board shall employ such services of every nature as may be required. [1927 c 254 § 149; RRS § 7402-149. Formerly RCW 89.24.080.]

**89.30.448 General improvement districts—Contract with state or United States for survey and investigation.** The district board shall also have authority to enter into contracts with the proper department of the state of Washington or the federal government, to make such survey and investigation, or any part of same or to render any other service as may be deemed advisable. [1927 c 254 § 150; RRS § 7402-150. Formerly RCW 89.24.090.]

**89.30.451 General improvement districts—Report on survey and investigation—Estimate of cost.** Upon the completion of said survey and investigation, the district board shall cause to be filed in its office a written report of the same. Said report shall specify the character of the proposed improvement to be made, or property or rights to be acquired, shall state in reasonable detail the probable cost of same, including integral parts thereof: PROVIDED, That such estimate of the cost shall be held to be preliminary only and shall not be binding as a limit on the amount that may be expended in carrying out the proposed project. Said report shall also outline a plan for financing the proposed project, shall contain any recommendations that may be deemed advisable, and shall be identified by the signature of the secretary of the district as the official report of the survey and investigation in the proceedings to organize said improvement district. [1927 c 254 § 151; RRS § 7402-151. Formerly RCW 89.24.100.]

**89.30.454 General improvement districts—Notice for hearing on report.** The district board shall thereupon fix a time and place for a hearing on said report and shall cause notice of said hearing to be published in the same manner and for the same length of time as provided herein in case of notice of hearing on the petition to organize the reclamation district. [1927 c 254 § 152; RRS § 7402-152. Formerly RCW 89.24.110.]

**89.30.457 General improvement districts—Contents of notice for hearing.** Said notice shall state that all or part of the lands included in the reclamation district (naming it) are proposed to be organized as a general improvement district for the purpose of making a certain improvement (stating its nature generally) or acquiring certain property or rights (naming the same) as the case may be, that the lands within the proposed improvement district (where part only of the lands in the reclamation district are to be included, such part shall be described in township, ranges and where necessary in lesser legal subdivisions) are to be assessed to pay for said improvement, or property or rights therein; that a report containing further information concerning the matter is on file in the office of the board of the reclamation district and may be inspected at any time, during business hours, by any interested person; that a hearing thereon will be held (stating the time and place); that all persons interested may appear before the board at the time and place named in the notice and show

cause, if any they have, why the proposed district should not be organized, the proposed project carried out, and said lands assessed for that purpose. Said notice shall be signed by the secretary of the reclamation district. [1927 c 254 § 153; RRS § 7402-153. Formerly RCW 89.24.120.]

**89.30.460 General improvement districts—Hearing—Adjournments.** On the date set for said hearing, the district board shall meet at the place designated in the notice, and if it appears that due notice of such hearing has been given, shall proceed with the hearing and may adjourn said hearing from time to time and place to place. [1927 c 254 § 154; RRS § 7402-154. Formerly RCW 89.24.130.]

**89.30.463 General improvement districts—Objections and evidence at hearing.** At said hearing, the district board shall hear all objections and receive all pertinent evidence offered and shall, in any event, receive evidence as to whether all the lands included in the proposed improvement district will be benefited by the proposed project. [1927 c 254 § 155; RRS § 7402-155. Formerly RCW 89.24.140.]

**89.30.466 General improvement districts—Change of plans.** The district board at said hearing may adopt, or for good reason, change, add to or modify the plans for the system of improvement, and shall exclude lands not benefited; said board shall have full authority to determine all the questions properly before it at said hearing. [1927 c 254 § 156; RRS § 7402-156. Formerly RCW 89.24.150.]

**89.30.469 General improvement districts—Order on approval.** If at said hearing the district board approves the plan of improvement or acquisition of property or rights therein, it shall make and enter an order to that effect, shall specify the lands that will be specially benefited by the proposed project and shall declare the improvement district duly organized under the name of general improvement district No. . . . . of . . . . . reclamation district. [1927 c 254 § 157; RRS § 7402-157. Formerly RCW 89.24.160.]

**89.30.472 General improvement districts—Findings conclusive, exception.** The finding of the board that the lands included within the general improvement district will be benefited by the proposed improvement or acquisition of property or rights therein, shall be a legislative determination that such lands will be specially benefited to the extent necessary to pay in full all costs and obligations of every nature required in making and maintaining such improvement or for the acquisition of property or rights, and such determination shall be conclusive upon the courts, except for actual fraud or arbitrary action on the part of the district board when making such finding as to lands benefited. [1927 c 254 § 158; RRS § 7402-158. Formerly RCW 89.24.170.]

**89.30.475 General improvement districts—Special benefits deemed continuing.** The special benefits conferred upon the lands involved in the general improvement district by any such improvement or by the acquisition of any property or rights therein shall not be deemed to accrue at any one time but shall be deemed to be benefits continuing through-

out the period of the life of the project, which render said lands subject to assessment, from year to year as herein provided, to pay for and carry out the object for which such improvement was made or property or rights therein acquired. [1927 c 254 § 159; RRS § 7402-159. Formerly RCW 89.24.180.]

**89.30.478 General improvement districts—Powers of board—Act on behalf of improvement or divisional district not to render reclamation district liable.** The board of directors of the reclamation district shall have full authority to manage and conduct the business affairs of the general improvement district, to employ and appoint such agents, officers and employees as may be necessary and prescribe their duties, to establish reasonable bylaws, rules and regulations for the government and management of the affairs of the improvement district, and generally to perform any and all acts necessary to carry out the purpose of the general improvement district: PROVIDED, That no act done nor contract entered into by the district board for or in behalf of any improvement district or in behalf of any divisional district herein authorized, shall in any manner bind the reclamation district or render the same liable except as herein specifically provided, but such act or contract shall be chargeable exclusively to the lands of the improvement district or divisional district concerned. [1927 c 254 § 160; RRS § 7402-160. Formerly RCW 89.24.190.]

**89.30.481 Power of board as to assessments in improvement or divisional districts.** Said district board shall have authority to levy assessments as herein provided against the benefited lands included within the operation of the general improvement or divisional district for any of the objects or purposes for which the general improvement or divisional district was organized. [1927 c 254 § 161; RRS § 7402-161. Formerly RCW 89.24.260.]

**89.30.484 Divisional districts—Authorized.** For the purpose of carrying out any of the objects for which a reclamation district may be created and maintained, under the provisions of this chapter in units of development of lesser area than that contemplated in the organization of a general improvement district, the district board shall have authority to organize the lands susceptible of irrigation in one or more of such units of development, into divisional districts. [1927 c 254 § 162; RRS § 7402-162. Formerly RCW 89.24.200.]

**89.30.487 Divisional districts—Powers of board, officers and electors.** All the powers which the district board, other officers and the electors therein, now or shall hereafter have under the provisions of this chapter to organize, manage, finance and operate a general improvement district, said board, other officers and said electors, shall have to organize, manage, finance and operate divisional districts, and such divisional districts may be organized, managed, financed and operated to develop and improve the lands susceptible of irrigation within their operation for any of the purposes for which a general improvement district may be organized, managed, financed and operated. [1927 c 254 § 163; RRS § 7402-163. Formerly RCW 89.24.210.]

**89.30.490 Divisional districts—Organization.** Divisional districts shall be organized in the same manner as that provided herein for the organization of general improvement districts. [1927 c 254 § 164; RRS § 7402-164. Formerly RCW 89.24.220.]

**89.30.493 Divisional districts—Liability.** Any assessments levied against the lands included in any said divisional district, any contracts entered into, any evidences of indebtedness issued, or obligations arising, in behalf of any said divisional district, shall be in addition to and independent of any assessments, contracts, evidences of indebtedness, or obligations arising in behalf of any general improvement district, authorized under the provisions of this chapter. [1927 c 254 § 165; RRS § 7402-165. Formerly RCW 89.24.230.]

**89.30.496 Divisional districts—Assessments, contracts, etc.** The district board and other proper officers shall have authority to levy and collect assessments against the lands included in any said divisional district, enter into contracts, issue evidences of indebtedness, and do everything that may be necessary to carry out the purposes of the divisional district organization, in similar form and manner as that provided in this chapter with respect to general improvement districts. [1927 c 254 § 166; RRS § 7402-166. Formerly RCW 89.24.240.]

**89.30.499 Exclusion of nonirrigable lands from general improvement or divisional districts—Petition—Prior obligations.** In any instance in which any tract of land not susceptible of irrigation in its natural state has been included in any general improvement district or divisional district herein authorized through inadvertency or mistake on the part of the district board at the time of the organization of such general improvement district or divisional district, the same may be excluded from the district concerned by a petition made by the owner or owners thereof and filed with the district board: PROVIDED, That the exclusion of said land or lands shall not relieve the same of its obligation to pay assessments for bonds outstanding at the time said petition is filed with the district board without written consent of the holders of said bonds. [1927 c 254 § 167; RRS § 7402-167. Formerly RCW 89.24.400.]

**89.30.502 Exclusion of nonirrigable lands from general improvement or divisional districts—Time for hearing—Notice.** Upon the receipt of any petition for exclusion of lands from any general improvement district or divisional district, the board shall fix a time and place for hearing said petition and give notice thereof at the expense of the landowner concerned by publication in a newspaper of general circulation published in the county where the lands petitioned to be excluded are situated, for a period of two weeks (three issues) prior to the date of the hearing. [1927 c 254 § 168; RRS § 7402-168. Formerly RCW 89.24.410.]

**89.30.505 Exclusion of nonirrigable lands from general improvement or divisional districts—Hearing.** At the time and place named in the notice, the board shall consider the petition and shall have full authority to grant or deny the

same. [1927 c 254 § 169; RRS § 7402-169. Formerly RCW 89.24.420.]

**89.30.508 Exclusion of nonirrigable lands from general improvement or divisional districts—Levy to pay bonds preserved.** In the event that there are outstanding bonds, the board shall have authority, if it believes that the petition should otherwise be granted, to grant the same for all purposes except that of the levy of assessments to pay the principal and interest of outstanding bonds. [1927 c 254 § 170; RRS § 7402-170. Formerly RCW 89.24.430.]

**89.30.511 Exclusion of nonirrigable lands from general improvement or divisional districts—Unconditional relief—Effect.** In the event that a petition for exclusion as herein provided is unconditionally granted by the district board, said land shall thereafter be relieved from any obligation to pay special assessments levied in behalf of the district from which the same is excluded. [1927 c 254 § 171; RRS § 7402-171. Formerly RCW 89.24.440.]

**89.30.514 Exclusion of nonirrigable lands from general improvement or divisional districts—Power to reduce assessments.** In the event that lands petitioned to be excluded cannot be relieved of the obligation to pay assessments for outstanding bonds, the board shall have authority, when sitting as a board of equalization, to make an equitable reduction in the amount of assessments levied against such land for bond purposes. [1927 c 254 § 172; RRS § 7402-172. Formerly RCW 89.24.450.]

**89.30.517 Negotiable bonds of general improvement or divisional district—Authorized.** (1) For the purpose of furthering or carrying out any of the objects for which a general improvement or divisional district was organized, for the purpose of raising additional moneys for that purpose or for refunding outstanding improvement or divisional district bonds, the district board shall have authority to issue and sell negotiable bonds in such amounts as shall be approved by the electors of the general improvement or divisional district at an election called for that purpose, as herein provided.

(2) Notwithstanding the provisions of RCW 89.30.520 through 89.30.568, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 256; 1927 c 254 § 173; RRS § 7402-173. Formerly RCW 89.26.400.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**89.30.520 Negotiable bonds of general improvement or divisional district—Form, contents, payment, interest.** (1) Bonds issued under the provisions of this chapter shall be negotiable, serial bonds, in such series, maturities and denominations as the board shall determine, payable in legal currency of the United States, at such place as the board shall provide, from funds derived from the levy and collection of special assessments against the benefited lands within the operation of the general improvement or divisional district and shall draw interest at a rate or rates as the board shall

authorize. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued in accordance with chapter 39.46 RCW. [1983 c 167 § 257; 1970 ex.s. c 56 § 103; 1969 ex.s. c 232 § 62; 1927 c 254 § 174; RRS § 7402-174. Formerly RCW 89.26.480.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**89.30.523 Negotiable bonds of general improvement or divisional district—Obligation of improvement and divisional district—Reclamation district not obligated—Deferred assessments.** Such bonds shall not constitute an obligation of the reclamation district and shall so specify on their face, but said bonds shall constitute a general obligation of the general improvement or divisional district for the benefit of which the same are issued and all the lands included in such general improvement or divisional district shall be and remain liable to be assessed for their payment until the principal and interest of said bonds are fully paid: PROVIDED, That in case the plan of improvement contemplates the construction of units progressively, the levy and collection of assessments against lands in any undeveloped unit, may at the option of the district board be deferred until such lands are sufficiently developed to equitably bear such exactions. [1927 c 254 § 175; RRS § 7402-175. Formerly RCW 89.26.500.]

**89.30.526 Negotiable bonds of general improvement or divisional district—Election, how conducted.** Elections held in a general improvement or divisional district for the purpose of determining whether bonds of the district shall be issued, shall except as otherwise herein provided, be called by the district board, shall be provided for, noticed, conducted and the results thereof determined in the same manner and by the same officers respectively in each county concerned as nearly as may be as provided in the general election laws of the state for special municipal and district elections. [1927 c 254 § 176; RRS § 7402-176. Formerly RCW 89.26.410.]

**89.30.529 Negotiable bonds of general improvement or divisional district—Election precincts and officials.** The several county election boards of the respective counties concerned shall have full authority and it shall be their duty to establish election precincts within the general improvement or divisional district for such bond elections and to appoint the necessary election officials, and to do such other things as may be necessary and proper for the holding of such an election: PROVIDED, That wherever possible the regular county voting precincts, polling places and election officials shall be used for said elections. [1927 c 254 § 177; RRS § 7402-177. Formerly RCW 89.26.420.]

**89.30.532 Negotiable bonds of general improvement or divisional district—Contents of notice of election.**

Notice of said election shall state the amount and maturities of the proposed bonds and in general terms the objects for which said bonds are to be issued, shall specify any precincts and the location of any polling places other than the regular county precincts and polling places therein, shall state that the polling places will be open from eight o'clock a.m. to eight o'clock p.m. on the day of said election and shall be signed by the clerk of said respective county election boards. [1927 c 254 § 178; RRS § 7402-178. Formerly RCW 89.26.430.]

**89.30.535 Negotiable bonds of general improvement or divisional district—Notice and election in nonassessable area.** Where any nonassessable area is situated within any voting precinct within the general improvement or divisional district, any notice or other announcement required by law to be posted, may be so posted in such area, and any election held or to be held pursuant to the provisions of this chapter, may be held within such area. [1927 c 254 § 179; RRS § 7402-179. Formerly RCW 89.26.440.]

**89.30.538 Negotiable bonds of general improvement or divisional district—Mailing returns—Canvass.** The election officials for every voting precinct for said bond elections shall mail their returns to the county election board of the county in which such precincts are located, and such board shall canvass the returns of said election. [1927 c 254 § 180; RRS § 7402-180. Formerly RCW 89.26.450.]

**89.30.541 Negotiable bonds of general improvement or divisional district—Abstract of election results.** Immediately upon the canvass of said election, the county auditors of the several counties concerned shall mail an abstract of the result of said election in the precincts of their respective counties to the board of directors of the reclamation district. [1927 c 254 § 181; RRS § 7402-181. Formerly RCW 89.26.460.]

**89.30.544 Negotiable bonds of general improvement or divisional district—Resolution authorizing issuance of bonds.** The reclamation district board shall tabulate said abstracts of election returns and if it appears that a majority of the votes cast at any such election are in favor of the proposition submitted at said election, the board shall so declare and enter a resolution authorizing the issuance of bonds in the amounts and maturities and for the objects proposed. Such bonds may be issued in accordance with chapter 39.46 RCW. [1983 c 167 § 258; 1927 c 254 § 182; RRS § 7402-182. Formerly RCW 89.26.470.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**89.30.547 Negotiable bonds of general improvement or divisional district—Sale or exchange price.** (1) General improvement or divisional district bonds issued under the provisions of this chapter shall not be sold for less than ninety percent of their par value, and refunding bonds shall not be sold or exchanged for less than their par value.

(2) Notwithstanding subsection (1) of this section, such bonds may be sold in accordance with chapter 39.46 RCW.

(2006 Ed.)

[1983 c 167 § 259; 1927 c 254 § 183; RRS § 7402-183. Formerly RCW 89.26.520.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**89.30.550 Negotiable bonds of general improvement or divisional district—Pledge of bonds to United States.** Such bonds may be pledged to the United States under any contract with the United States authorized by federal statute, for the purpose of furthering any of the objects and purposes of the district organization. [1927 c 254 § 184; RRS § 7402-184. Formerly RCW 89.26.530.]

**89.30.553 Negotiable bonds of general improvement or divisional district—Public or private sale—Payment in property, labor, etc.** Such bonds, or any portion thereof, may be sold at public or private sale, and property or property rights, labor and material, necessary to carry out the objects and purposes of said bond issue may be received by the district board in payment therefor. [1927 c 254 § 185; RRS § 7402-185. Formerly RCW 89.26.540.]

**89.30.556 Negotiable bonds of general improvement or divisional district—Negotiability—Execution.** (1) All general improvement or divisional district bonds issued under the provisions of this chapter shall be negotiable in form, shall be signed by the president of the reclamation district board and secretary of said district and shall have the seal of the district impressed thereon.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued in accordance with chapter 39.46 RCW. [1983 c 167 § 260; 1927 c 254 § 186; RRS § 7402-186. Formerly RCW 89.26.490.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**89.30.565 Negotiable bonds of general improvement or divisional district—Moneys paid to county treasurer.** The proceeds of bond sales for cash shall be paid by the purchaser to the county treasurer of the county in which the organization of the district was effected or to his duly authorized agent and credited to the proper fund. [1927 c 254 § 189; RRS § 7402-189. Formerly RCW 89.26.560.]

**89.30.568 Negotiable bonds of general improvement or divisional district—Bonds paramount lien on moneys in fund.** Bonds issued for or in behalf of any general improvement district or any divisional district under the provisions of this chapter, shall constitute a lien upon the moneys in any fund set apart for their payment paramount and superior to that of any other obligation of whatsoever nature against said fund except that of a prior bond issue payable from said fund. [1927 c 254 § 190; RRS § 7402-190. Formerly RCW 89.26.570.]

**89.30.571 Assessments in general improvement or divisional district—Annual ad valorem basis.** Assessments made in order to carry out the purposes of any general improvement district or of any divisional district, authorized in this chapter, shall be made annually on an ad valorem basis

against the lands and improvements thereon, included within the operation of any such district; PROVIDED, That in assessing lands having and using a water right independent of the district system, the value of such water right shall be deducted from the assessable value of said lands. [1927 c 254 § 191; RRS § 7402-191. Formerly RCW 89.26.720.]

**89.30.574 Assessments in general improvement or divisional district—Assessment roll.** On or before the first Tuesday in November of each year, the secretary of the district shall prepare and file with the district board for the use of any general improvement or divisional district authorized under this chapter, an assessment roll on which must be listed all the assessable property within such general improvement or divisional district. [1927 c 254 § 192; RRS § 7402-192. Formerly RCW 89.26.700.]

**89.30.577 Assessments in general improvement or divisional district—Contents of assessment roll.** On such assessment roll must be specified in separate columns, under appropriate headings, the following:

- (1) The name of the person to whom the property is assessed, if not known then to "unknown owners".
- (2) Land by township, range, section or fractional section and when such land is not a congressional division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, locality, and the improvements thereon.
- (3) City and town lots, naming the city or town, and the number and block according to the system of numbering in such city or town, and the improvements thereon.
- (4) The cash value of real estate other than city or town lots.
- (5) The cash value of improvements on such real estate.
- (6) The cash value of city and town lots.
- (7) The cash value of improvements on city and town lots.
- (8) The total value of all property assessed.
- (9) The total value of all property after equalization by the board of directors.
- (10) Such other things as the board of directors may require. [1927 c 254 § 193; RRS § 7402-193. Formerly RCW 89.26.710.]

**89.30.580 Assessments in general improvement or divisional district—Basis of valuation.** The value of such lands and improvements thereon shown on the county general tax roll, last equalized, shall be taken as the basis of valuation wherever possible in preparing said district assessment roll. [1927 c 254 § 194; RRS § 7402-194. Formerly RCW 89.26.730.]

**89.30.583 Assessments in general improvement or divisional district—Valuation of lands not on tax roll.** Lands and improvements not shown on the county general tax roll shall be given such valuation on the district assessment roll as the secretary shall determine having regard to the equalized valuation of similar private lands in the vicinity for general tax purposes. [1927 c 254 § 195; RRS § 7402-195. Formerly RCW 89.26.740, part.]

**89.30.586 Assessments in general improvement or divisional district—Values on roll are conclusive, when.** The values of land fixed by the secretary on the district assessment roll shall be conclusive upon all persons unless challenged before the district board at the time of the equalization of said roll. [1927 c 254 § 196; RRS § 7402-196. Formerly RCW 89.26.740, part.]

**89.30.589 Assessments in general improvement or divisional district—Assessments for prior years—Expense for delinquencies.** Any property which may have escaped assessment for any year or years shall in addition to the assessment for the then current year be assessed for such year or years with the same effect and with the same penalties as are provided for such current year, and any property delinquent in any year may be directly assessed during the current year for any expense caused the district on account of such delinquency. [1927 c 254 § 197; RRS § 7402-197. Formerly RCW 89.26.750.]

**89.30.592 Assessments in general improvement or divisional district—Roll to segregate lands as to counties.** Where the general improvement or divisional district embraces lands lying in more than one county, the assessment roll shall be so arranged that the lands lying in each county shall be segregated and grouped according to the county in which the same are situated. [1927 c 254 § 198; RRS § 7402-198. Formerly RCW 89.26.760.]

**89.30.595 Assessments in general improvement or divisional district—Roll to district board—Notice of equalization.** On or before the first Tuesday in November each year, the secretary shall complete the general improvement or divisional district assessment roll and deliver it to the district board who shall immediately direct the secretary to give a notice thereof and of the time the board of directors, acting as a board of equalization, will meet to equalize assessments, by publication in a newspaper in each of the counties comprising such district. [1927 c 254 § 199; RRS § 7402-199. Formerly RCW 89.26.770.]

**89.30.598 Assessments in general improvement or divisional district—Time for equalization meeting—Inspection of roll.** The time fixed for said meeting shall not be less than twenty nor more than thirty days from the day of the first publication of the notice and in the meantime the assessment roll shall remain in the office of the secretary for the inspection of all persons interested. [1927 c 254 § 200; RRS § 7402-200. Formerly RCW 89.26.780.]

**89.30.601 Assessments in general improvement or divisional district—Hearing before equalization board—Authority.** Upon the day specified in the notice of the meeting of the board of equalization, the board of directors which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from day to day as long as may be necessary, not to exceed ten days exclusive of Sundays, to hear and determine such objections to the valuation and assessment as may come before them and the board may

change the valuation as may be just. [1927 c 254 § 201; RRS § 7402-201. Formerly RCW 89.26.790.]

**89.30.604 Assessments in general improvement or divisional district—Changes on roll to be noted—Completed roll to county treasurers.** The secretary shall be present during the sessions of the board of equalization, and note all changes made in the valuation of property and in the names of the persons whose property is assessed and on or before the first day of January next following, he shall complete the assessment roll as finally equalized by the board and deliver the segregations of the same to the respective county treasurers concerned. [1927 c 254 § 202; RRS § 7402-202. Formerly RCW 89.26.800.]

**89.30.607 Assessments in general improvement or divisional district—Annual levy for bonds and interest.** The board of directors shall in each year before said assessment roll for any general improvement or divisional district herein authorized, is delivered to the respective county treasurers, levy an assessment sufficient to raise the ensuing annual interest on the outstanding bonds issued for the benefit of said district, and shall beginning in the year preceding the maturity of any series of the bonds of any issue, levy an assessment for the ensuing year and from year to year in an amount sufficient to pay and discharge said outstanding bonds as they mature. [1927 c 254 § 203; RRS § 7402-203. Formerly RCW 89.26.830.]

**89.30.610 Assessments in general improvement or divisional district—Levy for contracts with state or United States or for other charges.** Said board shall also levy an assessment sufficient to provide for all payments due or to become due in the ensuing year to the United States or the state of Washington under any contract between the district and the United States or the state of Washington authorized under this chapter. A similar levy of assessment shall be made by the board for any other item chargeable against the lands of such district under the provisions of this chapter. [1927 c 254 § 204; RRS § 7402-204. Formerly RCW 89.26.840.]

**89.30.613 Assessments in general improvement or divisional district—Levy for delinquencies.** The board shall also at the time of making the annual levy for any general improvement or divisional district authorized under this chapter, estimate all probable delinquencies on said levy and shall thereupon levy a sufficient amount to cover the same and a further amount to cover any deficit that may have resulted from any delinquent assessments for any preceding year. [1927 c 254 § 205; RRS § 7402-205. Formerly RCW 89.26.850.]

**89.30.616 Assessments in general improvement or divisional district—Collected assessments to constitute designated special funds.** Assessments against lands in any general improvement or divisional district authorized under this chapter, when collected by the county treasurer shall constitute a special fund or funds as the case may be, to be called respectively, the "bond fund of general improvement or divi-

sional district No. . . .", the "contract fund of general improvement or divisional district No. . . .", the "warrant fund of general improvement or divisional district No. . . .", and any other special fund authorized by law. [1983 c 167 § 261; 1927 c 254 § 206; RRS § 7402-206. Formerly RCW 89.26.860.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**89.30.619 Assessments in general improvement or divisional district—Procedure on failure to deliver roll—Preparation, equalization, levy by county commissioners.** If the annual assessment roll or segregation thereof for any general improvement or divisional district authorized under this chapter, has not been delivered to the respective county treasurers concerned on or before the first day of January following the equalization thereof, any said county treasurer shall immediately notify the secretary of the district by registered mail that unless said roll is delivered to said county treasurer within ten days from the receipt of said notice, the board of county commissioners of the county in which the organization of the reclamation district was effected will cause an assessment roll for the district to be prepared and shall equalize the same if necessary and make the levy required by this chapter. [1927 c 254 § 207; RRS § 7402-207. Formerly RCW 89.26.810.]

**89.30.622 Assessments in general improvement or divisional district—Manner and effect of levy by county commissioners—Expenses.** Any levy of assessments so made by said board of county commissioners shall be made in the same manner and with like effect as if the same had been made and equalized by the board of directors of the reclamation district and all expenses incidental thereto shall be borne by the district. [1927 c 254 § 208; RRS § 7402-208. Formerly RCW 89.26.820.]

**89.30.625 Assessments in general improvement or divisional district—County treasurer may perform duties of district secretary, when.** In case of the neglect or refusal of the secretary of the reclamation district to perform the duties imposed by law, then the treasurer of the county in which the organization of the reclamation district was effected may perform such duties and shall be accountable therefor on his official bond as in other cases. [1927 c 254 § 209; RRS § 7402-209. Formerly RCW 89.22.460.]

**89.30.628 Assessments in general improvement or divisional district—Lien of assessment, when attaches.** The assessment upon the real property in any general improvement or divisional district authorized under this chapter, shall be a lien against the property assessed from and after the first day of March in the year in which it is levied but as between a grantor and a grantee such lien shall not attach until the first Monday of February of the succeeding year. [1927 c 254 § 210; RRS § 7402-210. Formerly RCW 89.28.200.]

**89.30.631 Assessments in general improvement or divisional district—Assessment lien paramount—When**

**extinguished.** The lien for said assessments shall be paramount and superior to any other lien theretofore or thereafter created, whether by mortgage, judgment or otherwise except a lien for prior assessments and for general taxes, and such lien shall not be extinguished until the assessments are paid or the property sold for the payment thereof and deed issued as provided by law. [1927 c 254 § 211; RRS § 7402-211. Formerly RCW 89.28.210.]

**89.30.634 Assessments in general improvement or divisional district—When assessments due and payable—Delinquency date.** The assessments specified in said assessment roll shall become due and payable on the first Monday of February of the year succeeding the equalization of said assessments at the office of each respective county treasurer and said assessments shall become delinquent at five o'clock in the afternoon of the thirty-first day of May thereafter unless fifty percent thereof shall have been paid. [1927 c 254 § 212; RRS § 7402-212. Formerly RCW 89.28.220, part.]

**89.30.637 Assessments in general improvement or divisional district—When assessment delinquent—Interest rate.** If the whole or fifty percent thereof shall not have been paid on or before five o'clock in the afternoon on the thirty-first day of May as above provided, the said assessments shall become delinquent and shall draw interest at the rate of twelve percent per annum until paid. [1927 c 254 § 213; RRS § 7402-213. Formerly RCW 89.28.220, part.]

**89.30.640 Installment payments—Delinquency.** If fifty percent of said assessments against any tract of land is paid on or before five o'clock in the afternoon of the thirty-first day of May aforesaid, then the remainder thereof will not become delinquent until the thirtieth day of November next following. The second installment of assessments shall become delinquent at five o'clock in the afternoon on the thirtieth day of November unless sooner paid and the same interest shall attach thereto as provided in the case of the delinquency of the entire assessment. [1927 c 254 § 214; RRS § 7402-214. Formerly RCW 89.28.230.]

**89.30.643 Installment payments—Assessment book—Contents.** Upon receiving the assessment roll for any general improvement or divisional district authorized herein, the county treasurer shall prepare therefrom an assessment book in which shall be written the descriptions of the land as they appear in the assessment roll, the name of the owner or owners where known, and if assessed to unknown owners then the word "unknown", and the total assessment levied against each tract of land. Proper space shall be provided in said book for the entry therein of all subsequent proceedings relating to the payment and collection of said assessments. [1927 c 254 § 215; RRS § 7402-215. Formerly RCW 89.28.240.]

**89.30.646 Installment payments—Entry of payments—Receipt.** Upon the payment of any said assessment, the county treasurer shall enter the date of payment in said assessment book opposite the description of the land and the name of the person paying, and give a receipt to such person

specifying the amount of the assessment and the amount paid with the description of the property assessed. [1927 c 254 § 216; RRS § 7402-216. Formerly RCW 89.28.250.]

**89.30.649 Installment payments—Statement of assessments levied to be furnished on request.** It shall be the duty of the county treasurer of the county in which any land in the general improvement or divisional district is located, to furnish upon request of the owner or any person interested, a statement showing any and all assessments levied as shown by the assessment roll in his office upon land described in such request and all statements of general taxes covering any land in such district shall be accompanied by a statement showing the condition of district assessments against such lands: PROVIDED, That the failure of the county treasurer to render any statement herein required of him, shall not render invalid any assessments made for any general improvement or divisional district or proceeding had for the enforcement and collection of such assessments pursuant to this chapter. [1927 c 254 § 217; RRS § 7402-217. Formerly RCW 89.28.260.]

**89.30.652 Installment payments—County treasurers to make monthly remittances to district treasurer.** It shall be the duty of the county treasurer of any county other than the county in which the organization of the reclamation district was effected to make monthly remittances to the county treasurer of the county in which the organization of the reclamation district was effected, covering all amounts collected by him for any said general improvement or divisional district during the preceding month. [1927 c 254 § 218; RRS § 7402-218. Formerly RCW 89.22.430.]

**89.30.655 Delinquency and sale in general improvement and divisional districts—List to be posted.** On or before the thirtieth day of June in each year each respective county treasurer concerned shall post the delinquency list which must contain the names of persons and the descriptions of the property delinquent and the amount of assessments, interest and costs opposite each name and the description in all cases where payment of fifty percent or more of the assessment against any tract of land has not been made on or before the thirty-first day of May next preceding. Likewise on or before the fifteenth day of December in each year he must post the delinquency list of all persons delinquent in the payment of the final installment of the fifty percent of said assessments as in this chapter provided. [1927 c 254 § 219; RRS § 7402-219. Formerly RCW 89.28.400.]

**89.30.658 Delinquency and sale in general improvement and divisional districts—Notice of delinquency, contents, posting.** Said county treasurer must append to and post with the delinquency list a notice that unless the assessment delinquent together with interest and costs are paid, the real property upon which said assessments are a lien will be sold at public auction. Said notice and delinquent list shall be posted at least twenty days prior to the date of the sale. One copy thereof shall be posted in the office of the county treasurer making the collection, one copy in the office of the board of directors, and one copy in each of three public places

in the portion of said general improvement or divisional district lying in said county. [1927 c 254 § 220; RRS § 7402-220. Formerly RCW 89.28.410.]

**89.30.661 Delinquency and sale in general improvement and divisional districts—Publication of list of posted places and notice of sale.** Concurrent as nearly as possible with the day of the posting required in the preceding section, the said county treasurer shall publish a list of the places where said notices are posted and in connection therewith a notice that unless said delinquent assessments together with the interest and costs are paid, the real property upon which the said assessments are a lien will be sold at public auction. [1927 c 254 § 221; RRS § 7402-221. Formerly RCW 89.28.420.]

**89.30.664 Delinquency and sale in general improvement and divisional districts—Publication of notices—Contents—Time and place of sale.** Such notice must be published once a week for two successive weeks (three issues) in a newspaper of general circulation published in the county within which the land is located but said notice of publication need not comprise the delinquent list where the same is posted as herein provided. Both notices must designate the time and place of sale. The time of sale must not be less than thirty nor more than forty-five days from the date of posting and from the date of the first publication of the notice thereof and the place must be at some point designated in said notices by said treasurer. [1927 c 254 § 222; RRS § 7402-222. Formerly RCW 89.28.430.]

**89.30.667 Delinquency and sale in general improvement and divisional districts—Sale of land for delinquency.** The treasurer of the county in which the land is situated shall conduct the sale of all land situated therein and must collect the assessments due as shown on the delinquency list together with interest from the date of delinquency at the rate of twelve percent per annum, and the costs of sale. [1927 c 254 § 223; RRS § 7402-223. Formerly RCW 89.28.440.]

**89.30.670 Delinquency and sale in general improvement and divisional districts—How conducted.** On the day fixed for the sale or on some subsequent day to which the treasurer may have postponed it, of which postponement he must give notice at the time of making such postponement, and between the hours of ten o'clock a.m. and three o'clock p.m., the county treasurer making the sale must commence the same beginning at the head of the list and continuing alphabetically or in numerical order of the parcels, lots and blocks until completed. [1927 c 254 § 224; RRS § 7402-224. Formerly RCW 89.28.460.]

**89.30.673 Delinquency and sale in general improvement and divisional districts—Postponement of sale.** The county treasurer may postpone the date of commencing the sale or may postpone the sale from day to day by making oral notice thereof at the time of the postponement, but the sale must be completed within three weeks from the first day

fixed. [1927 c 254 § 225; RRS § 7402-225. Formerly RCW 89.28.450.]

**89.30.676 Delinquency and sale in general improvement and divisional districts—Designation of portion to be sold—Sale by parts.** The owner or person in possession of any real estate offered for sale for assessments thereon may designate in writing to the county treasurer by whom the sale is to be made and prior to the sale, what portion of the property he wishes sold, if less than the whole, but if the owner or possessor does not, then the treasurer may designate it and the person who will take the least quantity of the land or in case an undivided interest is assessed then the smallest portion of the interest, and pay the assessment, interest and cost due including one dollar to the treasurer for a duplicate of the certificate of sale, is the purchaser. The treasurer shall account to the district for said one dollar. [1927 c 254 § 226; RRS § 7402-226. Formerly RCW 89.28.470.]

**89.30.679 Delinquency and sale in general improvement and divisional districts—Resale upon purchaser's default.** If the purchaser does not pay the assessment, interest and costs before ten o'clock a.m. the day following the sale, the property must be resold on the next day for the assessment, interest and costs. [1927 c 254 § 227; RRS § 7402-227. Formerly RCW 89.28.480.]

**89.30.682 Delinquency and sale in general improvement and divisional districts—Reclamation district as purchaser.** In case there is no purchaser in good faith for the property on the first day that the property is offered for sale and if there is no purchaser in good faith when the property is offered thereafter for sale, the whole amount of the property assessed shall be struck off to the reclamation district as the purchaser, and the duplicate certificate shall be held with the original in the office of the county treasurer. [1927 c 254 § 228; RRS § 7402-228. Formerly RCW 89.28.490.]

**89.30.685 Delinquency and sale in general improvement and divisional districts—Entry of sale when district is purchaser—Credit.** In case the district is the purchaser, the treasurer shall make an entry "sold to the district", and he shall receive proper credit for the amount of the sale in his settlement with the district. [1927 c 254 § 229; RRS § 7402-229. Formerly RCW 89.28.500.]

**89.30.688 Delinquency and sale in general improvement and divisional districts—Rights of district as purchaser.** A reclamation district as purchaser at said sale shall be entitled to the same rights as a private purchaser and may assign or transfer the certificate of sale upon the payment of the amount which would be due as redemption were it made by the owner. Such transfer shall be made by the president and secretary of the district on the duplicate certificate which shall be delivered by the county treasurer to the assignee. The assignee shall be required to pay a fee of one dollar for such duplicate certificate. [1927 c 254 § 230; RRS § 7402-230. Formerly RCW 89.28.510.]

**89.30.691 Delinquency and sale in general improvement and divisional districts—Deed to district in absence of redemption—Conveyance.** If no redemption is made of land for which a reclamation district holds a certificate of purchase, the district will be entitled to receive a treasurer's deed therefor in the same manner as a private person would be entitled thereto, and may convey the title so acquired by deed executed by the president and secretary of the board. [1927 c 254 § 231; RRS § 7402-231. Formerly RCW 89.28.820, part.]

**89.30.694 Delinquency and sale in general improvement and divisional districts—Resolution to convey property acquired by district—Price.** Authority to convey any property thus acquired must be conferred by resolution of the board entered on its minutes fixing the price at which such sale may be made. [1927 c 254 § 232; RRS § 7402-232. Formerly RCW 89.28.820, part.]

**89.30.697 Delinquency and sale in general improvement and divisional districts—Lease of property acquired by district.** In the event that the district board shall determine that the best interests of the district will be conserved by the leasing of any property acquired for delinquent assessments, it shall have authority to lease the same for a period not exceeding five years on such terms and conditions as the board may require. [1927 c 254 § 233; RRS § 7402-233. Formerly RCW 89.28.830.]

**89.30.700 Delinquency and sale in general improvement and divisional districts—Disposition of proceeds of sale or lease by district.** All moneys received by the reclamation district for transfers of certificates of sale, or through sale or lease of property acquired on account of sales for delinquent assessments, shall be paid to the county treasurer of the county in which the lands involved are situated and by him credited to the funds for which the assessments were levied in proportion to the right of each fund respectively. [1927 c 254 § 234; RRS § 7402-234. Formerly RCW 89.28.840.]

**89.30.703 Delinquency and sale in general improvement and divisional districts—Reconveyance to person entitled to redemption, when.** When lands have been deeded by the county treasurer to the reclamation district on account of delinquent assessments, if title shall remain vested in the district and if in the judgment of the board of directors said sale for delinquent assessments shall have resulted from unavoidable accident, inadvertency or misfortune and without intent of the owner or persons entitled to make redemption, to permit said assessments to become delinquent and the land to be sold, the board of directors may, pursuant to an order entered upon the minutes of the board, cause said land to be reconveyed to the owner or person entitled to redemption within the period of one year after deed is issued, upon the payment by said owner or person who would have been entitled to make redemption before issuance of deed, of the total amount of assessments, interest and costs, subsequent assessments and an additional penalty of twenty-five percent of the amount for which the land was sold: PROVIDED, That nothing herein contained shall be construed to prevent

the district from selling or leasing property acquired at sales for delinquent assessments immediately after the deed has been delivered to the district. [1927 c 254 § 235; RRS § 7402-235. Formerly RCW 89.28.850.]

**89.30.706 Delinquency and sale in general improvement and divisional districts—Certificate of sale in duplicate, contents.** After receiving the amount of assessments, interest and costs, the county treasurer must make out in duplicate a certificate dated on the day of the sale stating (when known) the names of the persons assessed, a description of the land sold, the amount paid therefor, that it was sold for assessments giving the amount and year of assessment, and specifying the time when the purchaser shall be entitled to a deed. [1927 c 254 § 236; RRS § 7402-236. Formerly RCW 89.28.520.]

**89.30.709 Delinquency and sale in general improvement and divisional districts—Certificate of sale—Form, filing, delivery.** The certificate of sale must be signed by the treasurer making the sale and filed in his office. A duplicate of said certificate shall be delivered to any purchaser, other than the district. [1927 c 254 § 237; RRS § 7402-237. Formerly RCW 89.28.530.]

**89.30.712 Delinquency and sale in general improvement and divisional districts—Certificate of sale may include several tracts.** In case of a sale to a person or a district of more than one parcel or tract of land, the several parcels or tracts may be included in one certificate. [1927 c 254 § 238; RRS § 7402-238. Formerly RCW 89.28.540.]

**89.30.715 Delinquency and sale in general improvement and divisional districts—Entry of sale in assessment book, inspection—Filing certificate.** The county treasurer before delivering any copy of a certificate of sale, must file the same and enter in the assessment book opposite the description of the land sold the date of sale, the purchaser's name and the amount paid therefor, and must regularly number the descriptions on the margin of the assessment book and put a corresponding number on each certificate. Such book must be open to public inspection without fee during office hours when not in actual use. [1927 c 254 § 239; RRS § 7402-239. Formerly RCW 89.28.550.]

**89.30.718 Delinquency and sale in general improvement and divisional districts—Lien of assessment vested in purchaser—When divested.** On filing the certificate of sale as provided herein, the lien of the assessment vests in the purchaser and is only divested by the payment to the county treasurer making the sale of the purchase money, the costs of the certificate, and interest thereon at twelve percent per annum from the date of sale until redemption for the use of the purchaser. [1927 c 254 § 240; RRS § 7402-240. Formerly RCW 89.28.560.]

**89.30.721 Delinquency and sale in general improvement and divisional districts—Redemption of property sold.** A redemption of the property sold may be made by the owner or any person on behalf and in the name of the owner

or by any party in interest within one year from the date of purchase by paying the amount of the purchase price, cost of certificate and interest and the amount of any assessments which any such purchaser may have paid thereon after purchase by him together with like interest on such amount, and if the reclamation district is the purchaser, the redemptioner shall pay in addition to the purchase price and interest, the amount of any assessments levied against said land during the period of redemption and which are at that time delinquent. [1927 c 254 § 241; RRS § 7402-241. Formerly RCW 89.28.700.]

**89.30.724 Delinquency and sale in general improvement and divisional districts—Redemption in coin to treasurer—To whom credited.** Redemption must be made in gold or silver coin, as provided for the collection of state and county taxes, and the county treasurer must credit the amount paid to the person named in the certificate or his assignee and pay it on demand to such person or his assignee. No redemption shall be made except to the county treasurer of the county in which the land is situated. [1927 c 254 § 242; RRS § 7402-242. Formerly RCW 89.28.710.]

**89.30.727 Delinquency and sale in general improvement and divisional districts—Entry of redemption in book and on certificate.** Upon completion of redemption, the county treasurer to whom redemption has been made, shall enter the word "redeemed", the date of redemption and by whom redeemed on the certificate and on the margin of the assessment book where the entry of the certificate is made. [1927 c 254 § 243; RRS § 7402-243. Formerly RCW 89.28.720.]

**89.30.730 Delinquency and sale in general improvement and divisional districts—Deed in absence of redemption, contents.** If the property is not redeemed within one year from the date of sale, the county treasurer of the county in which the land sold is situated, must make to the purchaser or his assignee a deed of the property reciting in the deed substantially the matters contained in the certificate and that no person redeemed the property during the time allowed by law for its redemption. [1927 c 254 § 244; RRS § 7402-244. Formerly RCW 89.28.730.]

**89.30.733 Delinquency and sale in general improvement and divisional districts—Fee for deed—Several parcels may be included in one deed.** The treasurer shall receive from the purchaser for the use of the district one dollar for making such deed. When any person or district holds a duplicate certificate covering more than one tract of land, the several parcels or tracts of land mentioned in the certificate may be included in one deed. [1927 c 254 § 245; RRS § 7402-245. Formerly RCW 89.28.740.]

**89.30.736 Delinquency and sale in general improvement and divisional districts—Recitals in deed—Evidentiary effect.** The matter recited in the certificate of sale must be recited in the deed and such deed duly acknowledged or proved is prima facie evidence that:

- (1) The property was assessed as required by law.

- (2) The property was equalized as required by law.

- (3) The assessments were levied in accordance with law.

- (4) The assessments were not paid.

- (5) At a proper time and place the property was sold as prescribed by law, and by the proper officers.

- (6) The person who executed the deed was the proper officer. [1927 c 254 § 246; RRS § 7402-246. Formerly RCW 89.28.750.]

**89.30.739 Delinquency and sale in general improvement and divisional districts—Deed conclusive, exception.** Such deed duly acknowledged or proved is (except as against actual fraud) conclusive evidence of the regularity of all the proceedings from the assessment by the secretary inclusive up to the execution of the deed. [1927 c 254 § 247; RRS § 7402-247. Formerly RCW 89.28.760.]

**89.30.742 Delinquency and sale in general improvement and divisional districts—Title conveyed by deed.** The deed conveys to the grantee the absolute title to the lands described therein free from all encumbrances except when the land is owned by the United States or the state of Washington in which case it is prima facie evidence of the right of possession. [1927 c 254 § 248; RRS § 7402-248. Formerly RCW 89.28.770.]

**89.30.745 Delinquency and sale in general improvement and divisional districts—Probative force of assessment book and delinquency list.** The assessment book or delinquency list, or a copy thereof, certified by the secretary showing unpaid assessments against any person or property is prima facie evidence of the assessment of the property, the delinquency, the amount of the assessments due and unpaid and that all the forms of law in relation to the assessment and levy of such assessment have been complied with. [1927 c 254 § 249; RRS § 7402-249. Formerly RCW 89.28.570.]

**89.30.748 Delinquency and sale in general improvement and divisional districts—Sale not avoided by misnomer or mistake as to ownership.** When land is sold for assessments correctly imposed as the property of a particular person no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof affects the sale or renders it void or voidable. [1927 c 254 § 250; RRS § 7402-250. Formerly RCW 89.28.780.]

**89.30.751 Foreclosure of lien for general taxes—Payment in full or sale subject to assessments due.** The holder of any certificate of delinquency for general taxes may, before commencing any action to foreclose the lien of such certificate, pay in full all general improvement or divisional district assessments due and outstanding against the whole or any portion of the property included in such certificate of delinquency, and the amount of all assessments so paid together with interest at the rate of twelve percent per annum reckoned from the date of delinquency of said assessments shall be included in the amount for which foreclosure may be had or if said certificate holder elects to foreclose such certificate without paying such assessments, the purchaser at such foreclosure sale shall acquire title to such property subject to

all such district assessments. [1927 c 254 § 251; RRS § 7402-251. Formerly RCW 89.28.790.]

**89.30.754 Liability of county for assessments after sale to county for general taxes.** Property within a general improvement or divisional district authorized under the provisions of this chapter, acquired by a county pursuant to a foreclosure and sale for general taxes, shall, nevertheless, be liable for all assessments levied by the district subsequent to the date of the sale for delinquent general taxes to the county, which assessments the board of county commissioners may at its option pay from the current expense fund of the county or execute and deliver to the district a deed from the county to the district in lieu of the payment of said assessments. [1927 c 254 § 252; RRS § 7402-252. Formerly RCW 89.28.800.]

**89.30.757 Sale of county lands for delinquent assessments.** The county treasurer shall have authority to sell lands, owned by the county, for delinquent assessments levied against the same subsequent to the acquisition of said property by the county in the same manner and with the same force and effect as though said property were owned by a private individual. [1927 c 254 § 253; RRS § 7402-253. Formerly RCW 89.28.810.]

**89.30.760 Special assessments by general improvement or divisional district—Authorization by electors.** Special assessments may be voted by the electors of any general improvement district or divisional district within the reclamation district for any of the purposes for which bonds of the district as herein authorized may be issued. [1927 c 254 § 254; RRS § 7402-254. Formerly RCW 89.28.010.]

**89.30.763 Special assessments by general improvement or divisional district—Levy and collection.** In the event that special assessments are voted by the electors of the district, levy for the same against the lands within such district shall be made on the completion and equalization of the assessment roll each year, which special assessment roll shall be prepared, equalized, the levy made and assessments collected at the same time and in the same manner and by the same officers that the assessment roll is prepared, equalized and assessments collected for the payment of bonds and the district board and other officers shall have the same powers and functions for the purposes of said voted special assessment as possessed by them in case of levy of assessments to pay bonds of the district. [1927 c 254 § 255; RRS § 7402-255. Formerly RCW 89.28.060.]

**89.30.766 Special assessments by general improvement or divisional district—Proposition to be submitted to electors.** When it is desired to levy special assessments for any of the purposes for which bonds of the district may be issued, the proposition to levy such special assessments shall be submitted to the electors of the general improvement district or divisional district as the case may be, at an election called for that purpose. [1927 c 254 § 256; RRS § 7402-256. Formerly RCW 89.28.020.]

**89.30.769 Special assessments by general improvement or divisional district—Election, how called, conducted, etc.** Such election shall be called, provided for, notice thereof given, shall be conducted, and the results thereof canvassed by the same officers in the same manner and with the same force and effect as provided herein for bond elections in such districts. [1927 c 254 § 257; RRS § 7402-257. Formerly RCW 89.28.030.]

**89.30.772 Special assessments by general improvement or divisional district—Notice of election—Ballots.** The notice of election must specify the amount of money proposed to be raised and the purpose for which it is intended to be used and the number of installments in which it is to be paid. The ballot at such election shall contain the words "Assessment—Yes" and "Assessment—No". [1927 c 254 § 258; RRS § 7402-258. Formerly RCW 89.28.040.]

**89.30.775 Special assessments by general improvement or divisional district—Indebtedness authorized.** If the majority of the votes cast at such election are "Assessment—Yes", the board may immediately or at intervals thereafter incur indebtedness to the amount of said special assessment for any of the purposes for which the proceeds of said assessment may be used. [1927 c 254 § 259; RRS § 7402-259. Formerly RCW 89.28.050.]

**89.30.778 Special assessments by general improvement or divisional district—Notes—Terms.** Said board in such event may provide for the payment of said indebtedness by the issue and sale of notes of the district to an amount equal to said authorized indebtedness which notes shall be payable in such equal installments, not exceeding three in number, as the board shall direct. Such notes may be in any form, including bearer notes or registered notes as provided in RCW 39.46.030. Such notes may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 262; 1927 c 254 § 260; RRS § 7402-260. Formerly RCW 89.28.070, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**89.30.781 Special assessments by general improvement or divisional district—Notes payable exclusively by assessments.** Said notes shall be payable exclusively by assessments levied at the time of the regular annual levy each year thereafter until fully paid. All the lands within the general improvement district or divisional district as the case may be, shall be and remain liable to an annual assessment for the payment of said notes with interest until fully paid. [1983 c 167 § 263; 1927 c 254 § 261; RRS § 7402-261. Formerly RCW 89.28.080.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**89.30.784 Special assessments by general improvement or divisional district—Interest on notes.** (1) Notes issued under the provisions of this chapter shall bear interest at a rate or rates authorized by the district board, payable semiannually.

(2) Notwithstanding subsection (1) of this section, such notes may be issued in accordance with chapter 39.46 RCW. [1983 c 167 § 264; 1927 c 254 § 262; RRS § 7402-262. Formerly RCW 89.28.070, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**89.30.787 Tolls for electricity and water—Collection, deposit.** The district board shall have authority to fix and charge tolls for the sale or lease and/or distribution of electric power or water, as herein provided, and to collect said tolls from all persons using such service. All tolls shall be collected by such officer as the board shall designate and shall be deposited monthly with the county treasurer of the county in which the organization of the reclamation district was effected, and shall be credited to such fund of the district as the district board shall designate. [1933 c 149 § 18; 1927 c 254 § 263; RRS § 7402-263. Formerly RCW 89.26.040.]

**89.30.790 Tolls for electricity and water—Toll collector's bond.** Any officer of the district collecting tolls as herein provided, shall be required to give a surety bond in double the probable amount of monthly collections conditioned that he will faithfully account to the reclamation district for all tolls collected under the provisions of this chapter. [1927 c 254 § 264; RRS § 7402-264. Formerly RCW 89.26.050.]

**89.30.793 Jurisdiction of courts.** At the instance of the board of directors of any reclamation district created under this chapter, the superior court of the state of Washington shall have original jurisdiction to judicially examine, approve and confirm any or all proceedings pertaining to the organization of the reclamation district or of any general improvement or divisional district therein, and any or all proceedings had or contemplated in the exercise of any of the functions or powers of any of such districts. [1927 c 254 § 265; RRS § 7402-265. Formerly RCW 89.24.700.]

**89.30.796 Jurisdiction of courts—Petition for judicial determination.** For the purpose of securing such judicial determination, the board of directors of the reclamation district shall file in the superior court of the county in which the lands of said district or some portion thereof are situated, a petition praying in effect that the proceedings aforesaid be examined, approved and confirmed by the court. [1927 c 254 § 266; RRS § 7402-266. Formerly RCW 89.24.710, part.]

**89.30.799 Jurisdiction of courts—Contents of petition.** The petition shall state the facts generally showing the proceedings which are sought to be judicially examined. [1927 c 254 § 267; RRS § 7402-267. Formerly RCW 89.24.710, part.]

**89.30.802 Jurisdiction of courts—Notice of hearing of petition.** The court shall fix a time for the hearing of said petition and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall mention the time and place fixed for the hearing of the petition and the prayer of the petition, and shall state that any per-

son interested in said proceedings may on or before the day fixed for the hearing of said petition demur to or answer the same. [1927 c 254 § 268; RRS § 7402-268. Formerly RCW 89.24.720.]

**89.30.805 Jurisdiction of courts—Notice, how given and published.** The notice shall be given and published in the same manner and for the same length of time as that required herein for the notice of hearing on the petition to organize a reclamation district. [1927 c 254 § 269; RRS § 7402-269. Formerly RCW 89.24.730.]

**89.30.808 Jurisdiction of courts—Demurrer or answer to petition.** Any person interested in the proceedings sought to be judicially examined may demur to or answer said petition. [1927 c 254 § 270; RRS § 7402-270. Formerly RCW 89.24.750.]

**89.30.811 Jurisdiction of courts—Rules which govern.** The rules of pleading, practice and appeal provided by the statutes of this state which are not inconsistent with any of the provisions herein, are applicable to and shall govern the special proceedings for the judicial examination and determination of any of the district proceedings aforesaid. [1927 c 254 § 271; RRS § 7402-271. Formerly RCW 89.24.740.]

**89.30.814 Jurisdiction of courts—Motion and order for new trial.** A motion for a new trial must be made upon the minutes of the court. The order granting a new trial must specify the issues to be reexamined on such new trial and the findings of the court upon the other issues shall not be affected by such order granting a new trial. [1927 c 254 § 272; RRS § 7402-272. Formerly RCW 89.24.780.]

**89.30.817 Jurisdiction of courts—Action in rem—Power of court.** Said action shall be one in rem against all persons claiming any right or interest in the proceedings concerned and upon the hearing of such special proceedings the court shall have full power and jurisdiction to examine and determine the legality and validity of and to approve and confirm each and all of the proceedings mentioned in the petition seeking judicial determination and all other proceedings which may affect the proceedings in question. [1927 c 254 § 273; RRS § 7402-273. Formerly RCW 89.24.760.]

**89.30.820 Jurisdiction of courts—Errors disregarded—Approval in whole or part.** The court in inquiring into the regularity, legality and correctness of said proceedings, must disregard any error, determination or omission which does not affect the substantial rights of the parties to said special proceedings and it may approve and confirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings. [1927 c 254 § 274; RRS § 7402-274. Formerly RCW 89.24.770.]

**89.30.823 Jurisdiction of courts—Conclusiveness of judgment.** The judgment rendered in such action unless appealed from within the time prescribed herein and upon final judgment upon appeal, shall be conclusive as to all matters determined by the court in said action against every per-

son including those under disability as well as those free from disability. [1927 c 254 § 275; RRS § 7402-275. Formerly RCW 89.24.800.]

**89.30.826 Jurisdiction of courts—Costs.** The cost of the special judicial proceedings authorized herein may be allowed and apportioned between all of the parties in the discretion of the court. [1927 c 254 § 276; RRS § 7402-276. Formerly RCW 89.24.810.]

**89.30.829 Jurisdiction of courts—Time for appeal.** An appeal from an order granting or refusing a new trial or from the judgment in said action must be taken by the parties aggrieved within thirty days after the entry of said order or said judgment. [1927 c 254 § 277; RRS § 7402-277. Formerly RCW 89.24.790.]

**89.30.832 Liberal construction.** The provisions of this chapter and all proceedings thereunder shall be liberally construed with a view to effect their objects. [1927 c 254 § 278; RRS § 7402-278.]

**89.30.835 Severability—1927 c 254.** If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional. [1927 c 254 § 279; RRS § 7402-279.]

# Title 90

## WATER RIGHTS—ENVIRONMENT

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- 90.08** Stream patrolmen.
- 90.14** Water rights—Registration—Waiver and relinquishment, etc.
- 90.16** Appropriation of water for public and industrial purposes.
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## Chapter 90.03 RCW WATER CODE

### Sections

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**Prior acts on this subject:** Code 1881 c 141; 1889 pp 706-728 §§ 1-67, 1889 p 728 § 1; 1889 p 729 §§ 1-2; 1891 c 142; 1899 c 131; 1901 cc 30, 33, 36; 1903 c 53; 1907 c 144; and 1909 c 209.

(2006 Ed.)

*Aquifer protection areas: Chapter 36.36 RCW.*

**90.03.005 State water policy—Cooperation with other agencies—Reduction of wasteful practices.** It is the policy of the state to promote the use of the public waters in a fashion which provides for obtaining maximum net benefits arising from both diversionary uses of the state's public waters and the retention of waters within streams and lakes in sufficient quantity and quality to protect instream and natural values and rights. Consistent with this policy, the state supports economically feasible and environmentally sound development of physical facilities through the concerted efforts of the state with the United States, public corporations, Indian tribes, or other public or private entities. Further, based on the tenet of water law which precludes wasteful practices in the exercise of rights to the use of waters, the department of ecology shall reduce these practices to the maximum extent practicable, taking into account sound principles of water management, the benefits and costs of improved water use efficiency, and the most effective use of public and private funds, and, when appropriate, to work to that end in concert with the agencies of the United States and other public and private entities. [1989 c 348 § 2; 1979 ex.s. c 216 § 8.]

**Severability—1989 c 348:** See note following RCW 90.54.020.

**Rights not impaired—1989 c 348:** See RCW 90.54.920.

**Effective date—Severability—1979 ex.s. c 216:** See notes following RCW 90.03.245.

**90.03.010 Appropriation of water rights—Existing rights preserved.** The power of the state to regulate and control the waters within the state shall be exercised as hereinafter in this chapter provided. Subject to existing rights all waters within the state belong to the public, and any right thereto, or to the use thereof, shall be hereafter acquired only by appropriation for a beneficial use and in the manner provided and not otherwise; and, as between appropriations, the first in time shall be the first in right. Nothing contained in this chapter shall be construed to lessen, enlarge, or modify the existing rights of any riparian owner, or any existing right acquired by appropriation, or otherwise. They shall, however, be subject to condemnation as provided in RCW 90.03.040, and the amount and priority thereof may be determined by the procedure set out in RCW 90.03.110 through 90.03.240. [1917 c 117 § 1; RRS § 7351. Prior: 1891 p 127 § 1. Formerly RCW 90.04.020.]

**90.03.015 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Director" means the director of ecology.

(3) "Municipal water supplier" means an entity that supplies water for municipal water supply purposes.

(4) "Municipal water supply purposes" means a beneficial use of water: (a) For residential purposes through fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year; (b) for governmental or governmental proprietary purposes by a city, town, public utility district, county, sewer

district, or water district; or (c) indirectly for the purposes in (a) or (b) of this subsection through the delivery of treated or raw water to a public water system for such use. If water is beneficially used under a water right for the purposes listed in (a), (b), or (c) of this subsection, any other beneficial use of water under the right generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes. If a governmental entity holds a water right that is for the purposes listed in (a), (b), or (c) of this subsection, its use of water or its delivery of water for any other beneficial use generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes.

(5) "Person" means any firm, association, water users' association, corporation, irrigation district, or municipal corporation, as well as an individual. [2003 1st sp.s. c 5 § 1; 1987 c 109 § 65.]

**Severability—2003 1st sp.s. c 5:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 5 § 19.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.020 Units of water measurement.** The legally recognized units of water measurement shall be as follows: For flowing water—one cubic foot of water per second of time, and to be designated "secondfoot." For absolute volume or quantity of water—forty-three thousand five hundred sixty cubic feet of water, and to be designated "acrefoot." [1917 c 117 § 2; RRS § 7352. Prior: 1890 p 729 § 1. Formerly RCW 90.04.010, part.]

**90.03.030 Right to convey water along lake or stream—Conveyance to intake structure in neighboring state.** Any person may convey any water which he or she may have a right to use along any of the natural streams or lakes of this state, but not so as to raise the water thereof above ordinary highwater mark, without making just compensation to persons injured thereby; but due allowance shall be made for evaporation and seepage, the amount of such seepage to be determined by the department, upon the application of any person interested. Water conveyed under this section may be conveyed to an approved intake structure located in a neighboring state in order to accomplish an approved modification of the point of diversion in a permit to appropriate water for a beneficial use, if approval of the neighboring state is documented to the satisfaction of the department. [1999 c 232 § 3; 1987 c 109 § 68; 1917 c 117 § 3; RRS § 7353. Formerly RCW 90.28.050.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.040 Eminent domain—Use of water declared public use.** The beneficial use of water is hereby declared to

be a public use, and any person may exercise the right of eminent domain to acquire any property or rights now or hereafter existing when found necessary for the storage of water for, or the application of water to, any beneficial use, including the right to enlarge existing structures employed for the public purposes mentioned in this chapter and use the same in common with the former owner, and including the right and power to condemn an inferior use of water for a superior use. In condemnation proceedings the court shall determine what use will be for the greatest public benefit, and that use shall be deemed a superior one: PROVIDED, That no property right in water or the use of water shall be acquired hereunder by condemnation for irrigation purposes, which shall deprive any person of such quantity of water as may be reasonably necessary for the irrigation of his land then under irrigation to the full extent of the soil, by the most economical method of artificial irrigation applicable to such land according to the usual methods of artificial irrigation employed in the vicinity where such land is situated. In any case, the court shall determine what is the most economical method of irrigation. Such property or rights shall be acquired in the manner provided by law for the taking of private property for public use by private corporations. [1917 c 117 § 4; RRS § 7354. Formerly RCW 90.04.030.]

*Eminent domain by corporations: Chapter 8.20 RCW.*

**90.03.050 Powers and duties of director of ecology through the division of water resources.** See RCW 43.21A.064.

**90.03.060 Water masters—Appointment, compensation.** (1) Water masters shall be appointed by the department whenever it shall find the interests of the state or of the water users to require them. The districts for or in which the water masters serve shall be designated water master districts, which shall be fixed from time to time by the department, as required, and they shall be subject to revision as to boundaries or to complete abandonment as local conditions may indicate to be expedient, the spirit of this provision being that no district shall be created or continued where the need for the same does not exist. Water masters shall be supervised by the department, shall be compensated for services from funds of the department, and shall be technically qualified to the extent of understanding the elementary principals of hydraulics and irrigation, and of being able to make water measurements in streams and in open and closed conduits of all characters, by the usual methods employed for that purpose. Counties and municipal and public corporations of the state are authorized to contribute moneys to the department to be used as compensation to water masters in carrying out their duties. All such moneys received by the department shall be used exclusively for said purpose.

(2) A water master may be appointed by the department for a watershed management area for which a plan adopted by a planning unit and by the counties with territory in the watershed management area under RCW 90.82.130 contains a requirement or request that a water master be appointed, subject to availability of state or nonstate funding. [1999 c 237 § 1; 1987 c 109 § 69; 1967 c 80 § 1; 1947 c 123 § 2; 1917

c 117 § 9; Rem. Supp. 1947 § 7359. Formerly RCW 90.08.010.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Stream patrolmen (approval, supervision of, by water masters): Chapter 90.08 RCW.*

**90.03.070 Water masters—Duties—Office space and equipment—Clerical assistance.** It shall be the duty of the water master, acting under the direction of the department, to divide in whole or in part, the water supply of his district among the several water conduits and reservoirs using said supply, according to the right and priority of each, respectively. He shall divide, regulate and control the use of water within his district by such regulation of headgates, conduits and reservoirs as shall be necessary to prevent the use of water in excess of the amount to which the owner of the right is lawfully entitled. Whenever, in the pursuance of his duties, the water master regulates a headgate of a water conduit or the controlling works of a reservoir, he shall attach to such headgate or controlling works a written notice, properly dated and signed, stating that such headgate or controlling works has been properly regulated and is wholly under his control and such notice shall be a legal notice to all parties. In addition to dividing the available waters and supervising the stream patrolmen in his district, he shall enforce such rules and regulations as the department shall from time to time prescribe.

The county or counties in which water master districts are created shall depute the water masters appointed hereunder, and may without charge provide to each water master suitable office space, supplies, equipment and clerical assistance as are necessary to the water master in the performance of his duties. [1987 c 109 § 70; 1967 c 80 § 2; 1917 c 117 § 10; RRS § 7360. Formerly RCW 90.08.020.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Water master's power of arrest: RCW 90.03.090.*

**90.03.090 Water master's power of arrest.** The water master shall have the power, within his or her district, to arrest any person in the act of violating any of the provisions of this chapter and to deliver such person promptly into the custody of the sheriff or other competent officer within the county and immediately upon such delivery the water master making the arrest shall, in writing and upon oath, make complaint before the proper district judge against the person so arrested. [1987 c 202 § 250; 1917 c 117 § 12; RRS § 7362. Formerly RCW 90.08.030.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**90.03.100 Prosecuting attorney, legal assistant.** It shall be the duty of the prosecuting attorney of any county to appear for or on behalf of the department or any water master, upon request of any such officer in any case which may arise in the performance of the official duties of any such officer within the jurisdiction of said prosecuting attorney. [1987 c 109 § 71; 1917 c 117 § 13; RRS § 7363.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Attorney general to represent state, agencies, etc.: RCW 43.10.040.*

(2006 Ed.)

*Prosecuting attorney, duties: RCW 36.27.020(3), (4).*

**90.03.105 Petition by planning units for general adjudication.** The legislature finds that the lack of certainty regarding water rights within a water resource basin may impede management and planning for water resources. The legislature further finds that planning units conducting water resource planning under chapter 90.82 RCW may find that the certainty provided by a general adjudication of water rights under this chapter is required for water planning or water management in a water resource inventory area or in a portion of the area. Therefore, such planning units may petition the department to conduct such a general adjudication and the department shall give high priority to such a request in initiating any such general adjudications under this chapter. [1997 c 442 § 301.]

**Part headings not law—Severability—1997 c 442:** See RCW 90.82.900 and 90.82.901.

**90.03.110 Determination of water rights—Petition—Statement and plan.** Upon the filing of a petition with the department by one or more persons claiming the right to divert any waters within the state or when, after investigation, in the judgment of the department, the interest of the public will be subserved by a determination of the rights thereto, it shall be the duty of the department to prepare a statement of the facts, together with a plan or map of the locality under investigation, and file such statement and plan or map in the superior court of the county in which said water is situated, or, in case such water flows or is situated in more than one county, in the county which the department shall determine to be the most convenient to the parties interested therein. Such statement shall contain substantially the following matter, to wit:

(1) The names of all known persons claiming the right to divert said water, the right to the diversion of which is sought to be determined, and

(2) A brief statement of the facts in relation to such water, and the necessity for a determination of the rights thereto. [1987 c 109 § 72; 1917 c 117 § 14; RRS § 7364. Formerly RCW 90.12.010.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Additional powers and duties enumerated—Payment for from reclamation account: RCW 89.16.055.*

*Application of RCW sections to specific proceedings: RCW 90.14.200.*

*Schedule of fees: RCW 90.03.470.*

**90.03.120 Determination of water rights—Order—Summons—Necessary parties.** Upon the filing of the statement and map as provided in RCW 90.03.110 the judge of such superior court shall make an order directing summons to be issued, and fixing the return day thereof, which shall be not less than sixty nor more than ninety days, after the making of such order: PROVIDED, That for good cause, the court, at the request of the department, may modify said time period. A summons shall thereupon be issued out of said superior court, signed and attested by the clerk thereof, in the name of the state of Washington, as plaintiff, against all known persons claiming the right to divert the water involved and also all persons unknown claiming the right to divert the

water involved, which said summons shall contain a brief statement of the objects and purpose of the proceedings and shall require the defendants to appear on the return day thereof, and make and file a statement of claim to, or interest in, the water involved and a statement that unless they appear at the time and place fixed and assert such right, judgment will be entered determining their rights according to the evidence: PROVIDED, HOWEVER, That any persons claiming the right to the use of water by virtue of a contract with claimant to the right to divert the same, shall not be necessary parties to the proceeding. [1987 c 109 § 73; 1977 ex.s. c 357 § 1; 1917 c 117 § 15; RRS § 7365. Formerly RCW 90.12.020.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.130 Determination of water rights—Service of summons.** Service of said summons shall be made in the same manner and with the same force and effect as service of summons in civil actions commenced in the superior courts of the state: PROVIDED, That for good cause, the court, at the request of the department, as an alternative to personal service, may authorize service of summons to be made by certified mail, with return receipt signed by defendant, a spouse of a defendant, or another person authorized to accept service. If the defendants, or either of them, cannot be found within the state of Washington, of which the return of the sheriff of the county in which the proceeding is pending shall be prima facie evidence, upon the filing of an affidavit by the department, or its attorney, in conformity with the statute relative to the service of summons by publication in civil actions, such service may be made by publication in a newspaper of general circulation in the county in which such proceeding is pending, and also publication of said summons in a newspaper of general circulation in each county in which any portion of the water is situated, once a week for six consecutive weeks (six publications). In cases where personal service can be had, such summons shall be served at least twenty days before the return day thereof. The summons by publication shall state that statements of claim must be filed within twenty days after the last publication or before the return date, whichever is later.

Personal service of summons may be made by department of ecology employees for actions pertaining to water rights. [1987 c 109 § 74; 1979 ex.s. c 216 § 2; 1977 ex.s. c 357 § 2; 1929 c 122 § 1; 1917 c 117 § 16; RRS § 7366. Formerly RCW 90.12.030.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**Effective date—Severability—1979 ex.s. c 216:** See notes following RCW 90.03.245.

*Commencement of actions (service of summons): Chapter 4.28 RCW.*

*Manner of publication and form of summons: RCW 4.28.110.*

*Service of summons by publication—When authorized: RCW 4.28.100.*

**90.03.140 Determination of water rights—Statement by defendants.** On or before the return day of such summons, each defendant shall file in the office of the clerk of said court a statement, and therewith a copy thereof for the department, containing substantially the following:

- (1) The name and post office address of defendant.

- (2) The full nature of the right, or use, on which the claim is based.

- (3) The time of initiation of such right and commencement of such use.

- (4) The date of beginning and completion of construction.

- (5) The dimensions and capacity of all ditches existing at the time of making said statement.

- (6) The amount of land under irrigation and the maximum quantity of water used thereon prior to the date of said statement and if for power, or other purposes, the maximum quantity of water used prior to date of said statement.

- (7) The legal description of the land upon which said water has been, or may be, put to beneficial use, and the legal description of the subdivision of land on which the point of diversion is located.

Such statement shall be verified on oath by the defendant, and in the discretion of the court may be amended. [1987 c 109 § 75; 1929 c 122 § 2; 1917 c 117 § 17; RRS § 7367. Formerly RCW 90.12.040.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.150 Determination of water rights—Guardian ad litem for defendant.** Whenever any defendant in any proceeding instituted under this chapter is an infant, or an alleged incompetent or disabled person for whom the court has not yet appointed either a guardian or a limited guardian, the court shall appoint a guardian ad litem for such minor or alleged incompetent or disabled defendant. [1977 ex.s. c 80 § 75; 1917 c 117 § 18; RRS § 7368. Formerly RCW 90.12.050.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

*Guardian ad litem*

*for infant: RCW 4.08.050.*

*for incapacitated person: RCW 4.08.060.*

**90.03.160 Determination of water rights—Referral to department.** Upon the completion of the service of summons as hereinbefore provided, the superior court in which said proceeding is pending shall make an order referring said proceeding to the department to take testimony by its duly authorized designee, as referee, and the designee shall report to and file with the superior court of the county in which such cause is pending a transcript of such testimony for adjudication thereon by such court. The superior court may, in any complex case with more than one thousand named defendants, including the United States, retain for hearing and further processing such portions of the proceeding as pertain to a discrete class or classes of defendants or claims of water rights if the court determines that: (1) Resolution of claims of such classes appear to involve significant issues of law, either procedural or substantive; and (2) such a retention will both expedite the conclusion of the case and reduce the overall expenditures of the plaintiff, defendants, and the court. [1989 c 80 § 1; 1987 c 109 § 76; 1917 c 117 § 19; RRS § 7369. Formerly RCW 90.12.060.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.170 Determination of water rights—Hearing—Notice—Prior rights preserved.** Thereupon the department shall fix a time and place for such hearing and serve written notice thereof upon all persons who have appeared in said proceeding, their agents or attorneys. Notice of such hearing shall be served at least ten days before the time fixed therefor. Such hearings may be adjourned from time to time and place to place. The duly authorized designee shall have authority to subpoena witnesses and administer oaths in the same manner and with the same powers as referees in civil actions. The fees and mileage of witnesses shall be advanced by the party at whose instance they are called as in civil actions. A final decree adjudicating rights or priorities, entered in any case decided prior to June 6, 1917, shall be conclusive among the parties thereto and the extent of use so determined shall be prima facie evidence of rights to the amount of water and priorities so fixed as against any person not a party to said decree. [1987 c 109 § 77; 1917 c 117 § 20; RRS § 7370. Formerly RCW 90.12.070.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Civil procedure—Costs:* Chapter 4.84 RCW.

*Courts of record—Witnesses:* Chapter 2.40 RCW.

*Trial procedure—Powers of referee:* RCW 4.48.060.

**90.03.180 Determination of water rights—Statement by defendants—Filing fee.** At the time of filing the statement as provided in RCW 90.03.140, each defendant shall pay to the clerk of the superior court a fee as set under RCW 36.18.020. [1995 c 292 § 21; 1982 c 15 § 2; 1979 ex.s. c 216 § 3; 1929 c 122 § 3; 1919 c 71 § 2; 1917 c 117 § 21; RRS § 7371. Formerly RCW 90.12.080, part.]

**Effective date—Severability—1979 ex.s. c 216:** See notes following RCW 90.03.245.

**90.03.190 Determination of water rights—Transcript of testimony—Filing—Notice of hearing.** Upon the completion of the taking of testimony it shall be the duty of the department's designee to prepare and file with the clerk of the superior court where such proceeding is pending, a transcript of the testimony taken at such hearing, in triplicate, together with all papers and exhibits offered and received in evidence and not already a part of the record. He shall also make and file in said court a full and complete report as in other cases of reference in the superior court. Two of said transcripts shall be for the use of the parties as the court may direct. The court shall set a time for the hearing and the designee shall thereupon prepare a notice designating a time for the hearing of said report and serve a copy thereof, together with a copy of his report, on all persons, their agents or attorneys who have appeared in such proceeding. Such service shall be made not less than twenty days before the time for said hearing, either personally or by registered mail, and an affidavit of such service filed with the clerk. [1987 c 109 § 78; 1917 c 117 § 22; RRS § 7372. Formerly RCW 90.12.090.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.200 Determination of water rights—Exceptions to report—Decree—Appellate review.** Upon the fil-

ing of the evidence and the report of the department, any interested party may, on or before five days prior to the date of said hearing, file exceptions to such report in writing and such exception shall set forth the grounds therefor and a copy thereof shall be served personally or by registered mail upon all parties who have appeared in the proceeding. If no exceptions be filed, the court shall enter a decree determining the rights of the parties according to the evidence and the report of the department, whether such parties have appeared therein or not. If exceptions are filed the action shall proceed as in case of reference of a suit in equity and the court may in its discretion take further evidence or, if necessary, remand the case for such further evidence to be taken by the department's designee, and may require further report by him. Costs, not including taxable attorneys fees, may be allowed or not; if allowed, may be apportioned among the parties in the discretion of the court. Appellate review of the decree shall be in the same manner as in other cases in equity, except that review must be sought within sixty days from the entry thereof. [1988 c 202 § 91; 1987 c 109 § 79; 1971 c 81 § 176; 1917 c 117 § 23; RRS § 7373. Formerly RCW 90.12.100.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.210 Determination of water rights—Interim regulation of water—Appeals.** (1) During the pendency of such adjudication proceedings prior to judgment or upon review by an appellate court, the stream or other water involved shall be regulated or partially regulated according to the schedule of rights specified in the department's report upon an order of the court authorizing such regulation: PROVIDED, Any interested party may file a bond and obtain an order staying the regulation of said stream as to him, in which case the court shall make such order regarding the regulation of the stream or other water as he may deem just. The bond shall be filed within five days following the service of notice of appeal in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court.

(2) Any appeal of a decision of the department on an application to change or transfer a water right subject to a general adjudication that is being litigated actively and was commenced before October 13, 1977, shall be conducted as follows:

(a) The appeal shall be filed with the court conducting the adjudication and served under RCW 34.05.542(3). The content of the notice of appeal shall conform to RCW 34.05.546. Standing to appeal shall be based on the requirements of RCW 34.05.530 and is not limited to parties to the adjudication.

(b) If the appeal includes a challenge to the portion of the department's decision that pertains to tentative determinations of the validity and extent of the water right, review of those tentative determinations shall be conducted by the court consistent with the provisions of RCW 34.05.510 through 34.05.598, except that the review shall be de novo.

(c) If the appeal includes a challenge to any portion of the department's decision other than the tentative determinations of the validity and extent of the right, the court must certify to the pollution control hearings board for review and

decision those portions of the department's decision. Review by the pollution control hearings board shall be conducted consistent with chapter 43.21B RCW and the board's implementing regulations, except that the requirements for filing, service, and content of the notice of appeal shall be governed by (a) of this subsection.

(d) Appeals shall be scheduled to afford all parties full opportunity to participate before the superior court and the pollution control hearings board.

(e) Any person wishing to appeal the decision of the board made under (c) of this subsection shall seek review of the decision in accordance with chapter 34.05 RCW, except that the petition for review must be filed with the superior court conducting the adjudication.

(3) Nothing in this section shall be construed to affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under federal law. Nothing in this section is intended or shall be construed as affecting or modifying any existing right of a federally recognized Indian tribe to protect from impairment its federally reserved water rights in federal court. [2001 c 220 § 5; 1988 c 202 § 92; 1987 c 109 § 80; 1921 c 103 § 1; RRS § 7374. Formerly RCW 90.12.110.]

**Intent—Construction—Effective date—2001 c 220:** See notes following RCW 43.21B.110.

**Severability—1988 c 202:** See note following RCW 2.24.050.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.220 Determination of water rights—Failure to appear—Estoppel.** Whenever proceedings shall be instituted for the determination of the rights to the use of water, any defendant who shall fail to appear in such proceedings, after legal service, and submit proof of his claim, shall be estopped from subsequently asserting any right to the use of such water embraced in such proceeding, except as determined by such decree. [1917 c 117 § 24; RRS § 7375. Formerly RCW 90.12.120.]

**90.03.230 Determination of water rights—Copy of decree to director.** The clerk of the superior court, immediately upon the entry of any decree by the superior court, shall transmit a certified copy thereof to the director, who shall immediately enter the same upon the records of the department. [1987 c 109 § 81; 1917 c 117 § 25; RRS § 7376. Formerly RCW 90.12.130.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.240 Determination of water rights—Diversion certificate.** Upon the final determination of the rights to the diversion of water it shall be the duty of the department to issue to each person entitled to the diversion of water by such determination, a certificate under his official seal, setting forth the name and post office address of such person; the priority and purpose of the right; the period during which said right may be exercised, the point of diversion and the place of use; the land to which said water right is appurtenant and when applicable the maximum quantity of water allowed. [1987 c 109 § 82; 1917 c 117 § 26; RRS § 7377. Formerly RCW 90.12.140.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.243 Determination of water rights—State to bear its expenses, when.** The expenses incurred by the state in a proceeding to determine rights to water initiated under RCW 90.03.110 or 90.44.220 or upon appeal of such a determination shall be borne by the state. [1982 c 15 § 1.]

**90.03.245 Determination of water rights—Scope.** Rights subject to determination proceedings conducted under RCW 90.03.110 through 90.03.240 and 90.44.220 include all rights to the use of water, including all diversionary and instream water rights, and include rights to the use of water claimed by the United States.

Nothing in this section may be construed as establishing or creating any new rights to the use of water. This section relates exclusively to the confirmation of water rights established or created under other provisions of state law or under federal laws. [1979 ex.s. c 216 § 1.]

**Effective date—1979 ex.s. c 216:** "Section 2 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [June 4, 1979]." [1979 ex.s. c 216 § 12.]

**Severability—1979 ex.s. c 216:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 216 § 13.]

**90.03.247 Minimum flows and levels—Departmental authority exclusive—Other recommendations considered.** Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to protect the levels or flows. No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to \*RCW 77.55.100 and chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section. In establishing such minimum flows, levels, or similar restrictions, the department shall, during all stages of development by the department of ecology of minimum flow proposals, consult with, and carefully consider the recommendations of, the department of fish and wildlife, the department of community, trade, and economic development, the department of agriculture, and representatives of the affected Indian tribes. Nothing herein shall preclude the department of fish and wildlife, the department of community, trade, and economic development, or the department of agriculture from presenting its views on minimum flow needs at any public hearing or to any person or agency, and the department of fish and wildlife, the department of community, trade, and economic development, and the department of agriculture are each empowered to participate in proceedings of the federal energy regulatory commission and other agencies to present its views on minimum flow needs. [2003 c 39 § 48; 1996 c 186 § 523; 1994 c 264 § 82.]

Prior: 1987 c 506 § 95; 1987 c 505 § 81; 1980 c 87 § 46; 1979 ex.s. c 166 § 1.]

\*Reviser's note: RCW 77.55.100 was repealed by 2005 c 146 § 1006.

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**90.03.250 Appropriation procedure—Application for permit—Temporary permit.** Any person, municipal corporation, firm, irrigation district, association, corporation or water users' association hereafter desiring to appropriate water for a beneficial use shall make an application to the department for a permit to make such appropriation, and shall not use or divert such waters until he has received a permit from the department as in this chapter provided. The construction of any ditch, canal or works, or performing any work in connection with said construction or appropriation, or the use of any waters, shall not be an appropriation of such water nor an act for the purpose of appropriating water unless a permit to make said appropriation has first been granted by the department: PROVIDED, That a temporary permit may be granted upon a proper showing made to the department to be valid only during the pendency of such application for a permit unless sooner revoked by the department: PROVIDED, FURTHER, That nothing in this chapter contained shall be deemed to affect RCW 90.40.010 through 90.40.080 except that the notice and certificate therein provided for in RCW 90.40.030 shall be addressed to the department, and the department shall exercise the powers and perform the duties prescribed by RCW 90.40.030. [1987 c 109 § 83; 1917 c 117 § 27; RRS § 7378. Formerly RCW 90.20.010.]

**Purpose—Short title—Construction—Rules—Severability—Capitions—1987 c 109:** See notes following RCW 43.21B.001.

*Schedule of fees:* RCW 90.03.470.

**90.03.252 Use of reclaimed water by wastewater treatment facility—Permit requirements inapplicable.** The permit requirements of RCW 90.03.250 do not apply to the use of reclaimed water by the owner of a wastewater treatment facility under the provisions of RCW 90.46.120 and do not apply to the use of agricultural industrial process water as provided under RCW 90.46.150. [2001 c 69 § 6; 1997 c 444 § 2.]

**Severability—1997 c 444:** See note following RCW 90.46.010.

**90.03.255 Applications for water right, transfer, or change—Consideration of water impoundment or other resource management technique.** The department shall, when evaluating an application for a water right, transfer, or change filed pursuant to RCW 90.03.250 or 90.03.380 that includes provision for any water impoundment or other resource management technique, take into consideration the benefits and costs, including environmental effects, of any water impoundment or other resource management technique that is included as a component of the application. The department's consideration shall extend to any increased water supply that results from the impoundment or other resource management technique, including but not limited to any recharge of ground water that may occur, as a means of making water available or otherwise offsetting the impact of

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the diversion of surface water proposed in the application for the water right, transfer, or change. Provision for an impoundment or other resource management technique in an application shall be made solely at the discretion of the applicant and shall not otherwise be made by the department as a condition for approving an application that does not include such provision.

This section does not lessen, enlarge, or modify the rights of any riparian owner, or any existing water right acquired by appropriation or otherwise. [1997 c 360 § 2; 1996 c 306 § 1.]

**Findings—Purpose—1997 c 360:** "The legislature finds that in many basins in the state there is water available on a seasonal basis that is in excess of the needs of either existing water right holders or instream resources. The legislature finds that excess waters often result in significant flooding and damage to public and private resources. Further, it is in the public interest to encourage the impoundment of excess water and other measures that can be used to offset the impact of withdrawals and diversions on existing rights and instream resources. Further, in some areas of the state additional supplies of water are needed to meet the needs of a growing economy and population. The legislature finds there is a range of alternatives that offset the impacts that should be encouraged including the creation, restoration, enhancement, or enlargement of ponds, wetlands, and reservoirs and the artificial recharge of aquifers.

The purpose of this act is to foster the improvement in the water supplies available to meet the needs of the state. It is the goal of this act to strengthen the state's economy while maintaining and improving the overall quality of the state's environment." [1997 c 360 § 1.]

**90.03.260 Appropriation procedure—Application—Contents.** (1) Each application for permit to appropriate water shall set forth the name and post office address of the applicant, the source of water supply, the nature and amount of the proposed use, the time during which water will be required each year, the location and description of the proposed ditch, canal, or other work, the time within which the completion of the construction and the time for the complete application of the water to the proposed use.

(2) If for agricultural purposes, the application shall give the legal subdivision of the land and the acreage to be irrigated, as near as may be, and the amount of water expressed in acre feet to be supplied per season. If for power purposes, it shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied.

(3) If for construction of a reservoir, the application shall give the height of the dam, the capacity of the reservoir, and the uses to be made of the impounded waters.

(4) If for community or multiple domestic water supply, the application shall give the projected number of service connections sought to be served. However, for a municipal water supplier that has an approved water system plan under chapter 43.20 RCW or an approval from the department of health to serve a specified number of service connections, the service connection figure in the application or any subsequent water right document is not an attribute limiting exercise of the water right as long as the number of service connections to be served under the right is consistent with the approved water system plan or specified number.

(5) If for municipal water supply, the application shall give the present population to be served, and, as near as may be estimated, the future requirement of the municipality. However, for a municipal water supplier that has an approved water system plan under chapter 43.20 RCW or an approval

from the department of health to serve a specified number of service connections, the population figures in the application or any subsequent water right document are not an attribute limiting exercise of the water right as long as the population to be provided water under the right is consistent with the approved water system plan or specified number.

(6) If for mining purposes, the application shall give the nature of the mines to be served and the method of supplying and utilizing the water; also their location by legal subdivisions.

(7) All applications shall be accompanied by such maps and drawings, in duplicate, and such other data, as may be required by the department, and such accompanying data shall be considered as a part of the application. [2003 1st sp.s. c 5 § 4; 1987 c 109 § 84; 1917 c 117 § 28; RRS § 7379. Formerly RCW 90.20.020.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Height of dams on tributaries of Columbia river:* RCW 77.55.191.

**90.03.265 Appropriation procedure—Cost-reimbursement agreement for expedited review of application.**

Any applicant for a new withdrawal or a change, transfer, or amendment of a water right pending before the department, may initiate a cost-reimbursement agreement with the department to provide expedited review of the application. A cost-reimbursement agreement may only be initiated under this section if the applicant agrees to pay for, or as part of a cooperative effort agrees to pay for, the cost of processing his or her application and all other applications from the same source of supply which must be acted upon before the applicant's request because they were filed prior to the date of when the applicant filed. The department shall use the process established under RCW 43.21A.690 for entering into cost-reimbursement agreements. [2003 c 70 § 6; 2000 c 251 § 7.]

**Intent—Captions not law—Effective date—2000 c 251:** See notes following RCW 43.21A.690.

**90.03.270 Appropriation procedure—Record of application.** Upon receipt of an application it shall be the duty of the department to make an endorsement thereon of the date of its receipt, and to keep a record of same. If upon examination, the application is found to be defective, it shall be returned to the applicant for correction or completion, and the date and the reasons for the return thereof shall be endorsed thereon and made a record in his office. No application shall lose its priority of filing on account of such defects, provided acceptable maps, drawings and such data as is required by the department shall be filed with the department within such reasonable time as it shall require. [1987 c 109 § 85; 1917 c 117 § 29; RRS § 7380. Formerly RCW 90.20.030.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.280 Appropriation procedure—Notice.** Upon receipt of a proper application, the department shall instruct the applicant to publish notice thereof in a form and within a time prescribed by the department in a newspaper of general

circulation published in the county or counties in which the storage, diversion, and use is to be made, and in such other newspapers as the department may direct, once a week for two consecutive weeks. Upon receipt by the department of an application it shall send notice thereof containing pertinent information to the director of fish and wildlife. [1994 c 264 § 83; 1988 c 36 § 65; 1987 c 109 § 66; 1953 c 275 § 1; 1939 c 127 § 1; 1925 ex.s. c 161 § 1; 1917 c 117 § 30; RRS § 7381. Formerly RCW 90.20.040.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.290 Appropriation procedure—Department to investigate—Preliminary permit—Findings and action on application.**

(1) When an application complying with the provisions of this chapter and with the rules of the department has been filed, the same shall be placed on record with the department, and it shall be its duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the department shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation. If it is proposed to appropriate water for the purpose of power development, the department shall investigate, determine and find whether the proposed development is likely to prove detrimental to the public interest, having in mind the highest feasible use of the waters belonging to the public.

(2)(a) If the application does not contain, and the applicant does not promptly furnish sufficient information on which to base such findings, the department may issue a preliminary permit, for a period of not to exceed three years, requiring the applicant to make such surveys, investigations, studies, and progress reports, as in the opinion of the department may be necessary. If the applicant fails to comply with the conditions of the preliminary permit, it and the application or applications on which it is based shall be automatically canceled and the applicant so notified. If the holder of a preliminary permit shall, before its expiration, file with the department a verified report of expenditures made and work done under the preliminary permit, which, in the opinion of the department, establishes the good faith, intent, and ability of the applicant to carry on the proposed development, the preliminary permit may, with the approval of the governor, be extended, but not to exceed a maximum period of five years from the date of the issuance of the preliminary permit.

(b) For any application for which a preliminary permit was issued and for which the availability of water was directly affected by a moratorium on further diversions from the Columbia river during the years from 1990 to 1998, the preliminary permit is extended through June 30, 2002. If such an application and preliminary permit were canceled during the moratorium, the application and preliminary permit shall be reinstated until June 30, 2002, if the application and permit: (i) Are for providing regional water supplies in more than one urban growth area designated under chapter 36.70A RCW and in one or more areas near such urban growth areas, or the application and permit are modified for providing such supplies, and (ii) provide or are modified to provide such regional supplies through the use of existing intake or diver-

sion structures. The authority to modify such a canceled application and permit to accomplish the objectives of (b)(i) and (ii) of this subsection is hereby granted.

(3) The department shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, it shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: PROVIDED, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be duty of the department to reject such application and to refuse to issue the permit asked for.

(4) If the permit is refused because of conflict with existing rights and such applicant shall acquire same by purchase or condemnation under RCW 90.03.040, the department may thereupon grant such permit. Any application may be approved for a less amount of water than that applied for, if there exists substantial reason therefor, and in any event shall not be approved for more water than can be applied to beneficial use for the purposes named in the application. In determining whether or not a permit shall issue upon any application, it shall be the duty of the department to investigate all facts relevant and material to the application. After the department approves said application in whole or in part and before any permit shall be issued thereon to the applicant, such applicant shall pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the event a permit is issued by the department upon any application, it shall be its duty to notify the director of fish and wildlife of such issuance. [2001 c 239 § 1; 1994 c 264 § 84; 1988 c 36 § 66; 1987 c 109 § 86; 1947 c 133 § 1; 1939 c 127 § 2; 1929 c 122 § 4; 1917 c 117 § 31; Rem. Supp. 1947 § 7382. Formerly RCW 90.20.050 and 90.20.060.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Inapplicability of section to RCW 90.03.290: RCW 90.14.200.*

**90.03.300 Appropriation procedure—Diversion of water for out-of-state use—Reciprocity.** No permit for the appropriation of water shall be denied because of the fact that the point of diversion described in the application for such permit, or any portion of the works in such application described and to be constructed for the purpose of storing, conserving, diverting or distributing such water, or because the place of intended use or the lands to be irrigated by means of such water, or any part thereof, may be situated in some other state or nation, but in all such cases where either the point of diversion or any of such works or the place of intended use, or the lands, or part of the lands, to be irrigated by means of such water, are situated within the state of Washington, the permit shall issue as in other cases: PROVIDED,

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HOWEVER, That the department may in its discretion, decline to issue a permit where the point of diversion described in the application is within the state of Washington but the place of beneficial use in some other state or nation, unless under the laws of such state or nation water may be lawfully diverted within such state or nation for beneficial use in the state of Washington. [1987 c 109 § 87; 1921 c 103 § 3; RRS § 7383. Formerly RCW 90.20.070.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.310 Appropriation procedure—Assignability of permit or application.** Any permit to appropriate water may be assigned subject to the conditions of the permit, but no such assignment shall be binding or valid unless filed for record with the department. Any application for permits to appropriate water prior to permit issuing, may be assigned by the applicant, but no such assignment shall be valid or binding unless the written consent of the department is first obtained thereto, and unless such assignment is filed for record with the department. [1987 c 109 § 88; 1917 c 117 § 32; RRS § 7384. Prior: 1891 c 142 § 6. Formerly RCW 90.20.080.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.320 Appropriation procedure—Construction work.** Actual construction work shall be commenced on any project for which permit has been granted within such reasonable time as shall be prescribed by the department, and shall thereafter be prosecuted with diligence and completed within the time prescribed by the department. The department, in fixing the time for the commencement of the work, or for the completion thereof and the application of the water to the beneficial use prescribed in the permit, shall take into consideration the cost and magnitude of the project and the engineering and physical features to be encountered, and shall allow such time as shall be reasonable and just under the conditions then existing, having due regard for the public welfare and public interests affected. For good cause shown, the department shall extend the time or times fixed as aforesaid, and shall grant such further period or periods as may be reasonably necessary, having due regard to the good faith of the applicant and the public interests affected. Good cause includes prevention or restriction of water use by operation of federal laws for the time or times fixed for commencing work, completing work, and applying water to beneficial use otherwise authorized under a water right permit issued for a federal reclamation project. In fixing construction schedules and the time, or extension of time, for application of water to beneficial use for municipal water supply purposes, the department shall also take into consideration the term and amount of financing required to complete the project, delays that may result from planned and existing conservation and water use efficiency measures implemented by the public water system, and the supply needs of the public water system's service area, consistent with an approved comprehensive plan under chapter 36.70A RCW, or in the absence of such a plan, a county-approved comprehensive plan under chapter 36.70 RCW or a plan approved under chapter 35.63 RCW, and related water demand projections prepared by

public water systems in accordance with state law. An existing comprehensive plan under chapter 36.70A or 36.70 RCW, plan under chapter 35.63 RCW, or demand projection may be used. If the terms of the permit or extension thereof, are not complied with the department shall give notice by registered mail that such permit will be canceled unless the holders thereof shall show cause within sixty days why the same should not be so canceled. If cause is not shown, the permit shall be canceled. [1999 c 400 § 1; 1997 c 445 § 3; 1987 c 109 § 67; 1917 c 117 § 33; RRS § 7385. Formerly RCW 90.20.090.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.330 Appropriation procedure—Water right certificate.** (1) Upon a showing satisfactory to the department that any appropriation has been perfected in accordance with the provisions of this chapter, it shall be the duty of the department to issue to the applicant a certificate stating such facts in a form to be prescribed by the director, and such certificate shall thereupon be recorded with the department. Any original water right certificate issued, as provided by this chapter, shall be recorded with the department and thereafter, at the expense of the party receiving the same, be transmitted by the department to the county auditor of the county or counties where the distributing system or any part thereof is located, and be recorded in the office of such county auditor, and thereafter be transmitted to the owner thereof.

(2) Except as provided for the issuance of certificates under RCW 90.03.240 and for the issuance of certificates following the approval of a change, transfer, or amendment under RCW 90.03.380 or 90.44.100, the department shall not revoke or diminish a certificate for a surface or ground water right for municipal water supply purposes as defined in RCW 90.03.015 unless the certificate was issued with ministerial errors or was obtained through misrepresentation. The department may adjust such a certificate under this subsection if ministerial errors are discovered, but only to the extent necessary to correct the ministerial errors. The department may diminish the right represented by such a certificate if the certificate was obtained through a misrepresentation on the part of the applicant or permit holder, but only to the extent of the misrepresentation. The authority provided by this subsection does not include revoking, diminishing, or adjusting a certificate based on any change in policy regarding the issuance of such certificates that has occurred since the certificate was issued. This subsection may not be construed as providing any authority to the department to revoke, diminish, or adjust any other water right.

(3) This subsection applies to the water right represented by a water right certificate issued prior to September 9, 2003, for municipal water supply purposes as defined in RCW 90.03.015 where the certificate was issued based on an administrative policy for issuing such certificates once works for diverting or withdrawing and distributing water for municipal supply purposes were constructed rather than after the water had been placed to actual beneficial use. Such a water right is a right in good standing.

(4) After September 9, 2003, the department must issue a new certificate under subsection (1) of this section for a water right represented by a water right permit only for the

perfected portion of a water right as demonstrated through actual beneficial use of water. [2003 1st sp.s. c 5 § 6; 1987 c 109 § 89; 1929 c 122 § 5; 1917 c 117 § 34; RRS § 7386. Formerly RCW 90.20.100.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.340 Appropriation procedure—Effective date of water right.** The right acquired by appropriation shall relate back to the date of filing of the original application with the department. [1987 c 109 § 90; 1917 c 117 § 35; RRS § 7387. Formerly RCW 90.20.110.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.345 Establishment of reservations of water for certain purposes and minimum flows or levels as constituting appropriations with priority dates.** The establishment of reservations of water for agriculture, hydroelectric energy, municipal, industrial, and other beneficial uses under RCW 90.54.050(1) or minimum flows or levels under RCW 90.22.010 or 90.54.040 shall constitute appropriations within the meaning of this chapter with priority dates as of the effective dates of their establishment. Whenever an application for a permit to make beneficial use of public waters embodied in a reservation, established after September 1, 1979, is filed with the department of ecology after the effective date of such reservation, the priority date for a permit issued pursuant to an approval by the department of ecology of the application shall be the effective date of the reservation. [1979 ex.s. c 216 § 7.]

**Effective date—Severability—1979 ex.s. c 216:** See notes following RCW 90.03.245.

**90.03.350 Construction or modification of storage dam—Plans and specifications—Additional dam safety inspection requirements for metals mining and milling operations.** Except as provided in RCW 43.21A.068, any person, corporation or association intending to construct or modify any dam or controlling works for the storage of ten acre feet or more of water, shall before beginning said construction or modification, submit plans and specifications of the same to the department for examination and approval as to its safety. Such plans and specifications shall be submitted in duplicate, one copy of which shall be retained as a public record, by the department, and the other returned with its approval or rejection endorsed thereon. No such dam or controlling works shall be constructed or modified until the same or any modification thereof shall have been approved as to its safety by the department. Any such dam or controlling works constructed or modified in any manner other than in accordance with plans and specifications approved by the department or which shall not be maintained in accordance with the order of the department shall be presumed to be a public nuisance and may be abated in the manner provided by law, and it shall be the duty of the attorney general or prosecuting attorney of the county wherein such dam or controlling works, or the major portion thereof, is situated to institute abatement proceedings against the owner or owners of such

dam or controlling works, whenever he or she is requested to do so by the department.

A metals mining and milling operation regulated under chapter 232, Laws of 1994 is subject to additional dam safety inspection requirements due to the special hazards associated with failure of a tailings pond impoundment. The department shall inspect these impoundments at least quarterly during the project's operation and at least annually thereafter for the postclosure monitoring period in order to ensure the safety of the dam or controlling works. The department shall conduct additional inspections as needed during the construction phase of the mining operation in order to ensure the safe construction of the tailings impoundment. [1995 c 8 § 6; 1994 c 232 § 20; 1987 c 109 § 91; 1955 c 362 § 1; 1939 c 107 § 1; 1917 c 117 § 36; RRS § 7388. Formerly RCW 90.28.060.] [1954 SLC-RO-18.]

**Findings—1995 c 8:** See note following RCW 43.21A.064.

**Severability—1994 c 232:** See RCW 78.56.900.

**Effective date—1994 c 232 §§ 6-8 and 18-22:** See RCW 78.56.902.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Height of dams on tributaries of Columbia river:* RCW 77.55.191.

### **90.03.360 Controlling works and measuring devices—Metering of diversions—Impact on fish stock.**

(1) The owner or owners of any water diversion shall maintain, to the satisfaction of the department of ecology, substantial controlling works and a measuring device constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the department, any measuring device necessary to ascertain the natural flow into and out of said reservoir.

Metering of diversions or measurement by other approved methods shall be required as a condition for all new surface water right permits, and except as provided in subsection (2) of this section, may be required as a condition for all previously existing surface water rights. The department may also require, as a condition for all water rights, metering of diversions, and reports regarding such metered diversions as to the amount of water being diverted. Such reports shall be in a form prescribed by the department.

(2) Where water diversions are from waters in which the salmonid stock status is depressed or critical, as determined by the department of fish and wildlife, or where the volume of water being diverted exceeds one cubic foot per second, the department shall require metering or measurement by other approved methods as a condition for all new and previously existing water rights or claims. The department shall attempt to integrate the requirements of this subsection into its existing compliance workload priorities, but shall prioritize the requirements of this subsection ahead of the existing compliance workload where a delay may cause the decline of wild salmonids. The department shall notify the department of fish and wildlife of the status of fish screens associated with these diversions.

This subsection (2) shall not apply to diversions for public or private hatcheries or fish rearing facilities if the diverted water is returned directly to the waters from which it

was diverted. [1994 c 264 § 85; 1993 sp.s. c 4 § 12; 1989 c 348 § 6; 1987 c 109 § 92; 1917 c 117 § 37; RRS § 7389. Formerly RCW 90.28.070.]

**Findings—Grazing lands—1993 sp.s. c 4:** See RCW 79.13.600.

**Severability—1989 c 348:** See note following RCW 90.54.020.

**Rights not impaired—1989 c 348:** See RCW 90.54.920.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Instream flows:* RCW 90.22.060.

### **90.03.370 Reservoir permits—Secondary permits—Expedited processing—Underground artificial storage and recovery project standards and rules—Exemptions—Report to the legislature.**

(1)(a) All applications for reservoir permits are subject to the provisions of RCW 90.03.250 through 90.03.320. But the party or parties proposing to apply to a beneficial use the water stored in any such reservoir shall also file an application for a permit, to be known as the secondary permit, which shall be in compliance with the provisions of RCW 90.03.250 through 90.03.320. Such secondary application shall refer to such reservoir as its source of water supply and shall show documentary evidence that an agreement has been entered into with the owners of the reservoir for a permanent and sufficient interest in said reservoir to impound enough water for the purposes set forth in said application. When the beneficial use has been completed and perfected under the secondary permit, the department shall take the proof of the water users under such permit and the final certificate of appropriation shall refer to both the ditch and works described in the secondary permit and the reservoir described in the primary permit. The department may accept for processing a single application form covering both a proposed reservoir and a proposed secondary permit or permits for use of water from that reservoir.

(b) The department shall expedite processing applications for the following types of storage proposals:

(i) Development of storage facilities that will not require a new water right for diversion or withdrawal of the water to be stored;

(ii) Adding or changing one or more purposes of use of stored water;

(iii) Adding to the storage capacity of an existing storage facility; and

(iv) Applications for secondary permits to secure use from existing storage facilities.

(c) A secondary permit for the beneficial use of water shall not be required for use of water stored in a reservoir where the water right for the source of the stored water authorizes the beneficial use.

(2)(a) For the purposes of this section, "reservoir" includes, in addition to any surface reservoir, any naturally occurring underground geological formation where water is collected and stored for subsequent use as part of an underground artificial storage and recovery project. To qualify for issuance of a reservoir permit an underground geological formation must meet standards for review and mitigation of adverse impacts identified, for the following issues:

(i) Aquifer vulnerability and hydraulic continuity;

(ii) Potential impairment of existing water rights;

(iii) Geotechnical impacts and aquifer boundaries and characteristics;

(iv) Chemical compatibility of surface waters and ground water;

(v) Recharge and recovery treatment requirements;

(vi) System operation;

(vii) Water rights and ownership of water stored for recovery; and

(viii) Environmental impacts.

(b) Standards for review and standards for mitigation of adverse impacts for an underground artificial storage and recovery project shall be established by the department by rule. Notwithstanding the provisions of RCW 90.03.250 through 90.03.320, analysis of each underground artificial storage and recovery project and each underground geological formation for which an applicant seeks the status of a reservoir shall be through applicant-initiated studies reviewed by the department.

(3) For the purposes of this section, "underground artificial storage and recovery project" means any project in which it is intended to artificially store water in the ground through injection, surface spreading and infiltration, or other department-approved method, and to make subsequent use of the stored water. However, (a) this subsection does not apply to irrigation return flow, or to operational and seepage losses that occur during the irrigation of land, or to water that is artificially stored due to the construction, operation, or maintenance of an irrigation district project, or to projects involving water reclaimed in accordance with chapter 90.46 RCW; and (b) RCW 90.44.130 applies to those instances of claimed artificial recharge occurring due to the construction, operation, or maintenance of an irrigation district project or operational and seepage losses that occur during the irrigation of land, as well as other forms of claimed artificial recharge already existing at the time a ground water subarea is established.

(4) Nothing in chapter 98, Laws of 2000 changes the requirements of existing law governing issuance of permits to appropriate or withdraw the waters of the state.

(5) The department shall report to the legislature by December 31, 2001, on the standards for review and standards for mitigation developed under subsection (3) of this section and on the status of any applications that have been filed with the department for underground artificial storage and recovery projects by that date.

(6) Where needed to ensure that existing storage capacity is effectively and efficiently used to meet multiple purposes, the department may authorize reservoirs to be filled more than once per year or more than once per season of use.

(7) This section does not apply to facilities to recapture and reuse return flow from irrigation operations serving a single farm under an existing water right as long as the acreage irrigated is not increased beyond the acreage allowed to be irrigated under the water right.

(8) In addition to the facilities exempted under subsection (7) of this section, this section does not apply to small irrigation impoundments. For purposes of this section, "small irrigation impoundments" means lined surface storage ponds less than ten acre feet in volume used to impound irrigation water under an existing water right where use of the impoundment: (a)(i) Facilitates efficient use of water; or (ii) promotes compliance with an approved recovery plan for

endangered or threatened species; and (b) does not expand the number of acres irrigated or the annual consumptive quantity of water used. Such ponds must be lined unless a licensed engineer determines that a liner is not needed to retain water in the pond and to prevent ground water contamination. Although it may also be composed of other materials, a properly maintained liner may be composed of bentonite. Water remaining in a small irrigation impoundment at the end of an irrigation season may be carried over for use in the next season. However, the limitations of this subsection (8) apply. Development and use of a small irrigation impoundment does not constitute a change or amendment for purposes of RCW 90.03.380 or 90.44.055. [2003 c 329 § 1; 2002 c 329 § 10; 2000 c 98 § 3; 1987 c 109 § 93; 1917 c 117 § 38; RRS § 7390. Formerly RCW 90.28.080.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.380 Right to water attaches to land—Transfer or change in point of diversion—Transfer of rights from one district to another—Priority of water rights applications—Exemption for small irrigation impoundments.**

(1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therewith the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water.

(2) If an application for change proposes to transfer water rights from one irrigation district to another, the department shall, before publication of notice, receive concurrence

from each of the irrigation districts that such transfer or change will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of either of the districts.

(3) A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district, and when water is provided by an irrigation entity that is a member of a board of joint control created under chapter 87.80 RCW, approval need only be received from the board of joint control if the use of water continues within the area of jurisdiction of the joint board and the change can be made without detriment or injury to existing rights.

(4) This section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

(5)(a) Pending applications for new water rights are not entitled to protection from impairment, injury, or detriment when an application relating to an existing surface or ground water right is considered.

(b) Applications relating to existing surface or ground water rights may be processed and decisions on them rendered independently of processing and rendering decisions on pending applications for new water rights within the same source of supply without regard to the date of filing of the pending applications for new water rights.

(c) Notwithstanding any other existing authority to process applications, including but not limited to the authority to process applications under WAC 173-152-050 as it existed on January 1, 2001, an application relating to an existing surface or ground water right may be processed ahead of a previously filed application relating to an existing right when sufficient information for a decision on the previously filed application is not available and the applicant for the previously filed application is sent written notice that explains what information is not available and informs the applicant that processing of the next application will begin. The previously filed application does not lose its priority date and if the information is provided by the applicant within sixty days, the previously filed application shall be processed at that time. This subsection (5)(c) does not affect any other existing authority to process applications.

(d) Nothing in this subsection (5) is intended to stop the processing of applications for new water rights.

(6) No applicant for a change, transfer, or amendment of a water right may be required to give up any part of the applicant's valid water right or claim to a state agency, the trust water rights program, or to other persons as a condition of processing the application.

(7) In revising the provisions of this section and adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

(8) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection

shall not be construed as requiring a change or transfer of any existing water right to enable the holder of the right to store water governed by the right. [2003 c 329 § 2; 2001 c 237 § 5; 1997 c 442 § 801; 1996 c 320 § 19; 1991 c 347 § 15; 1987 c 109 § 94; 1929 c 122 § 6; 1917 c 117 § 39; RRS § 7391. Formerly RCW 90.28.090.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**Part headings not law—Severability—1997 c 442:** See RCW 90.82.900 and 90.82.901.

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**Severability—1991 c 347:** See RCW 90.42.900.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Application to Yakima river basin trust water rights: RCW 90.38.040.*

### **90.03.383 Interties—Findings—Definitions—Review and approval.**

(1) The legislature recognizes the value of interties for improving the reliability of public water systems, enhancing their management, and more efficiently utilizing the increasingly limited resource. Given the continued growth in the most populous areas of the state, the increased complexity of public water supply management, and the trend toward regional planning and regional solutions to resource issues, interconnections of public water systems through interties provide a valuable tool to ensure reliable public water supplies for the citizens of the state. Public water systems have been encouraged in the past to utilize interties to achieve public health and resource management objectives. The legislature finds that it is in the public interest to recognize interties existing and in use as of January 1, 1991, and to have associated water rights modified by the department of ecology to reflect current use of water through those interties, pursuant to subsection (3) of this section. The legislature further finds it in the public interest to develop a coordinated process to review proposals for interties commencing use after January 1, 1991.

(2) For the purposes of this section, the following definitions shall apply:

(a) "Interties" are interconnections between public water systems permitting exchange or delivery of water between those systems for other than emergency supply purposes, where such exchange or delivery is within established instantaneous and annual withdrawal rates specified in the systems' existing water right permits or certificates, or contained in claims filed pursuant to chapter 90.14 RCW, and which results in better management of public water supply consistent with existing rights and obligations. Interties include interconnections between public water systems permitting exchange or delivery of water to serve as primary or secondary sources of supply, but do not include development of new sources of supply to meet future demand.

(b) "Service area" is the area designated in a water system plan or a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW respectively. When a public water system does not have a designated service area subject to the approval process of those chapters, the service area shall be the designated place of use contained in the water right permit or certificate, or contained in the claim filed pursuant to chapter 90.14 RCW.

(3) Public water systems with interties existing and in use as of January 1, 1991, or that have received written approval from the department of health prior to that date, shall file written notice of those interties with the department of health and the department of ecology. The notice may be incorporated into the public water system's five-year update of its water system plan, but shall be filed no later than June 30, 1996. The notice shall identify the location of the intertie; the dates of its first use; the purpose, capacity, and current use; the intertie agreement of the parties and the service areas assigned; and other information reasonably necessary to modify the water right permit. Notwithstanding the provisions of RCW 90.03.380 and 90.44.100, for public water systems with interties existing and in use as of January 1, 1991, the department of ecology, upon receipt of notice meeting the requirements of this subsection, shall, as soon as practicable, modify the place of use descriptions in the water right permits, certificates, or claims to reflect the actual use through such interties, provided that the place of use is within service area designations established in a water system plan approved pursuant to chapter 43.20 RCW, or a coordinated water system plan approved pursuant to chapter 70.116 RCW, and further provided that the water used is within the instantaneous and annual withdrawal rates specified in the water right permit and that no outstanding complaints of impairment to existing water rights have been filed with the department of ecology prior to September 1, 1991. Where such complaints of impairment have been received, the department of ecology shall make all reasonable efforts to resolve them in a timely manner through agreement of the parties or through available administrative remedies.

(4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100, exchange or delivery of water through interties commencing use after January 1, 1991, shall be permitted when the intertie improves overall system reliability, enhances the manageability of the systems, provides opportunities for conjunctive use, or delays or avoids the need to develop new water sources, and otherwise meets the requirements of this section, provided that each public water system's water use shall not exceed the instantaneous or annual withdrawal rate specified in its water right authorization, shall not adversely affect existing water rights, and shall not be inconsistent with state-approved plans such as water system plans or other plans which include specific proposals for construction of interties. Interties commencing use after January 1, 1991, shall not be inconsistent with regional water resource plans developed pursuant to chapter 90.54 RCW.

(5) For public water systems subject to the approval process of chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties commencing use after January 1, 1991, shall be incorporated into water system plans pursuant to chapter 43.20 RCW or coordinated water system plans pursuant to chapter 70.116 RCW and submitted to the department of health and the department of ecology for review and approval as provided for in subsections (5) through (9) of this section. The plan shall state how the proposed intertie will improve overall system reliability, enhance the manageability of the systems, provide opportunities for conjunctive use, or delay or avoid the need to develop new water sources.

(6) The department of health shall be responsible for review and approval of proposals for new interties. In its

review the department of health shall determine whether the intertie satisfies the criteria of subsection (4) of this section, with the exception of water rights considerations, which are the responsibility of the department of ecology, and shall determine whether the intertie is necessary to address emergent public health or safety concerns associated with public water supply.

(7) If the intertie is determined by the department of health to be necessary to address emergent public health or safety concerns associated with public water supply, the public water system shall amend its water system plan as required and shall file an application with the department of ecology to change its existing water right to reflect the proposed use of the water as described in the approved water system plan. The department of ecology shall process the application for change pursuant to RCW 90.03.380 or 90.44.100 as appropriate, except that, notwithstanding the requirements of those sections regarding notice and protest periods, applicants shall be required to publish notice one time, and the comment period shall be fifteen days from the date of publication of the notice. Within sixty days of receiving the application, the department of ecology shall issue findings and advise the department of health if existing water rights are determined to be adversely affected. If no determination is provided by the department of ecology within the sixty-day period, the department of health shall proceed as if existing rights are not adversely affected by the proposed intertie. The department of ecology may obtain an extension of the sixty-day period by submitting written notice to the department of health and to the applicant indicating a definite date by which its determination will be made. No additional extensions shall be granted, and in no event shall the total review period for the department of ecology exceed one hundred eighty days.

(8) If the department of health determines the proposed intertie appears to meet the requirements of subsection (4) of this section but is not necessary to address emergent public health or safety concerns associated with public water supply, the department of health shall instruct the applicant to submit to the department of ecology an application for change to the underlying water right or claim as necessary to reflect the new place of use. The department of ecology shall consider the applications pursuant to the provisions of RCW 90.03.380 and 90.44.100 as appropriate. If in its review of proposed interties and associated water rights the department of ecology determines that additional information is required to act on the application, the department may request applicants to provide information necessary for its decision, consistent with agency rules and written guidelines. Parties disagreeing with the decision of the department of ecology on the application for change in place of use may appeal the decision to the pollution control hearings board.

(9) The department of health may approve plans containing intertie proposals prior to the department of ecology's decision on the water right application for change in place of use. However, notwithstanding such approval, construction work on the intertie shall not begin until the department of ecology issues the appropriate water right document to the applicant consistent with the approved plan. [1991 c 350 § 1.]

**90.03.386 Coordination of approval procedures for compliance and consistency with approved water system plan.** (1) Within service areas established pursuant to chapter 43.20 or 70.116 RCW, the department of ecology and the department of health shall coordinate approval procedures to ensure compliance and consistency with the approved water system plan or small water system management program.

(2) The effect of the department of health's approval of a planning or engineering document that describes a municipal water supplier's service area under chapter 43.20 RCW, or the local legislative authority's approval of service area boundaries in accordance with procedures adopted pursuant to chapter 70.116 RCW, is that the place of use of a surface water right or ground water right used by the supplier includes any portion of the approved service area that was not previously within the place of use for the water right if the supplier is in compliance with the terms of the water system plan or small water system management program, including those regarding water conservation, and the alteration of the place of use is not inconsistent, regarding an area added to the place of use, with: Any comprehensive plans or development regulations adopted under chapter 36.70A RCW; any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county; or any watershed plan approved under chapter 90.82 RCW, or a comprehensive watershed plan adopted under RCW 90.54.040(1) after September 9, 2003, if such a watershed plan has been approved for the area.

(3) A municipal water supplier must implement cost-effective water conservation in accordance with the requirements of RCW 70.119A.180 as part of its approved water system plan or small water system management program. In preparing its regular water system plan update, a municipal water supplier with one thousand or more service connections must describe: (a) The projects, technologies, and other cost-effective measures that comprise its water conservation program; (b) improvements in the efficiency of water system use resulting from implementation of its conservation program over the previous six years; and (c) projected effects of delaying the use of existing inchoate rights over the next six years through the addition of further cost-effective water conservation measures before it may divert or withdraw further amounts of its inchoate right for beneficial use. When establishing or extending a surface or ground water right construction schedule under RCW 90.03.320, the department must take into consideration the public water system's use of conserved water. [2003 1st sp.s. c 5 § 5; 1991 c 350 § 2.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**90.03.390 Temporary changes—Emergency interties—Rotation in use.** RCW 90.03.380 shall not be construed to prevent water users from making a seasonal or temporary change of point of diversion or place of use of water when such change can be made without detriment to existing rights, but in no case shall such change be made without the permission of the water master of the district in which such proposed change is located, or of the department. Nor shall RCW 90.03.380 be construed to prevent construction of emergency interties between public water systems to permit exchange of water during short-term emergency situations, or rotation in the use of water for bringing about a more eco-

nomical use of the available supply, provided however, that the department of health in consultation with the department of ecology shall adopt rules or develop written guidelines setting forth standards for determining when a short-term emergency exists and the circumstances in which emergency interties are permitted. The rules or guidelines shall be consistent with the procedures established in RCW 43.83B.400 through 43.83B.420. Water users owning lands to which water rights are attached may rotate in the use of water to which they are collectively entitled, or an individual water user having lands to which are attached water rights of a different priority, may in like manner rotate in use when such rotation can be made without detriment to other existing water rights, and has the approval of the water master or department. [1991 c 350 § 3; 1987 c 109 § 95; 1929 c 122 § 7; RRS § 7391a. Formerly RCW 90.28.100.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.395 Change of point of diversion to downstream intake structure—Intent.** The legislature intends to allow modification of the point of diversion in a water right permit when such a modification will provide both environmental benefits and water supply benefits and nothing in RCW 90.03.397 is to be construed as allowing any other change or transfer of a right to the use of surface water which has not been applied to a beneficial use. [1999 c 232 § 1.]

**90.03.397 Change of point of diversion to downstream intake structure—Conditions for approval.** The department may approve a change of the point of diversion prescribed in a permit to appropriate water for a beneficial use to a point of diversion that is located downstream and is an existing approved intake structure with capacity to transport the additional diversion, if the ownership, purpose of use, season of use, and place of use of the permit remain the same.

This section may not be construed as limiting in any manner whatsoever other authorities of the department under RCW 90.03.380 or other changes that may be approved under RCW 90.03.380 under authorities existing before July 25, 1999. [1999 c 232 § 2.]

**90.03.400 Crimes against water code—Unauthorized use of water.** (1)(a) The unauthorized use of water to which another person is entitled or the willful or negligent waste of water to the detriment of another, is a misdemeanor.

(b) For instances of the waste of water under this subsection, the department may alternatively follow the sequence of enforcement actions as provided in RCW 90.03.605.

(2) The possession or use of water without legal right shall be prima facie evidence of the guilt of the person using it.

(3) It is also a misdemeanor to use, store, or divert any water until after the issuance of permit to appropriate such water. [2003 1st sp.s. c 15 § 2; 2003 c 53 § 418; 1917 c 117 § 40; RRS § 7392. Formerly RCW 90.32.010.]

**Reviser's note:** The effective date of 2003 c 53 § 418 is July 1, 2004. However, 2003 c 53 § 418 was amended by 2003 1st sp.s. c 15 § 2 which has an effective date of September 9, 2003. Consequently, the effective date of this section is September 9, 2003.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

*Punishment of misdemeanor when not fixed by statute: RCW 9.92.030.*

**90.03.410 Crimes against water code—Interference with works—Wrongful use of water—Property destruction—Penalty.** (1) Any person or persons who shall wilfully interfere with, or injure or destroy any dam, dike, headgate, weir, canal or reservoir, flume or other structure or appliance for the diversion, carriage, storage, apportionment or measurement of water for irrigation, reclamation, power or other beneficial uses, or who shall wilfully use or conduct water into or through his ditch, which has been lawfully denied him by the water master or other competent authority, or shall wilfully injure or destroy any telegraph, telephone or electric transmission line, or any other property owned, occupied or controlled by any person, association, or corporation, or by the United States and used in connection with said beneficial use of water, shall be guilty of a misdemeanor or, if there is actual physical injury to or destruction of any real or personal property, of property destruction and shall incur the penalties set forth in \*RCW 9.61.070.

(2) Any person or persons who shall wilfully or unlawfully take or use water, or conduct the same into his ditch or to his land, or land occupied by him, and for such purpose shall cut, dig, break down or open any headgate, bank, embankment, canal or reservoir, flume or conduit, or interfere with, injure or destroy any weir, measuring box or other appliance for the apportionment and measurement of water, or unlawfully take or cause to run or pour out of such structure or appliance any water, shall be guilty of a misdemeanor or, if there is actual physical injury to or destruction of any real or personal property, of property destruction and shall incur the penalties set forth in \*RCW 9.61.070.

(3) The use of water through such structure or structures, appliance or appliances hereinbefore named after its or their having been interfered with, injured or destroyed, shall be prima facie evidence of the guilt of the person using it. [1971 ex.s. c 152 § 8; 1921 c 103 § 2; 1917 c 117 § 41; RRS § 7393. Formerly RCW 90.32.020.]

**\*Reviser's note:** RCW 9.61.070 was repealed by 1975 1st ex.s. c 260 § 9A.92.010, effective July 1, 1976.

**90.03.420 Crimes against water code—Obstruction of right of way.** Whenever any appropriator of water has the lawful right of way for the storage, diversion, or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto or trespass thereon. [1917 c 117 § 42; RRS § 7394. Formerly RCW 90.32.030.]

**90.03.430 Partnership ditches—Action for reimbursement for work done.** In all cases where irrigating ditches are owned by two or more persons and one or more of such persons shall fail or neglect to do his, her or their proportionate share of the work necessary for the proper maintenance and operation of such ditch or ditches or to construct suitable headgates or measuring devices at the points where water is diverted from the main ditch, such owner or owners desiring the performance of such work as is reasonably necessary to maintain the ditch, may, after having given ten

days' written notice to such owner or owners who have failed to perform his, her or their proportionate share of such work, necessary for the operation and maintenance of said ditch or ditches, perform his, her or their share of such work, and recover therefor from such person or persons so failing to perform his, her or their share of such work in any court having jurisdiction of the matter the expense or value of such work or labor so performed: PROVIDED, That no improvement involving an expenditure in excess of one hundred dollars shall be made without the written approval of the department having first been obtained. [1987 c 109 § 96; 1919 c 71 § 3; RRS § 7395. Formerly RCW 90.28.110.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.440 Partnership ditches—Procedure for division of water between joint owners.** When two or more persons, joint owners in an irrigation ditch or reservoir, not incorporated, or their lessees, are unable to agree relative to the division or distribution of water received through their ditch or from their reservoir, and where there is no disagreement as to the ownership of said water, it shall be lawful for any such owner or owners, his or their lessee or lessees, or either of them, to apply to the department, in writing, setting forth such fact and giving such information as shall enable the department to estimate the probable expense of such service, asking the department to appoint some suitable person to take charge of such ditch or reservoir for the purpose of making a just division or distribution of the water from the same to the parties entitled to the use thereof. The department shall upon the receipt of such application notify the applicant of the probable expense of such division and upon receipt of certified check for said amount, the department shall appoint a suitable person to make such division. The person so appointed shall take exclusive charge of such ditch or reservoir for the purpose of dividing the water therefrom in accordance with the established rights of the diverters therefrom, and continue the said work until the necessity therefor shall cease to exist. The expense of such investigation and division shall be a charge upon all of the co-owners and the person advancing the payment to the department shall be entitled to recover in any court of competent jurisdiction from his co-owners their proportionate share of the expense. [1987 c 109 § 97; 1919 c 71 § 4; RRS § 7396. Formerly RCW 90.28.130.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.450 Partnership ditches—Lien for labor performed.** Upon the failure of any co-owner to pay his proportionate share of such expense as mentioned in RCW 90.03.430 within thirty days after receiving a statement of the same as performed by his co-owner or owners, such person or persons so performing such labor may secure payment of said claim by filing an itemized and sworn statement thereof, setting forth the date of the performance and the nature of the labor so performed, with the county auditor of the county wherein said ditch is situated, and when so filed it shall constitute a valid lien against the interest of such person or persons who shall fail to perform their proportionate share of the work requisite to the proper maintenance of said ditch, which said lien when so taken may be enforced in the same manner

as provided by law for the enforcement of mechanics' and builders' liens. [1919 c 71 § 5; RRS § 7397. Formerly RCW 90.28.120.]

*Mechanics' and materialmen's liens: Chapter 60.04 RCW.*

**90.03.460 Inchoate rights not affected.** Nothing in this chapter contained shall operate to effect an impairment of any inchoate right to divert and use water while the application of the water in question to a beneficial use is being prosecuted with reasonable diligence, having due regard to the circumstances surrounding the enterprise, including the magnitude of the project for putting the water to a beneficial use and the market for the resulting water right for irrigation or power or other beneficial use, in the locality in question. [1917 c 117 § 43; RRS § 7398. Formerly RCW 90.28.140.]

**90.03.470 Schedule of fees.** The fees specified in this section shall be collected by the department in advance of the requested action.

(1) For the examination of an application for a permit to appropriate water, a minimum fee of fifty dollars must be remitted with the application. For an amount of water exceeding one-half cubic foot per second, the examination fee shall be assessed at the rate of one dollar per one hundredth cubic foot per second. In no case will the examination fee be less than fifty dollars or more than twenty-five thousand dollars. No fee is required under this subsection (1) for an application filed by a party to a cost reimbursement agreement made under RCW 90.03.265.

(2) For the examination of an application to store water, a fee of two dollars for each acre foot of storage proposed shall be charged, but a minimum fee of fifty dollars must be remitted with the application. In no case will the examination fee for a storage project be less than fifty dollars or more than twenty-five thousand dollars. No fee is required under this subsection (2) for an application filed by a party to a cost reimbursement agreement made under RCW 90.03.265.

(3)(a) For the examination of an application to transfer, change, or amend a water right certificate, permit, or claim as authorized by RCW 90.44.100, 90.44.105, or 90.03.380, a minimum fee of fifty dollars must be remitted with the application. For an application for change involving an amount of water exceeding one cubic foot per second, the total examination fee shall be assessed at the rate of fifty cents per one hundredth cubic foot per second. For an application for change of a storage water right, the total examination fee shall be assessed at the rate of one dollar for each acre foot of water involved in the change. The fee shall be based on the amount of water subject to change as proposed in the application, not on the total amount of water reflected in the water right certificate, permit, or claim. In no case will the examination fee charged for a change application be less than fifty dollars or more than twelve thousand five hundred dollars.

(b) The examination fee for a temporary or seasonal change under RCW 90.03.390 is fifty dollars and must be remitted with the application.

(c) No fee is required under this subsection (3) for:

(i) An application to process a change relating to donation of a trust water right to the state;

(ii) An application to process a change when the department otherwise acquires a trust water right for purposes of improving instream flows or for other public purposes;

(iii) An application filed with a water conservancy board according to chapter 90.80 RCW or for the review of a water conservancy board's record of decision submitted to the department according to chapter 90.80 RCW; or

(iv) An application filed by a party to a cost reimbursement agreement made under RCW 90.03.265.

(d) For a change, transfer, or amendment involving a single project operating under more than one water right, including related secondary diversion rights, or involving the consolidation of multiple water rights, only one examination fee and one certificate fee are required to be paid.

(4) The fifty-dollar minimum fee payable with the application shall be a credit to the total amount whenever the examination fee totals more than fifty dollars under the schedule specified in subsections (1) through (3) of this section and in such case the further fee due shall be the total computed amount, less the amount previously paid. Within five working days from receipt of an application, the department shall notify the applicant by registered mail of any additional fees due under subsections (1) through (3) of this section.

(5) The fees specified in subsections (1) through (3) of this section do not apply to any filings for emergency withdrawal authorizations or temporary drought-related water right changes authorized under RCW 43.83B.410 that are received by the department while a drought condition order issued under RCW 43.83B.405 is in effect.

(6) For applying for each extension of time for beginning construction work under a permit to appropriate water, for completion of construction work, or for completing application of water to a beneficial use, a fee of fifty dollars is required. These fees also apply to similar extensions of time requested under a change or transfer authorization.

(7) For the inspection of any hydraulic works to insure safety to life and property, a fee based on the actual cost of the inspection, including the expense incident thereto, is required except as follows: (a) For any hydraulic works less than ten years old, that the department examined and approved the construction plans and specifications as to its safety when required under RCW 90.03.350, there shall be no fee charged; or (b) for any hydraulic works more than ten years old, but less than twenty years old, that the department examined and approved the construction plans and specifications as to its safety when required under RCW 90.03.350, the fee charged shall not exceed the fee for a significant hazard dam.

(8) For the examination of plans and specifications as to safety of controlling works for storage of ten acre feet or more of water, a minimum fee of ten dollars, or a fee equal to the actual cost, is required.

(9) For recording an assignment either of a permit to appropriate water or of an application for such a permit, a fee of fifty dollars is required.

(10) For preparing and issuing all water right certificates, a fee of fifty dollars is required.

(11) For filing and recording a formal protest against granting any application, a fee of fifty dollars is required. No

fee is required to submit a comment, by mail or otherwise, regarding an application.

(12) For filing an application to amend a water right claim filed under chapter 90.14 RCW, a fee of fifty dollars is required.

(13) An application or request for an action as provided for under this section is incomplete unless accompanied by the fee or the minimum fee. If no fee or an amount less than the minimum fee accompanies an application or other request for an action as provided under this section, the department shall return the application or request to the applicant with advice as to the fee that must be remitted with the application or request for it to be accepted for processing. If additional fees are due, the department shall provide timely notification by certified mail with return receipt requested to the applicant. No action may be taken by the department until the fee is paid in full. Failure to remit fees within sixty days of the department's notification is grounds for rejecting the application or request or canceling the permit. Cash shall not be accepted. Fees must be paid by check or money order and are nonrefundable.

(14) For purposes of calculating fees for ground water filings, one cubic foot per second shall be regarded as equivalent to four hundred fifty gallons per minute.

(15) Eighty percent of the fees collected by the department under this section shall be deposited in the state general fund. Twenty percent of the fees collected by the department under this section shall be deposited in the water rights tracking system account established in RCW 90.14.240.

(16) Except for the fees relating to the inspection of hydraulic works and the examination of plans and specifications of controlling works provided for in subsections (7) and (8) of this section, nothing in this section is intended to grant authority to the department to amend the fees in this section by adoption of rules or otherwise. [2005 c 412 § 2; 1993 c 495 § 2; 1987 c 109 § 98; 1965 ex.s. c 160 § 1; 1951 c 57 § 5; 1929 c 122 § 8; 1925 ex.s. c 161 § 2; 1917 c 117 § 44; RRS § 7399. Formerly RCW 90.04.040.]

**Findings—Intent—2005 c 412:** "The legislature finds that the fees associated with various actions of the department of ecology relating to the processing and administration of water rights are outdated and are insufficient even to recover the cost of handling the funds submitted. The legislature also finds that water right processing fees are currently collected at three different stages of the water rights process and that reducing the number of instances of fee collection to two stages of the process would increase efficiency and reduce administrative costs. The legislature further finds that several current statutory fees are archaic or are otherwise covered by other general statutes, including the state's public disclosure laws. The legislature therefore intends to update and modernize the fee schedule associated with water right-related actions of the department of ecology." [2005 c 412 § 1.]

**Findings—1993 c 495:** "The legislature finds that a water right confers significant economic benefits to the water right holder. The fees associated with acquiring a water right have not changed significantly since 1917. Water rights applicants pay less than two percent of the costs of the administration of the water rights program. The legislature finds that, since water rights are of significant value, water rights applicants should contribute more to the cost of administration of the water rights program.

The legislature also finds that an abrupt increase in water rights fees could be disruptive to water rights holders and applicants. The legislature further finds that water rights applicants have a right to know that the water rights program is being administered efficiently and that the fees charged for various services relate directly to the cost of providing those services.

Therefore, the legislature creates a task force to review the water rights program, to make recommendations for streamlining the application process and increasing the overall efficiency and accountability of the administration of the program, and to return to the legislature with a proposal for a fee

schedule where the fee levels relate clearly to the cost of services provided." [1993 c 495 § 1.]

**Reviser's note:** 1993 c 495 § 3 created a water rights task force that expired June 30, 1994.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.471 Disposition of fees.** All fees, collections and revenues derived under RCW 90.03.470 or by virtue of RCW 90.03.180, shall be used exclusively for the purpose of carrying out the work and performing the functions of the division of water resources of the department. [1987 c 109 § 99; 1925 ex.s. c 161 § 3; RRS § 7399-1.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.500 Storm water control facilities—Imposition of rates and charges—Legislative findings.** The legislature finds that increasing the surface water or storm water accumulation on or flow over real property, beyond that which naturally occurs on the real property, may cause severe damage to the real property and limit the gainful use or enjoyment of the real property, resulting in a tort, nuisance, or taking. The damage can arise from activities increasing the point or nonpoint flow of surface water or storm water over the real property, or altering or interrupting the natural drainage from the real property. The legislature finds that it is in the public interest to permit the construction and operation of public improvements to lessen the damage. The legislature further finds that it is in the public interest to provide for the equitable imposition of special assessments, rates, and charges to fund such improvements. This shall include the imposition of special assessments, rates, and charges on real property to fund that reasonable portion of the public improvements that alleviate the damage arising from activities that are the proximate cause of the damage on other real property. Except as otherwise provided in RCW 90.03.525, these special assessments, rates, and charges may be imposed on any publicly-owned, including state-owned, real property that causes such damage. [1986 c 278 § 62; 1983 c 315 § 8.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Severability—1983 c 315:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 315 § 26.]

*Flood control zone districts—Storm water control improvements: Chapter 86.15 RCW.*

*Public property subject to rates and charges for storm water control facilities: RCW 35.67.025, 35.92.021, 36.89.085, and 36.94.145.*

**90.03.510 Storm water control facilities—Imposition of rates and charges—Credit for other improvements.** Whenever a county, city, town, water-sewer district, or flood control zone district imposes rates or charges to fund storm water control facilities or improvements and the operation and maintenance of such facilities or improvements under RCW 35.67.020, 35.92.020, 36.89.080, 36.94.140, 57.08.005, or 57.08.081, it may provide a credit for the value of storm water control facilities or improvements that a person or entity has installed or located that mitigate or lessen the impact of storm water which otherwise would occur. [1996 c 230 § 1616; 1986 c 278 § 63; 1983 c 315 § 9.]

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Severability—1983 c 315:** See note following RCW 90.03.500.

**90.03.520 Storm water control facilities—Imposition of rates and charges—Definitions.** The definitions set forth in this section apply to RCW 90.03.525 and 35.67.025.

(1) "State highway right of way" means the right of way for a state highway. The phrase includes the right of way of a state limited-access highway inside or outside a city or town but does not include city or town streets forming a part of the route of state highways that are not limited-access highways. The term does not include state property under the jurisdiction of the department of transportation that is outside the right of way lines of a state highway.

(2) "Storm water control facility" means any facility, improvement, development, property, or interest therein, made, constructed, or acquired for the purpose of controlling, or protecting life or property from, any storm, waste, flood, or surplus waters.

(3) "Rate" means the dollar amount charged per unit of surface area of a parcel of real property based upon factors established by the local government utility.

(4) "Comparable real property" means real property equal to the state highway right of way or a section of state highway right of way in terms of the factors considered by the local government utility in establishing rates. [1986 c 278 § 53.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

*Public property subject to rates and charges for storm water control facilities: RCW 35.67.025.*

**90.03.525 Storm water control facilities—Imposition of rates and charges with respect to state highway rights of way—Annual plan for expenditure of charges.** (1) The rate charged by a local government utility to the department of transportation with respect to state highway right of way or any section of state highway right of way for the construction, operation, and maintenance of storm water control facilities under chapters 35.67, 35.92, 36.89, 36.94, 57.08, and 86.15 RCW, shall be thirty percent of the rate for comparable real property, except as otherwise provided in this section. The rate charged to the department with respect to state highway right of way or any section of state highway right of way within a local government utility's jurisdiction shall not, however, exceed the rate charged for comparable city street or county road right of way within the same jurisdiction. The legislature finds that the aforesaid rates are presumptively fair and equitable because of the traditional and continuing expenditures of the department of transportation for the construction, operation, and maintenance of storm water control facilities designed to control surface water or storm water runoff from state highway rights of way.

(2) Charges paid under subsection (1) of this section by the department of transportation must be used solely for storm water control facilities that directly reduce state highway runoff impacts or implementation of best management practices that will reduce the need for such facilities. By January 1st of each year, beginning with calendar year 1997, the local government utility, in coordination with the department,

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shall develop a plan for the expenditure of the charges for that calendar year. The plan must be consistent with the objectives identified in \*RCW 90.78.010. In addition, beginning with the submittal for 1998, the utility shall provide a progress report on the use of charges assessed for the prior year. No charges may be paid until the plan and report have been submitted to the department.

(3) The utility imposing the charge and the department of transportation may, however, agree to either higher or lower rates with respect to the construction, operation, or maintenance of any specific storm water control facilities based upon the annual plan prescribed in subsection (2) of this section. If, after mediation, the local government utility and the department of transportation cannot agree upon the proper rate, either may commence an action in the superior court for the county in which the state highway right of way is located to establish the proper rate. The court in establishing the proper rate shall take into account the extent and adequacy of storm water control facilities constructed by the department and the actual benefits to the sections of state highway rights of way from storm water control facilities constructed, operated, and maintained by the local government utility. Control of surface water runoff and storm water runoff from state highway rights of way shall be deemed an actual benefit to the state highway rights of way. The rate for sections of state highway right of way as determined by the court shall be set forth in terms of the percentage of the rate for comparable real property, but shall in no event exceed the rate charged for comparable city street or county road right of way within the same jurisdiction.

(4) The legislature finds that the federal clean water act (national pollutant discharge elimination system, 40 C.F.R. parts 122-124), the state water pollution control act, chapter 90.48 RCW, and the highway runoff program under chapter 90.71 RCW, mandate the treatment and control of storm water runoff from state highway rights of way owned by the department of transportation. Appropriations made by the legislature to the department of transportation for the construction, operation, and maintenance of storm water control facilities are intended to address applicable federal and state mandates related to storm water control and treatment. This section is not intended to limit opportunities for sharing the costs of storm water improvements between cities, counties, and the state. [2005 c 319 § 140. Prior: 1996 c 285 § 1; 1996 c 230 § 1617; 1986 c 278 § 54.]

**\*Reviser's note:** RCW 90.78.010 expired July 1, 2003, pursuant to 1996 c 285 § 5.

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**Severability—1986 c 278:** See note following RCW 36.01.010.

**90.03.540 Highway construction improvement projects—Joint storm water treatment facilities.** In the development of highway construction improvement projects, the department of transportation shall coordinate with adjacent local governments, ports, and other public and private organizations to determine opportunities for cost-effective joint storm water treatment facilities for both new and existing impervious surfaces. [1996 c 285 § 6.]

**90.03.550 Municipal water supply purposes—Beneficial uses.** Beneficial uses of water under a municipal water supply purposes water right may include water withdrawn or diverted under such a right and used for:

(1) Uses that benefit fish and wildlife, water quality, or other instream resources or related habitat values; or

(2) Uses that are needed to implement environmental obligations called for by a watershed plan approved under chapter 90.82 RCW, or a comprehensive watershed plan adopted under RCW 90.54.040(1) after September 9, 2003, a federally approved habitat conservation plan prepared in response to the listing of a species as being endangered or threatened under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq., a hydropower license of the federal energy regulatory commission, or a comprehensive irrigation district management plan. [2003 1st sp.s. c 5 § 2.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**90.03.560 Municipal water supply purposes—Identification.** When requested by a municipal water supplier or when processing a change or amendment to the right, the department shall amend the water right documents and related records to ensure that water rights that are for municipal water supply purposes, as defined in RCW 90.03.015, are correctly identified as being for municipal water supply purposes. This section authorizes a water right or portion of a water right held or acquired by a municipal water supplier that is for municipal water supply purposes as defined in RCW 90.03.015 to be identified as being a water right for municipal water supply purposes. However, it does not authorize any other water right or other portion of a right held or acquired by a municipal water supplier to be so identified without the approval of a change or transfer of the right or portion of the right for such a purpose. [2003 1st sp.s. c 5 § 3.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**90.03.570 Change or transfer of an unperfected surface water right for municipal water supply purposes.** (1) An unperfected surface water right for municipal water supply purposes or a portion thereof held by a municipal water supplier may be changed or transferred in the same manner as provided by RCW 90.03.380 for any purpose if:

(a) The supplier is in compliance with the terms of an approved water system plan or small water system management program under chapter 43.20 or 70.116 RCW that applies to the supplier, including those regarding water conservation;

(b) Instream flows have been established by rule for the water resource inventory area, as established in chapter 173-500 WAC as it exists on September 9, 2003, that is the source of the water for the transfer or change;

(c) A watershed plan has been approved for the water resource inventory area referred to in (b) of this subsection under chapter 90.82 RCW and a detailed implementation plan has been completed that satisfies the requirements of RCW 90.82.043 or a watershed plan has been adopted after September 9, 2003, for that water resource inventory area under RCW 90.54.040(1) and a detailed implementation plan

has been completed that satisfies the requirements of RCW 90.82.043; and

(d) Stream flows that satisfy the instream flows referred to in (b) of this subsection are met or the milestones for satisfying those instream flows required under (c) of this subsection are being met.

(2) If the criteria listed in subsection (1)(a) through (d) of this section are not satisfied, an unperfected surface water right for municipal water supply purposes or a portion thereof held by a municipal water supplier may nonetheless be changed or transferred in the same manner as provided by RCW 90.03.380 if the change or transfer is:

(a) To provide water for an instream flow requirement that has been established by the department by rule;

(b) Subject to stream flow protection or restoration requirements contained in: A federally approved habitat conservation plan under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq., a hydropower license of the federal energy regulatory commission, or a watershed agreement established under RCW 90.03.590;

(c) For a water right that is subject to instream flow requirements or agreements with the department and the change or transfer is also subject to those instream flow requirements or agreements; or

(d) For resolving or alleviating a public health or safety emergency caused by a failing public water supply system currently providing potable water to existing users, as such a system is described in RCW 90.03.580, and if the change, transfer, or amendment is for correcting the actual or anticipated cause or causes of the public water system failure. Inadequate water rights for a public water system to serve existing hookups or to accommodate future population growth or other future uses do not constitute a public health or safety emergency.

(3) If the recipient of water under a change or transfer authorized by subsection (1) of this section is a water supply system, the receiving system must also be in compliance with the terms of an approved water system plan or small water system management program under chapter 43.20 or 70.116 RCW that applies to the system, including those regarding water conservation.

(4) The department must provide notice to affected tribes of any transfer or change proposed under this section. [2003 1st sp.s. c 5 § 14.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**90.03.580 Failing public water system—Conditions.** To be considered a failing public water system for the purposes of RCW 90.03.570, the department of health, in consultation with the department and the local health authority, must make a determination that the system meets one or more of the following conditions:

(1) A public water system has failed, or is in danger of failing within two years, to meet state board of health standards for the delivery of potable water to existing users in adequate quantity or quality to meet basic human drinking, cooking, and sanitation needs or to provide adequate fire protection flows;

(2) The current water source has failed or will fail so that the public water system is or will become incapable of exer-

cising its existing water rights to meet existing needs for drinking, cooking, and sanitation purposes after all reasonable conservation efforts have been implemented; or

(3) A change in source is required to meet drinking water quality standards and avoid unreasonable treatment costs, or the state department of health determines that the existing source of supply is unacceptable for human use. [2003 1st sp.s. c 5 § 15.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**90.03.590 Municipal water suppliers—Watershed agreement—Pilot project.** (1) On a pilot project basis, the department may enter into a watershed agreement with one or more municipal water suppliers in water resource inventory area number one to meet the objectives established in a water resource management program approved or being developed under chapter 90.82 RCW with the consent of the initiating governments of the water resource inventory area. The term of an agreement may not exceed ten years, but the agreement may be renewed or amended upon agreement of the parties.

(2) A watershed agreement must be consistent with:

(a) Growth management plans developed under chapter 36.70A RCW where these plans are adopted and in effect;

(b) Water supply plans and small water system management programs approved under chapter 43.20 or 70.116 RCW;

(c) Coordinated water supply plans approved under chapter 70.116 RCW; and

(d) Water use efficiency and conservation requirements and standards established by the state department of health or such requirements and standards as are provided in an approved watershed plan, whichever are the more stringent.

(3) A watershed agreement must:

(a) Require the public water system operated by the participating municipal water supplier to meet obligations under the watershed plan;

(b) Establish performance measures and timelines for measures to be completed;

(c) Provide for monitoring of stream flows and metering of water use as needed to ensure that the terms of the agreement are met; and

(d) Require annual reports from the water users regarding performance under the agreement.

(4) As needed to implement watershed agreement activities, the department may provide or receive funding, or both, under its existing authorities.

(5) The department must provide opportunity for public review of a proposed agreement before it is executed. The department must make proposed and executed watershed agreements and annual reports available on the department's internet web site.

(6) The department must consult with affected local governments and the state departments of health and fish and wildlife before executing an agreement.

(7) Before executing a watershed agreement, the department must conduct a government-to-government consultation with affected tribal governments. The municipal water suppliers operating the public water systems that are proposing to enter into the agreements must be invited to participate in the consultations. During these consultations, the depart-

ment and the municipal water suppliers shall explore the potential interest of the tribal governments or governments in participating in the agreement.

(8) Any person aggrieved by the department's failure to satisfy the requirements in subsection (3) of this section as embodied in the department's decision to enter into a watershed agreement under this section may, within thirty days of the execution of such an agreement, appeal the department's decision to the pollution control hearings board under chapter 43.21B RCW.

(9) Any projects implemented by a municipal water system under the terms of an agreement reached under this section may be continued and maintained by the municipal water system after the agreement expires or is terminated as long as the conditions of the agreement under which they were implemented continue to be met.

(10) Before December 31, 2003, and December 31, 2004, the department must report to the appropriate committees of the legislature the results of the pilot project provided for in this section. Based on the experience of the pilot project, the department must offer any suggested changes in law that would improve, facilitate, and maximize the implementation of watershed plans adopted under this chapter. [2003 1st sp.s. c 5 § 16.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**90.03.591 New watershed agreements prohibited after July 1, 2008.** The department may not enter into new watershed agreements under RCW 90.03.590 after July 1, 2008. This section does not apply to the renewal of agreements in effect prior to that date. [2003 1st sp.s. c 5 § 17.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**90.03.600 Civil penalties.** In determining the amount of a penalty to be levied, the department shall consider the seriousness of the violation, whether the violation is repeated or continuous after notice of the violation is given, and whether any damage has occurred to the health or property of other persons. Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, the department of ecology may levy civil penalties ranging from one hundred dollars to five thousand dollars per day for violation of any of the provisions of this chapter and chapters 43.83B, 90.22, and 90.44 RCW, and rules, permits, and similar documents and regulatory orders of the department of ecology adopted or issued pursuant to such chapters. The procedures of RCW 90.48.144 shall be applicable to all phases of the levying of a penalty as well as review and appeal of the same. [2003 1st sp.s. c 15 § 3; 1995 c 403 § 635; 1987 c 109 § 157; 1977 ex.s. c 1 § 8. Formerly RCW 43.83B.335.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.605 Compliance—Sequence of enforcement measures—Location of compliance personnel.** (1) The department shall, through a network of water masters appointed under this chapter, stream patrollers appointed

under chapter 90.08 RCW, and other assigned compliance staff to the extent such a network is funded, achieve compliance with the water laws and rules of the state of Washington in the following sequence:

(a) The department shall prepare and distribute technical and educational information to the general public to assist the public in complying with the requirements of their water rights and applicable water laws;

(b) When the department determines that a violation has occurred or is about to occur, it shall first attempt to achieve voluntary compliance. As part of this first response, the department shall offer information and technical assistance to the person in writing identifying one or more means to accomplish the person's purposes within the framework of the law; and

(c) If education and technical assistance do not achieve compliance the department shall issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess penalties under RCW 90.03.600 unless the noncompliance is corrected expeditiously or the department determines no impairment or harm.

(2) Nothing in the section is intended to prevent the department of ecology from taking immediate action to cause a violation to be ceased immediately if in the opinion of the department the nature of the violation is causing harm to other water rights or to public resources.

(3) The department of ecology shall to the extent practicable station its compliance personnel within the watershed communities they serve. To the extent practicable, compliance personnel shall be distributed evenly among the regions of the state. [2002 c 329 § 2.]

## Chapter 90.08 RCW STREAM PATROLMEN

### Sections

90.08.040	Stream patrolmen—Appointment—Powers.
90.08.050	Stream patrolmen—Compensation, travel expenses.
90.08.060	Stream patrolmen—Users to share in payment of compensation.
90.08.070	Right of county to sue user for unpaid share of expenses.

**90.08.040 Stream patrolmen—Appointment—Powers.** Where water rights of a stream have been adjudicated a stream patrolman shall be appointed by the director of the department of ecology upon application of water users having adjudicated water rights in each particular water resource making a reasonable showing of the necessity therefor, which application shall have been approved by the district water master if one has been appointed, at such time, for such stream, and for such periods of service as local conditions may indicate to be necessary to provide the most practical supervision and to secure to water users and owners the best protection in their rights.

The stream patrolman shall have the same powers as a water master appointed under RCW 90.03.060, but his district shall be confined to the regulation of waters of a designated stream or streams. Such patrolman shall be under the supervision of the director or his designated representative. He shall also enforce such special rules and regulations as the

director may prescribe from time to time. [1977 c 22 § 1; 1925 ex.s. c 162 § 1; RRS § 7351-1.]

### *Water masters*

*appointment, compensation:* RCW 90.03.060.

*duties:* RCW 90.03.070.

*power of arrest:* RCW 90.03.090.

**90.08.050 Stream patrolmen—Compensation, travel expenses.** Each stream patrolman shall receive a wage per day for each day actually employed in the duties of his office, or if employed by the month, he shall receive a salary per month, which wage or salary shall be fixed in the manner provided by law for the fixing of the salaries or compensation of other state officers or employees, plus travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, to be paid by the county in which the work is performed. In case the service extends over more than one county, each county shall pay its equitable part of such wage to be apportioned by the director. He shall be reimbursed for actual necessary expenses when absent from his designated headquarters in the performance of his duties, such expense to be paid by the county in which he renders the service. The accounts of the stream patrolman shall be audited and certified by the director and the county auditor shall issue a warrant therefor upon the current expense fund. [1977 c 22 § 2; 1975-'76 2nd ex.s. c 34 § 180; 1947 c 123 § 1; 1925 ex.s. c 162 § 2; Rem. Supp. 1947 § 7351-2.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

*Public officers, salaries and fees:* Chapter 42.16 RCW.

*State government, salaries and expenses:* Chapter 43.03 RCW.

**90.08.060 Stream patrolmen—Users to share in payment of compensation.** The salary of the stream patrolman shall be borne by the water users receiving the benefits and shall be paid to the county or counties in the following manner:

The county or counties may assess each water user for his proportionate share of the total stream patrolman expense in the same ratio that the amount of water diverted by him bears to the total amount diverted from the stream during each season, on an annual basis, to recover all such county expenses. The stream patrolman shall keep an accurate record of the amount of water diverted by each water user coming under his supervision. On the first of each month the stream patrolman shall present his record of water diversion to the county or counties for the preceding month. Where the water users are organized into an irrigation district or water users' association, such organization may enter into an agreement with the county or counties for direct payment to the stream patrolman in order to minimize administrative costs. [1977 c 22 § 3; 1925 ex.s. c 162 § 3; RRS § 7351-3.]

*Irrigation districts generally:* Chapter 87.03 RCW.

**90.08.070 Right of county to sue user for unpaid share of expenses.** Upon failure of any water user to pay his proportionate share of the expense referred to in RCW 90.08.050 and 90.08.060, the county or counties shall be entitled to sue for and recover any such unpaid portion in any court of competent jurisdiction. [1977 c 22 § 4; 1925 ex.s. c 162 § 4; RRS § 7351-4.]

## Chapter 90.14 RCW

## WATER RIGHTS—REGISTRATION—WAIVER AND RELINQUISHMENT, ETC.

## Sections

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90.14.043	Claim of right to withdraw, divert or use ground or surface waters—Claim upon certification by board—Procedure—Cut-off date for accepting petitions.
90.14.044	Existing water rights not impaired.
90.14.051	Statement of claim—Contents—Short form.
90.14.061	Statement of claim—Filing procedure—Processing of claim—Fee.
90.14.065	Statement of claim—Amendment—Review of department of ecology's determination.
90.14.068	Statement of claim—New filing period.
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90.14.140	"Sufficient cause" for nonuse defined—Rights exempted.
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90.14.160	Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Prior rights acquired through appropriation, custom or general adjudication.
90.14.170	Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Rights acquired due to ownership of land abutting stream, lake, or watercourse.
90.14.180	Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Future rights acquired through appropriation.
90.14.190	Water resources decisions—Appeals—Attorneys' fees.
90.14.200	Implementation and enforcement of chapter—Proceedings under RCW 90.14.130 deemed adjudicative—Application of RCW sections to specific proceedings.
90.14.210	Chapter applies to all rights to withdraw ground waters.
90.14.215	Chapter not applicable to trust water rights under chapter 90.38 or 90.42 RCW.
90.14.220	No rights to be acquired by prescription or adverse use.
90.14.230	Rules and regulations.
90.14.240	Water rights tracking system account.
90.14.900	Effective date—1967 c 233.
90.14.910	Severability—1967 c 233.

**90.14.010 Purpose.** The future growth and development of the state is dependent upon effective management and efficient use of the state's water resources. The purpose of this chapter is to provide adequate records for efficient administration of the state's waters, and to cause a return to the state of any water rights which are no longer exercised by putting said waters to beneficial use. [1967 c 233 § 1.]

**90.14.020 Legislative declaration.** The legislature finds that:

(1) Extensive uncertainty exists regarding the volume of private claims to water in the state;

(2) Such uncertainty seriously retards the efficient utilization and administration of the state's water resources, and impedes the fullest beneficial use thereof;

(3) A strong beneficial use requirement as a condition precedent to the continued ownership of a right to withdraw or divert water is essential to the orderly development of the state;

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(4) Enforcement of the state's beneficial use policy is required by the state's rapid growth;

(5) All rights to divert or withdraw water, except riparian rights which do not diminish the quantity of water remaining in the source such as boating, swimming, and other recreational and aesthetic uses must be subjected to the beneficial use requirement;

(6) The availability for appropriation of additional water as a result of the requirements of this chapter will accelerate growth, development, and diversification of the economy of the state;

(7) Water rights will gain sufficient certainty of ownership as a result of this chapter to become more freely transferable, thereby increasing the economic value of the uses to which they are put, and augmenting the alienability of titles to land. [1967 c 233 § 2.]

**90.14.031 Definitions.** Unless a different meaning is plainly required by the context, the following words and phrases as used in RCW 90.14.031 through 90.14.121 shall have the following meanings:

(1) "Person" shall mean an individual, partnership, association, public or private corporation, city or other municipality, county, or a state agency, and the United States of America when claiming water rights established under the laws of the state of Washington.

(2) "Beneficial use" shall include, but not be limited to, use for domestic water, irrigation, fish, shellfish, game and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation. [1969 ex.s. c 284 § 12.]

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

**90.14.041 Claim of right to withdraw, divert or use ground or surface waters—Filing statement of claim required—Exemptions.** All persons using or claiming the right to withdraw or divert and make beneficial use of public surface or ground waters of the state, except as provided in this section, RCW 90.14.043, and 90.14.068, shall file with the department of ecology not later than June 30, 1974, a statement of claim for each water right asserted on a form provided by the department. Neither this section nor RCW 90.14.068 apply to any water rights which are based on the authority of a permit or certificate issued by the department of ecology or one of its predecessors. Further, RCW 90.14.068 does not apply to the beneficial uses of water which are the subject of statements of claim in the water rights claims registry prior to September 1, 1997, or which are exempted from permit and application requirements by RCW 90.44.050 and neither this section nor RCW 90.14.068 requires that statements of claims for such uses be filed during the filing period established by RCW 90.14.068. [1997 c 440 § 2; 1988 c 127 § 73; 1969 ex.s. c 284 § 13.]

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

**90.14.043 Claim of right to withdraw, divert or use ground or surface waters—Claim upon certification by board—Procedure—Cut-off date for accepting petitions.** (1) Notwithstanding any time restrictions imposed by the provisions of chapter 90.14 RCW, a person may file a claim

pursuant to RCW 90.14.041 if such person obtains a certification from the pollution control hearings board as provided in this section.

(2) A certification shall be issued by the pollution control hearings board if, upon petition to the board, it is shown to the satisfaction of the board that:

(a) Waters of the state have been applied to beneficial use continuously (with no period of nonuse exceeding five consecutive years) in the case of surface water beginning not later than June 7, 1917, and in the case of ground water beginning not later than June 7, 1945, or

(b) Waters of the state have been applied to beneficial use continuously (with no period of nonuse exceeding five consecutive years) from the date of entry of a court decree confirming a water right and any failure to register a claim resulted from a reasonable misinterpretation of the requirements as they related to such court decreed rights.

(3) The board shall have jurisdiction to accept petitions for certification from any person through September 1, 1985, and not thereafter.

(4) A petition for certification shall include complete information on the claim pursuant to RCW 90.14.051 (1) through (8), and any such information as the board may require.

(5) The department of ecology is directed to accept for filing any claim certified by the board as provided in subsection (2) of this section. The department of ecology, upon request of the board, may provide assistance to the board pertinent to any certification petition.

(6) A certification by the pollution control hearings board or a filing with the department of ecology of a claim under this section shall not constitute a determination or confirmation that a water right exists.

(7) The provisions of RCW 90.14.071 shall have no applicability to certified claims filed pursuant to this section.

(8) This section shall have no applicability to ground waters resulting from the operations of reclamation projects. [1985 c 435 § 1; 1979 ex.s. c 216 § 4.]

**Effective date—Severability—1979 ex.s. c 216:** See notes following RCW 90.03.245.

**90.14.044 Existing water rights not impaired.** The provisions of chapter 435, Laws of 1985 authorizing the acceptance of a petition for certification filed during the period beginning on July 28, 1985, and ending on midnight, September 1, 1985, shall not affect or impair in any respect whatsoever any water right existing prior to July 28, 1985. [1985 c 435 § 2.]

**90.14.051 Statement of claim—Contents—Short form.** The statement of claim for each right shall include substantially the following:

- (1) The name and mailing address of the claimant.
- (2) The name of the watercourse or water source from which the right to divert or make use of water is claimed, if available.
- (3) The quantities of water and times of use claimed.
- (4) The legal description, with reasonable certainty, of the point or points of diversion and places of use of waters.
- (5) The purpose of use, including, if for irrigation, the number of acres irrigated.

(6) The approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (3).

(7) The legal doctrine or doctrines upon which the right claimed is based, including if statutory, the specific statute.

(8) The sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

Except, however, that any claim for diversion or withdrawal of surface or ground water for those uses described in the exemption from the permit requirements of RCW 90.44.050 may be filed on a short form to be provided by the department. Such short form shall only require inclusion of sufficient data to identify the claimant, source of water, purpose of use and legal description of the land upon which the water is used: PROVIDED, That the provisions of RCW 90.14.081 pertaining to evidentiary value of filed claims shall not apply to claims submitted in short form: AND PROVIDED FURTHER, That claimants for such minimal uses may, at their option, file statements of claim on the standard form used by all other claimants. [1973 1st ex.s. c 113 § 1; 1969 ex.s. c 284 § 14.]

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

**90.14.061 Statement of claim—Filing procedure—Processing of claim—Fee.** Filing of a statement of a claim shall take place and be completed upon receipt by the department of ecology, at its office in Olympia, of an original statement signed by the claimant or his authorized agent, and two copies thereof. Any person required to file hereunder may file through a designated representative. A company, district, public or municipal corporation, or the United States when furnishing to persons water pertaining to water rights required to be filed under RCW 90.14.041, shall have the right to file one claim on behalf of said persons on a form prepared by the department for the total benefits of each person served; provided that a separate claim shall be filed by such company, district, public or private corporation, or the United States for each operating unit of the filing entity providing such water and for each water source. Within thirty days after receipt of a statement of claim the department shall acknowledge the same by a notation on one copy indicating receipt thereof and the date of receipt, together with the wording of the first sentence of RCW 90.14.081, and shall return said copy by certified or registered mail to the claimant at the address set forth in the statement of claim. No statement of claim shall be accepted for filing by the department of ecology unless accompanied by a two dollar filing fee. [1988 c 127 § 74; 1969 ex.s. c 284 § 15.]

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

**90.14.065 Statement of claim—Amendment—Review of department of ecology's determination.** Any person or entity, or successor to such person or entity, having a statement of claim on file with the water rights claims registry on April 20, 1987, may submit to the department of ecology for filing, an amendment to such a statement of claim if the submitted amendment is based on:

- (1) An error in estimation of the quantity of the applicant's water claim prescribed in RCW 90.14.051 if the appli-

cant provides reasons for the failure to claim such right in the original claim;

(2) A change in circumstances not foreseeable at the time the original claim was filed, if such change in circumstances relates only to the manner of transportation or diversion of the water and not to the use or quantity of such water; or

(3) The amendment is ministerial in nature.

The department shall accept any such submission and file the same in the registry unless the department by written determination concludes that the requirements of subsection (1), (2), or (3) of this section have not been satisfied. Any person aggrieved by a determination of the department may obtain a review thereof by filing a petition for review with the pollution control hearings board within thirty days of the date of the determination by the department. The provisions of RCW 90.14.081 shall apply to any amendment filed under this section. [1987 c 93 § 1.]

**90.14.068 Statement of claim—New filing period. (1)**

A new period for filing statements of claim for water rights is established. The filing period shall begin September 1, 1997, and shall end at midnight June 30, 1998. Each person or entity claiming under state law a right to withdraw or divert and beneficially use surface water under a right that was established before \*the effective date of [the] water code established by chapter 117, Laws of 1917, and any person claiming under state law a right to withdraw and beneficially use ground water under a right that was established before \*\*the effective date of the ground water code established by chapter 263, Laws of 1945, shall register the claim with the department during the filing period unless the claim has been filed in the state water rights claims registry before July 27, 1997. A person who claims such a right and fails to register the claim as required is conclusively deemed to have waived and relinquished any right, title, or interest in the right. A statement filed during this filing period shall be filed as provided in RCW 90.14.051 and 90.14.061 and shall be subject to the provisions of this chapter regarding statements of claim. This reopening of the period for filing statements of claim shall not affect or impair in any respect whatsoever any water right existing prior to July 27, 1997. A water right embodied in a statement of claim filed under this section is subordinate to any water right embodied in a permit or certificate issued under chapter 90.03 or 90.44 RCW prior to the date the statement of claim is filed with the department and is subordinate to any water right embodied in a statement of claim filed in the water rights claims registry before July 27, 1997.

(2) The department of ecology shall, at least once each week during the month of August 1997 and at least once each month during the filing period, publish a notice regarding this new filing period in newspapers of general circulation in the various regions of the state. The notice shall contain the substance of the following notice:

**WATER RIGHTS NOTICE**

Each person or entity claiming a right to withdraw or divert and beneficially use surface water under a right that was established before June 7, 1917, or claiming a right to withdraw and beneficially use

ground water under a right that was established before June 7, 1945, under the laws of the state of Washington must register the claim with the department of ecology, Olympia, Washington. The claim must be registered on or after September 1, 1997, and not later than five o'clock on June 30, 1998.

**FAILURE TO REGISTER THE CLAIM  
WILL RESULT IN A WAIVER AND  
RELINQUISHMENT OF THE WATER  
RIGHT OR CLAIMED WATER RIGHT**

Registering a claim is NOT required for:

1. A water right that is based on the authority of a permit or certificate issued by the department of ecology or one of its predecessors;
2. A water right that is based on the exemption from permitting requirements provided by RCW 90.44.050 for certain very limited uses of ground water; or
3. A water right that is based on a statement of claim that has previously been filed in the state's water rights claims registry during other registration periods.

For further information, for a copy of the law establishing this filing period, and for an explanation of the law and its requirements, contact the department of ecology, Olympia, Washington.

The department shall also prepare, make available to the public, and distribute to the communications media information describing the types of rights for which statements of claim need not be filed, the effect of filing, the effect of RCW 90.14.071, and other information relevant to filings and statements of claim.

(3) The department of ecology shall ensure that employees of the department are readily available to respond to inquiries regarding filing statements of claim and that all of the information the department has at its disposal that is relevant to an inquiry regarding a particular potential claim, including information regarding other rights and claims in the vicinity of the potentially claimed right, is available to the person making the inquiry. The department shall dedicate additional staff in each of the department's regional offices and in the department's central office to ensure that responses and information are provided in a timely manner during each of the business days during the month of August 1997 and during the new filing period.

(4) To assist the department in avoiding unnecessary duplication, the department shall provide to a requestor, within ten working days of receiving the request, the records of any water right claimed, listed, recorded, or otherwise existing in the records of the department or its predecessor agencies, including any report of a referee in a water rights adjudication. This information shall be provided as required by this subsection if the request is provided in writing from the owner of the water right or from the holder of a possessory interest in any real property for water right records associated with the property or if the requestor is an attorney for such an owner. The information regarding water rights in the

area served by a regional office of the department shall also be provided within ten working days to any requestor who requests to review the information in person in the department's regional office. The information held by the headquarters office of the department shall also be provided within ten working days to any requestor who requests to review the information in person in the department's headquarters office. The requirements of this subsection that records and information be provided to requestors within ten working days may not be construed as limiting in any manner the obligations of the department to provide public access to public records as required by chapter 42.56 RCW.

(5) This section does not apply to claims for the use of ground water withdrawn in an area that is, during the period established by subsection (2) of this section, the subject of a general adjudication proceeding for water rights in superior court under RCW 90.03.110 through 90.03.245 and the proceeding applies to ground water rights. This section does not apply to claims for the use of surface water withdrawn in an area that is, during the period established by subsection (2) of this section, the subject of a general adjudication proceeding for water rights in superior court under RCW 90.03.110 through 90.03.245 and the proceeding applies to surface water rights.

(6) This section does not apply to claims for the use of water in a ground water area or subarea for which a management program adopted by the department by rule and in effect on July 27, 1997, establishes acreage expansion limitations for the use of ground water. [2005 c 274 § 365; 1997 c 440 § 1.]

**Reviser's note:** \*(1) The effective date of chapter 117, Laws of 1917, is June 7, 1917.

\*\*\*(2) The effective date of chapter 263, Laws of 1945, is June 7, 1945.

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**90.14.071 Failure to file claim waives and relinquishes right.** Except as provided in \*section 5 of this act or as exempted from filing by RCW 90.14.041, any person claiming the right to divert or withdraw waters of the state as set forth in RCW 90.14.041, who fails to file a statement of claim as provided in RCW 90.14.041, 90.14.043, or 90.14.068 and in RCW 90.14.051 and 90.14.061, shall be conclusively deemed to have waived and relinquished any right, title, or interest in said right. [1997 c 440 § 3; 1969 ex.s. c 284 § 16.]

**\*Reviser's note:** Section 5 of this act was vetoed by the governor.

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

**90.14.081 Filing of claim not deemed adjudication of right—Prima facie evidence.** The filing of a statement of claim does not constitute an adjudication of any claim to the right to use of waters as between the water use claimant and the state, or as between one or more water use claimants and another or others. A statement of claim filed pursuant to RCW 90.14.061 shall be admissible in a general adjudication of water rights as prima facie evidence of the times of use and the quantity of water the claimant was withdrawing or diverting as of the year of the filing, if, but only if, the quantities of water in use and the time of use when a controversy is mooted are substantially in accord with the times of use and quantity

of water claimed in the statement of claim. A statement of claim shall not otherwise be evidence of the priority of the claimed water right. [1969 ex.s. c 284 § 17.]

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

**90.14.091 Definitions—Water rights notice—Form.** For the purpose of RCW 90.14.031 through 90.14.121 the following words and phrases shall have the following meanings:

(1) "Statement of taxes due" means the statement required under RCW 84.56.050.

(2) "Notice in writing" means a notice substantially in the following form:

#### WATER RIGHTS NOTICE

Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency and the state of Washington, and the United States of America, when claiming water rights established under the laws of the state of Washington, are hereby notified that all water rights or claimed water rights relating to the withdrawal or diversion of public surface or ground waters of the state, except those water rights based upon authority of a permit or certificate issued by the department of ecology or one of its predecessors, must be registered with the department of ecology, Olympia, Washington not later than June 30, 1974. FAILURE TO REGISTER AS REQUIRED BY LAW WILL RESULT IN A WAIVER AND RELINQUISHMENT OF SAID WATER RIGHT OR CLAIMED WATER RIGHT. For further information contact the Department of Ecology, Olympia, Washington, for a copy of the act and an explanation thereof. [1988 c 127 § 75; 1969 ex.s. c 284 § 18.]

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

**90.14.101 Notice of chapter provisions—How given—Requirements.** To insure that all persons referred to in RCW 90.14.031 and 90.14.041 are notified of the registration provisions of this chapter, the department of ecology is directed to give notice of the registration provisions of this chapter as follows:

(1) It shall cause a notice in writing to be placed in a prominent and conspicuous place in all newspapers of the state having a circulation of more than fifty thousand copies for each week day, and in at least one newspaper published in each county of the state, at least once each year for five consecutive years.

(2) It shall cause a notice substantially the same as a notice in writing to be broadcast by each commercial television station operating in the United States and viewed in the state, and by at least one commercial radio station operating from each county of the state having such a station regularly at six month intervals for five consecutive years.

(3) It shall cause a notice in writing to be placed in a prominent and conspicuous location in each county court house in the state.

(4) The county treasurer of each county shall enclose with each mailing of one or more statements of taxes due issued in 1972 a copy of a notice in writing and a declaration that it shall be the duty of the recipient of the statement of

taxes due to forward the notice to the beneficial owner of the property. A sufficient number of copies of the notice and declaration shall be supplied to each county treasurer by the director of ecology before the fifteenth day of January, 1972. In the implementation of this subsection the department of ecology shall provide reimbursement to the county treasurer for the reasonable additional costs, if any there may be, incurred by said treasurer arising from the inclusion of a notice in writing as required herein.

(5) It shall provide copies of the notice in writing to the press services with offices located in Thurston county during January of the years 1970, 1971, 1972, 1973 and 1974.

The director of the department may also in his discretion give notice in any other manner which will carry out the purposes of this section. Where notice in writing is given pursuant to subsections (1) and (3) of this section, RCW 90.14.041, 90.14.051 and 90.14.071 shall be set forth and quoted in full. [1988 c 127 § 76; 1969 ex.s. c 284 § 19.]

**Reviser's note:** "this 1969 amendatory act" has been changed to "this chapter" in the first paragraph. "This 1969 amendatory act" [1969 ex.s. c 284] consists of RCW 90.48.290, former RCW 90.48.295, since repealed, RCW 90.22.010 through 90.22.040, 90.14.031 through 90.14.121, 43.27A.190 through 43.27A.220, 43.27A.075, and repeals RCW 43.21.145 and 90.14.030 through 90.14.120.

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

**90.14.111 Water rights claims registry.** The department of ecology is directed to establish a registry entitled the "Water Rights Claims Registry". All claims set forth pursuant to RCW 90.14.041, 90.14.051 and 90.14.061 shall be filed in the registry alphabetically and consecutively by control number, and by such other manner as deemed appropriate by the department. [1988 c 127 § 77; 1969 ex.s. c 284 § 20.]

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

**90.14.121 Penalty for overstating claim.** The filing of a statement of claim pursuant to RCW 90.14.061 which knowingly provides for an overstatement of a right either in quantities of water or times of use claimed shall constitute a misdemeanor punishable by a fine of not more than two hundred fifty dollars or by imprisonment for not more than ninety days, or both. [1969 ex.s. c 284 § 21.]

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

**90.14.130 Reversion of rights to state due to non-use—Notice by order—Relinquishment determinations—Appeal.** When it appears to the department of ecology that a person entitled to the use of water has not beneficially used his water right or some portion thereof, and it appears that said right has or may have reverted to the state because of such nonuse, as provided by RCW 90.14.160, 90.14.170, or 90.14.180, the department of ecology shall notify such person by order: PROVIDED, That where a company, association, district, or the United States has filed a blanket claim under the provisions of \*RCW 90.14.060 for the total benefits of those served by it, the notice shall be served on such company, association, district or the United States and not upon any of its individual water users who may not have used the water or some portion thereof which they were entitled to use. The order shall contain: (1) A description of the water right, including the approximate location of

the point of diversion, the general description of the lands or places where such waters were used, the water source, the amount involved, the purpose of use, and the apparent authority upon which the right is based; (2) a statement that unless sufficient cause be shown on appeal the water right will be declared relinquished; and (3) a statement that such order may be appealed to the pollution control hearings board. Any person aggrieved by such an order may appeal it to the pollution control hearings board pursuant to RCW 43.21B.310. The order shall be served by registered or certified mail to the last known address of the person and be posted at the point of division or withdrawal. The order by itself shall not alter the recipient's right to use water, if any. [1987 c 109 § 13; 1967 c 233 § 13.]

**\*Reviser's note:** RCW 90.14.060 was repealed by 1969 ex.s. c 284 § 23, which act added new sections relating to the registration of claims for water rights as codified in this chapter.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Proceedings under this section deemed adjudicative—Application of RCW sections to specific proceedings:* RCW 90.14.200.

**90.14.140 "Sufficient cause" for nonuse defined—Rights exempted.** (1) For the purposes of RCW 90.14.130 through 90.14.180, "sufficient cause" shall be defined as the nonuse of all or a portion of the water by the owner of a water right for a period of five or more consecutive years where such nonuse occurs as a result of:

- (a) Drought, or other unavailability of water;
- (b) Active service in the armed forces of the United States during military crisis;
- (c) Nonvoluntary service in the armed forces of the United States;
- (d) The operation of legal proceedings;
- (e) Federal or state agency leases of or options to purchase lands or water rights which preclude or reduce the use of the right by the owner of the water right;
- (f) Federal laws imposing land or water use restrictions either directly or through the voluntary enrollment of a landowner in a federal program implementing those laws, or acreage limitations, or production quotas;
- (g) Temporarily reduced water need for irrigation use where such reduction is due to varying weather conditions, including but not limited to precipitation and temperature, that warranted the reduction in water use, so long as the water user's diversion and delivery facilities are maintained in good operating condition consistent with beneficial use of the full amount of the water right;
- (h) Temporarily reduced diversions or withdrawals of irrigation water directly resulting from the provisions of a contract or similar agreement in which a supplier of electricity buys back electricity from the water right holder and the electricity is needed for the diversion or withdrawal or for the use of the water diverted or withdrawn for irrigation purposes;
- (i) Water conservation measures implemented under the Yakima river basin water enhancement project, so long as the conserved water is reallocated in accordance with the provisions of P.L. 103-434;
- (j) Reliance by an irrigation water user on the transitory presence of return flows in lieu of diversion or withdrawal of

water from the primary source of supply, if such return flows are measured or reliably estimated using a scientific methodology generally accepted as reliable within the scientific community; or

(k) The reduced use of irrigation water resulting from crop rotation. For purposes of this subsection, crop rotation means the temporary change in the type of crops grown resulting from the exercise of generally recognized sound farming practices. Unused water resulting from crop rotation will not be relinquished if the remaining portion of the water continues to be beneficially used.

(2) Notwithstanding any other provisions of RCW 90.14.130 through 90.14.180, there shall be no relinquishment of any water right:

(a) If such right is claimed for power development purposes under chapter 90.16 RCW and annual license fees are paid in accordance with chapter 90.16 RCW;

(b) If such right is used for a standby or reserve water supply to be used in time of drought or other low flow period so long as withdrawal or diversion facilities are maintained in good operating condition for the use of such reserve or standby water supply;

(c) If such right is claimed for a determined future development to take place either within fifteen years of July 1, 1967, or the most recent beneficial use of the water right, whichever date is later;

(d) If such right is claimed for municipal water supply purposes under chapter 90.03 RCW;

(e) If such waters are not subject to appropriation under the applicable provisions of RCW 90.40.030;

(f) If such right or portion of the right is leased to another person for use on land other than the land to which the right is appurtenant as long as the lessee makes beneficial use of the right in accordance with this chapter and a transfer or change of the right has been approved by the department in accordance with RCW 90.03.380, 90.03.383, 90.03.390, or 90.44.100;

(g) If such a right or portion of the right is authorized for a purpose that is satisfied by the use of agricultural industrial process water as authorized under RCW 90.46.150; or

(h) If such right is a trust water right under chapter 90.38 or 90.42 RCW.

(3) In adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised. [2001 c 240 § 1; 2001 c 237 § 27; 2001 c 69 § 5; 1998 c 258 § 1; 1987 c 125 § 1; 1967 c 233 § 14.]

**Reviser's note:** This section was amended by 2001 c 69 § 5, 2001 c 237 § 27, and by 2001 c 240 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2001 c 240:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2001]." [2001 c 240 § 2.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**Effective date—1967 c 233:** See RCW 90.14.900.

*Application to Yakima river basin trust water rights: RCW 90.38.040.*

**90.14.150 Rights arising from permit to withdraw public waters not affected—Extensions.** Nothing in this chapter shall be construed to affect any rights or privileges arising from any permit to withdraw public waters or any application for such permit, but the department of ecology shall grant extensions of time to the holder of a preliminary permit only as provided by RCW 90.03.290. [1987 c 109 § 100; 1967 c 233 § 15.]

**Purpose—Short title—Construction—Rules—Severability—Cap-tions—1987 c 109:** See notes following RCW 43.21B.001.

*Application to Yakima river basin trust water rights: RCW 90.38.040.*

**90.14.160 Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Prior rights acquired through appropriation, custom or general adjudication.** Any person entitled to divert or withdraw waters of the state through any appropriation authorized by enactments of the legislature prior to enactment of chapter 117, Laws of 1917, or by custom, or by general adjudication, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to divert or withdraw for any period of five successive years after July 1, 1967, shall relinquish such right or portion thereof, and said right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250. [1981 c 291 § 1; 1979 ex.s. c 216 § 5; 1967 c 233 § 16.]

**Effective date—Severability—1979 ex.s. c 216:** See notes following RCW 90.03.245.

**Effective date—1967 c 233:** See RCW 90.14.900.

*Application to Yakima river basin trust water rights: RCW 90.38.040.*

*Implementation and enforcement of chapter—Proceedings under RCW 90.14.130 deemed adjudicative—Application of RCW sections to specific proceedings: RCW 90.14.200.*

**90.14.170 Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Rights acquired due to ownership of land abutting stream, lake, or watercourse.** Any person entitled to divert or withdraw waters of the state by virtue of his ownership of land abutting a stream, lake, or watercourse, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw or divert said water for any period of five successive years after July 1, 1967, shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with the provisions of RCW 90.03.250. [1967 c 233 § 17.]

**Effective date—1967 c 233:** See RCW 90.14.900.

*Application to Yakima river basin trust water rights: RCW 90.38.040.*

*Availability for other uses qualified: RCW 90.14.160.*

*Implementation and enforcement of chapter—Application of RCW sections to specific proceedings: RCW 90.14.200.*

**90.14.180 Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Future rights acquired through appropriation.** Any person hereafter entitled to divert or withdraw waters of the state through an appropriation authorized under RCW 90.03.330,

90.44.080, or 90.44.090 who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw for any period of five successive years shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250. All certificates hereafter issued by the department of ecology pursuant to RCW 90.03.330 shall expressly incorporate this section by reference. [1987 c 109 § 101; 1967 c 233 § 18.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Application to Yakima river basin trust water rights:* RCW 90.38.040.

*Availability for other uses qualified:* RCW 90.14.160.

*Implementation and enforcement of chapter—Application of RCW sections to specific proceedings:* RCW 90.14.200.

**90.14.190 Water resources decisions—Appeals—Attorneys' fees.** Any person feeling aggrieved by any decision of the department of ecology may have the same reviewed pursuant to RCW 43.21B.310. In any such review, the findings of fact as set forth in the report of the department of ecology shall be prima facie evidence of the fact of any waiver or relinquishment of a water right or portion thereof. If the hearings board affirms the decision of the department, a party seeks review in superior court of that hearings board decision pursuant to chapter 34.05 RCW, and the court determines that the party was injured by an arbitrary, capricious, or erroneous order of the department, the court may award reasonable attorneys' fees. [1987 c 109 § 14; 1967 c 233 § 19.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Application to Yakima river basin trust water rights:* RCW 90.38.040.

**90.14.200 Implementation and enforcement of chapter—Proceedings under RCW 90.14.130 deemed adjudicative—Application of RCW sections to specific proceedings.** (1) All matters relating to the implementation and enforcement of this chapter by the department of ecology shall be carried out in accordance with chapter 34.05 RCW, the Administrative Procedure Act, except where the provisions of this chapter expressly conflict with chapter 34.05 RCW. Proceedings held pursuant to RCW 90.14.130 are adjudicative proceedings within the meaning of chapter 34.05 RCW. Final decisions of the department of ecology in these proceedings are subject to review in accordance with chapter 43.21B RCW.

(2) RCW 90.14.130 provides nonexclusive procedures for determining a relinquishment of water rights under RCW 90.14.160, 90.14.170, and 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in, among other proceedings, general adjudication proceedings initiated under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall apply to litigation involving determinations of the department of ecology under RCW 90.03.290 relating to the impairment of existing rights. [1989 c 175 § 180; 1979 ex.s. c 216 § 6; 1967 c 233 § 20.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Effective date—Severability—1979 ex.s. c 216:** See notes following RCW 90.03.245.

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*Application to Yakima river basin trust water rights:* RCW 90.38.040.

**90.14.210 Chapter applies to all rights to withdraw ground waters.** The provisions of this chapter shall apply to all rights to withdraw ground waters of the state, whether authorized by chapter 90.44 RCW or otherwise. [1967 c 233 § 21.]

*Application to Yakima river basin trust water rights:* RCW 90.38.040.

**90.14.215 Chapter not applicable to trust water rights under chapter 90.38 or 90.42 RCW.** This chapter shall not apply to trust water rights held or exercised by the department of ecology under chapter 90.38 or 90.42 RCW. [1991 c 347 § 14.]

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**Severability—1991 c 347:** See RCW 90.42.900.

**90.14.220 No rights to be acquired by prescription or adverse use.** No rights to the use of surface or ground waters of the state affecting either appropriated or unappropriated waters thereof may be acquired by prescription or adverse use. [1967 c 233 § 22.]

*Application to Yakima river basin trust water rights:* RCW 90.38.040.

**90.14.230 Rules and regulations.** The department of ecology is authorized to promulgate such rules and regulations as are necessary to carry out the provisions of this chapter. [1987 c 109 § 102; 1967 c 233 § 23.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Application to Yakima river basin trust water rights:* RCW 90.38.040.

**90.14.240 Water rights tracking system account.** The water rights tracking system account is created in the state treasury. Twenty percent of the fees collected by the department of ecology according to RCW 90.03.470 must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of ecology for the development, implementation, and management of a water rights tracking system, including a water rights mapping system and a water rights data base. [2005 c 412 § 3.]

**Findings—Intent—2005 c 412:** See note following RCW 90.03.470.

**90.14.900 Effective date—1967 c 233.** The effective date of this act is July 1, 1967. [1967 c 233 § 25.]

*Application to Yakima river basin trust water rights:* RCW 90.38.040.

**90.14.910 Severability—1967 c 233.** If any provisions of this act or the application thereof to any person or circumstance is held invalid, the act can be given effect without the invalid provision or application; and to this end the provisions of this act are declared to be severable. This act shall be liberally construed to effectuate its purpose. [1967 c 233 § 26.]

*Application to Yakima river basin trust water rights:* RCW 90.38.040.

## Chapter 90.16 RCW

## APPROPRIATION OF WATER FOR PUBLIC AND INDUSTRIAL PURPOSES

## Sections

90.16.010	Appropriation by certain water companies.
90.16.020	Appropriation for industrial purposes.
90.16.025	Appropriation for industrial purposes—Procedure.
90.16.030	Right of eminent domain by water power companies.
90.16.040	Right of eminent domain by water power companies—Right of entry.
90.16.045	Right of eminent domain by water power companies—Procedure.
90.16.050	Schedule of fees for claimants of water power.
90.16.060	Schedule of fees for claimants of water power—Statement of claim—Penalties—Excessive claim—Abandonment.
90.16.090	Disposition of fees.
90.16.100	Appropriation of lands by corporations conveying water.
90.16.110	Water for use outside state.
90.16.120	Water for use outside state—Reciprocity.

*Use of waters for irrigation, mining, manufacturing, deemed a public use: State Constitution Art. 21.*

**90.16.010 Appropriation by certain water companies.** Such water companies incorporated for the purposes specified in the preceding section shall have the right to purchase or take possession of and use and hold such lands and waters for the purposes of the company, lying without the limits of the city or town intended to be supplied with water upon making compensation therefor. The mode of proceeding to obtain possession of such lands for the use of the company, right of way for laying pipes and aqueducts for the use of the company, when the parties cannot agree shall so far as the same be applicable be as prescribed in chapter 187: PROVIDED, That nothing therein contained, shall be so construed, as to authorize the appropriation of water belonging to any person, unless the owner thereof shall refuse to supply said town or city with water after being requested so to do by the town board or city council. [1883 p 45 § 1, subd. 8; Code 1881 § 2448; 1873 p 408 § 28; 1869 p 340 § 30; RRS § 11570.]

**Reviser's note:** The language "for the purposes specified in the preceding section" refers to Code 1881 § 2447 (repealed by 1939 c 143 § 19) which stated in part: ". . . for the purpose of supplying any cities or towns in this territory, or the inhabitants thereof with pure and fresh water."

The language "chapter 187" refers to chapter 187 of the Code of 1881 the existing sections of which chapter are codified in chapter 81.36 RCW and RCW 90.16.100; the remaining sections thereof have been repealed.

**Validating—1881 Act:** "All persons who have organized themselves as a corporation under the provisions of this chapter for purposes other than those enumerated in section 2421, are hereby declared incorporate bodies, with all the powers the same as they would enjoy had they been incorporated for the purposes set forth in section 2421." [Code 1881 § 2445.] The language "this chapter" refers to chapter 185, Code of 1881 which embodied the territorial laws relating to the formation of corporations; current provisions relating thereto are codified in Titles 23 and 24 RCW. The language "section 2421" refers to Code 1881 § 2421 which set forth the purposes for which a corporation might then be formed. General purposes for which a corporation may be formed under existing law are codified in Title 23B RCW; see also Table of Prior Laws following Title 23 RCW digest.

**90.16.020 Appropriation for industrial purposes.** Any person or persons, or company now incorporated, or that may hereafter become incorporated under the laws of this state, for the purpose of mining or manufacturing, shall have the right to purchase or appropriate and take possession of and divert from its natural channel, and use and hold the waters of any river, creek or stream in this state that may be

required for the mining and manufacturing purposes of any such person or persons, corporation or corporations, and to construct all dams, canals, reservoirs, ditches, pipes, flumes and aqueducts, suitable and necessary for the controlling, directing and running such waters to their mines or manufacturing establishments of any such person or persons, corporation or corporations, where the same may be intended to be utilized for such purposes: PROVIDED, That no such appropriation or diversion of the waters of any such river, creek, or stream, from its natural channel; nor shall any such dam, canal, reservoir, ditch, pipe, flume or aqueduct, be constructed to the detriment of any person or persons, corporation or corporations, occupying the lands or being located below the point or place of such appropriation or diversion on any such stream or its tributaries, or above or below such dam, canal, reservoir, ditch, pipe, flume or aqueduct, or of the owners of the lands, through which the waters run in the natural course for the deprivation of the same, or the owners of the land through or upon which such dam, canal, reservoirs, ditch, pipe, flume or aqueduct, may pass through or over, or be situated upon, unless just and adequate compensation be previously ascertained and paid therefor. [Code 1881 Bagley's Supp. p 36 § 1; 1879 p 124 § 1; RRS § 11575.]

**90.16.025 Appropriation for industrial purposes—Procedure.** The mode of proceeding to appropriate, take possession of and divert such waters and to build such dam, canal, ditch, reservoir, pipe, flume, or aqueduct, as prescribed in RCW 90.16.020, when the parties cannot agree upon the purchase thereof, shall be the same as prescribed in chapter four of an act to provide for the formation of corporations, approved November thirteenth, eighteen hundred and seventy-three, except that the amount of the benefits accruing to the residue of the property of the same individual or corporation, by reason of the use made of that taken, to be estimated by the parties assessing the damages, shall be deducted from the value of the property taken. [Code 1881 Bagley's Supp. p 37 § 2; 1879 p 125 § 2.]

**90.16.030 Right of eminent domain by water power companies.** The right of eminent domain for the purpose of appropriating real estate is hereby extended to all corporations that are now or that may hereafter be incorporated under the laws of this state, or of any state or territory of the United States and doing business in this state, for the purpose of conveying water by ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power: PROVIDED, HOWEVER, That said right of eminent domain shall not be exercised in respect to any residence or business structure or structures. [1901 c 143 § 1; RRS § 11572. FORMER PART OF SECTION: 1901 c 143 § 3; RRS § 11574, now codified as RCW 90.16.045.]

**90.16.040 Right of eminent domain by water power companies—Right of entry.** Every corporation that is now or that may hereafter be incorporated under the laws of this state, or of any other state or territory of the United States and doing business in this state, for the purpose of conveying water by ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, shall have the right

to enter upon any land between the termini of the proposed ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, for the purpose of examining, locating and surveying such ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, doing no unnecessary damage thereby. [1901 c 143 § 2; RRS § 11573.]

**90.16.045 Right of eminent domain by water power companies—Procedure.** Every such corporation shall have the right, subject to the proviso contained in RCW 90.16.030 to appropriate real estate or other property for a right-of-way for such ditches, flumes, pipe lines, tunnels or other means of conveying water, and for any other corporate purposes, in the same manner and under the same procedure as now is or may be hereafter provided by law in the case of other corporations authorized by the laws of the state to exercise the right of eminent domain. [1901 c 143 § 3; RRS § 11574. Formerly RCW 90.16.030, part.]

*Eminent domain by corporations: Chapter 8.20 RCW.*

**90.16.050 Schedule of fees for claimants of water power.** Every person, firm, private or municipal corporation, or association hereinafter called "claimant", claiming the right to the use of water within or bordering upon the state of Washington for power development, shall on or before the first day of July, 1929, and on or before the first day of January of each year thereafter pay to the state of Washington in advance an annual license fee, based upon the theoretical water power claimed under each and every separate claim to water according to the following schedule:

For projects in operation: For each and every theoretical horsepower claimed up to and including one thousand horsepower, at the rate of ten cents per horsepower; for each and every theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of two cents per horsepower; for each and every theoretical horsepower in excess of ten thousand horsepower, at the rate of one cent per horsepower.

For undeveloped projects, the fee shall be at one-half the rates specified for projects in operation; for projects partly developed and in operation the fees paid on that portion of any project that shall have been developed and in operation shall be the full annual license fee above specified for projects in operation, and for the remainder of the power claimed under such project the fees shall be the same as for undeveloped projects. PROVIDED, That upon the filing of statement, as hereinafter required, by the United States or the state claiming the right to the use of water to any extent for the generation of power, or any other claimant to the use of water for the generation of fifty horsepower, or less, shall be exempted from the payment of all fees hereinafter required; and PROVIDED FURTHER, That any irrigation district or other municipal subdivision of the state, developing power chiefly for use in pumping of water for irrigation, may upon the filing of a statement, showing the amount of power used for irrigation pumping, be exempted to the extent of the power so used from the payment of the annual license fee herein provided for. [1929 c 105 § 1; RRS § 11575-1.]

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**90.16.060 Schedule of fees for claimants of water power—Statement of claim—Penalties—Excessive claim—Abandonment.** The license fee herein required shall be paid in advance to the state department of ecology and shall be accompanied by written statement, showing the extent of the claim. Said statement shall set forth the name and address of the claimant, the name of the stream from which the water is appropriated or claimed for power development, a description of the forty acres or smallest legal subdivision in which the point of diversion and point of return are located, the date of the right as claimed, the maximum amount of water claimed, expressed in cubic feet per second of time, the total average fall utilized under such claim, the manner of developing power and the use to which the power is applied. If the regular flow is supplemented by water stored in a reservoir, the location of such reservoir, its capacity in acre feet, and the stream from which it is filled and fed, should be given, also the date of the right as claimed for storage purposes.

Should any claimant fail or neglect to file such statement within the time specified, or fail or neglect to pay such fees within the time specified, the fees due and payable shall be at the schedule rates set out in RCW 90.16.050, increased twenty-five percent, and the state shall have preference lien therefor, with interest at the rate of ten percent per annum from the date of delinquency, upon the property of claimant used or necessary for use in the development of the right or claim, together with any improvements erected thereon for such development, and upon request from the director of ecology the attorney general shall proceed to foreclose the lien, and collect the amount due, as herein provided, in the same manner as other liens for general state and county taxes on real property are foreclosed.

The filing of a claim to water in excess of the amount to which the claimant is legally entitled shall not operate to vest in such claimant any right to the use of such excess water, nor shall the payment of the annual license fees, provided for herein, operate to vest in any claimant any right to the use of such water beyond the amount to which claimant is legally entitled. The filing of such claim, or claims to water shall be conclusive evidence of abandonment by the claimant of all right to water for power purposes not covered by the claim, or claims, as filed; and the failure to file statement and pay the fees, as herein required, for any power site or claim of power rights on account of riparian ownership within two years after June 12, 1929, shall be conclusive evidence of abandonment. The amount of the theoretical horsepower upon which fees shall be paid shall be computed by multiplying the maximum amount of water claimed, expressed in cubic feet per second of time, by the average fall utilized, expressed in feet, and dividing the product by 8.8. [1988 c 127 § 78; 1929 c 105 § 2; RRS § 11575-2. Formerly RCW 90.16.060, 90.16.070 and 90.16.080.]

*Property taxes*

*lien foreclosure: Chapter 84.64 RCW.*

*lien of taxes: Chapter 84.60 RCW.*

**90.16.090 Disposition of fees.** All fees paid under provisions of this chapter, shall be credited by the state treasurer to the reclamation revolving account and subject to legislative appropriation, be allocated and expended by the director

of ecology for investigations and surveys of natural resources in cooperation with the federal government, or independently thereof, including stream gaging, hydrographic, topographic, river, underground water, mineral and geological surveys: PROVIDED, That in any one biennium all said expenditures shall not exceed total receipts from said power license fees collected during said biennium: AND PROVIDED FURTHER, That the portion of money allocated by said director to be expended in cooperation with the federal government shall be contingent upon the federal government making available equal amounts for such investigations and surveys. [1988 c 127 § 79; 1973 c 106 § 39; 1939 c 209 § 1; 1929 c 105 § 3; RRS § 11575-3.]

**90.16.100 Appropriation of lands by corporations conveying water.** All corporations, authorized to do business in the state, and who have been, or may hereafter be organized, for the purpose of erecting and maintaining flumes and aqueducts to convey water for consumption or for mining, irrigation, milling or other industrial purposes, shall have the same right to appropriate lands for necessary corporate purposes, and under the same regulations and instructions as are provided for other corporations; and such corporations organized for such purposes, in order to carry out the object of their incorporation, are authorized to take and use any water not otherwise legally appropriated. [Code 1881 § 2472; 1879 p 134 § 1; RRS § 11576.]

**90.16.110 Water for use outside state.** Whenever the use of water shall be necessary for domestic, manufacturing, irrigation, or in interstate transportation at or for any incorporated or unincorporated city, town, village or hamlet situated partly in Washington and partly in an adjoining state or where any city, town, village or hamlet is incorporated on one side of the state line and there are inhabitants living in adjacent and contiguous territory on the other side, it shall be lawful for any person, association or corporation to locate, appropriate, divert and deliver any of the unappropriated public waters of this state necessary for the use of such city, town, village or hamlet and the inhabitants thereof and those residing in and embracing such contiguous territory both within this state and such adjoining state; and locations may be made and authority is hereby granted for such purpose the same as for any other appropriation within the state and a diversion and delivery for such purpose shall have the same force and effect as if made for use wholly within this state and any appropriation, diversion or use heretofore made for such purpose shall be deemed as valid and legal as if made for a use wholly within this state and priority thereof shall date from the appropriation and diversion the same as if it had been made for use wholly within this state. [1919 c 41 § 1; RRS § 11577.]

**90.16.120 Water for use outside state—Reciprocity.** The provisions of \*this act shall not apply to any territory or the inhabitants thereof situated or located in any adjoining state which does not by its laws, usages or legal regulations grant similar or reciprocal rights, privileges and opportunities to this state and its inhabitants and adjacent and contiguous

territory whether incorporated or unincorporated as in \*this act specified. [1919 c 41 § 2; RRS § 11578.]

\*Reviser's note: "this act" [1919 c 41], is codified in RCW 90.16.110 and 90.16.120.

## Chapter 90.22 RCW

### MINIMUM WATER FLOWS AND LEVELS

#### Sections

90.22.010	Establishment of minimum water flows or levels—Authorized—Purposes.
90.22.020	Establishment of minimum water flows or levels—Hearings—Notice—Rules.
90.22.030	Existing water and storage rights—Right to divert or store water.
90.22.040	Stockwatering requirements.
90.22.050	Civil penalties.
90.22.060	Instream flow evaluations—Statewide list of priorities—Salmon impact.

**90.22.010 Establishment of minimum water flows or levels—Authorized—Purposes.** The department of ecology may establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same. In addition, the department of ecology shall, when requested by the department of fish and wildlife to protect fish, game or other wildlife resources under the jurisdiction of the requesting state agency, or if the department of ecology finds it necessary to preserve water quality, establish such minimum flows or levels as are required to protect the resource or preserve the water quality described in the request or determination. Any request submitted by the department of fish and wildlife shall include a statement setting forth the need for establishing a minimum flow or level. When the department acts to preserve water quality, it shall include a similar statement with the proposed rule filed with the code reviser. This section shall not apply to waters artificially stored in reservoirs, provided that in the granting of storage permits by the department of ecology in the future, full recognition shall be given to downstream minimum flows, if any there may be, which have theretofore been established hereunder. [1997 c 32 § 4; 1994 c 264 § 86; 1988 c 47 § 6. Prior: 1987 c 506 § 96; 1987 c 109 § 103; 1969 ex.s. c 284 § 3.]

**Application—Severability—1988 c 47:** See notes following RCW 43.83B.300.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Purpose—Short title—Construction—Rules—Severability—Cap-tions—1987 c 109:** See notes following RCW 43.21B.001.

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

**90.22.020 Establishment of minimum water flows or levels—Hearings—Notice—Rules.** Flows or levels authorized for establishment under RCW 90.22.010, or subsequent modification thereof by the department shall be provided for through the adoption of rules. Before the establishment or modification of a water flow or level for any stream or lake or other public water, the department shall hold a public hearing in the county in which the stream, lake, or other public water is located. If it is located in more than one county the depart-

ment shall determine the location or locations therein and the number of hearings to be conducted. Notice of the hearings shall be given by publication in a newspaper of general circulation in the county or counties in which the stream, lake, or other public waters is located, once a week for two consecutive weeks before the hearing. The notice shall include the following:

- (1) The name of each stream, lake, or other water source under consideration;
- (2) The place and time of the hearing;
- (3) A statement that any person, including any private citizen or public official, may present his or her views either orally or in writing.

Notice of the hearing shall also be served upon the administrators of the departments of social and health services, natural resources, fish and wildlife, and transportation. [1994 c 264 § 87; 1987 c 506 § 97; 1985 c 196 § 1; 1984 c 7 § 384; 1969 ex.s. c 284 § 4.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Severability—1984 c 7:** See note following RCW 47.01.141.

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

**90.22.030 Existing water and storage rights—Right to divert or store water.** The establishment of levels and flows pursuant to RCW 90.22.010 shall in no way affect existing water and storage rights and the use thereof, including but not limited to rights relating to the operation of any hydroelectric or water storage reservoir or related facility. No right to divert or store public waters shall be granted by the department of ecology which shall conflict with regulations adopted pursuant to RCW 90.22.010 and 90.22.020 establishing flows or levels. All regulations establishing flows or levels shall be filed in a "Minimum Water Level and Flow Register" of the department of ecology. [1988 c 127 § 81; 1969 ex.s. c 284 § 5.]

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

**90.22.040 Stockwatering requirements.** It shall be the policy of the state, and the department of ecology shall be so guided in the implementation of RCW 90.22.010 and 90.22.020, to retain sufficient minimum flows or levels in streams, lakes or other public waters to provide adequate waters in such water sources to satisfy stockwatering requirements for stock on riparian grazing lands which drink directly therefrom where such retention shall not result in an unconscionable waste of public waters. The policy hereof shall not apply to stockwatering relating to feed lots and other activities which are not related to normal stockgrazing land uses. [1987 c 109 § 104; 1969 ex.s. c 284 § 6.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

**90.22.050 Civil penalties.** See RCW 90.03.600.

**90.22.060 Instream flow evaluations—Statewide list of priorities—Salmon impact.** By December 31, 1993, the department of ecology shall, in cooperation with the Indian tribes, and the department of fish and wildlife, establish a

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statewide list of priorities for evaluation of instream flows. In establishing these priorities, the department shall consider the achievement of wild salmonid production as its primary goal. [1998 c 245 § 172; 1993 sp.s. c 4 § 13.]

**Findings—Grazing lands—1993 sp.s. c 4:** See RCW 79.13.600.

## Chapter 90.24 RCW

### REGULATION OF OUTFLOW OF LAKES

#### Sections

90.24.010	Petition to regulate flow—Order—Exceptions.
90.24.020	Contents of petition.
90.24.030	Title of petition—Service of petition and order—Notice.
90.24.040	Hearing on petition—Order—Continuing jurisdiction.
90.24.050	Devices to protect the fish—Cost—Special fund.
90.24.060	Installation of devices.
90.24.066	Jurisdiction over weed control.
90.24.070	Appellate review.

**90.24.010 Petition to regulate flow—Order—Exceptions.** Ten or more owners of real property abutting on a lake may petition the superior court of the county in which the lake is situated, for an order to provide for the regulation of the outflow of the lake in order to maintain a certain water level therein. If there are fewer than ten owners, a majority of the owners abutting on a lake may petition the superior court for such an order. The court, after notice to the department of fish and wildlife and a hearing, is authorized to make an order fixing the water level thereof and directing the department of ecology to regulate the outflow therefrom in accordance with the purposes described in the petition. This section shall not apply to any lake or reservoir used for the storage of water for irrigation or other beneficial purposes, or to lakes navigable from the sea. [1999 c 162 § 1; 1985 c 398 § 28; 1959 c 258 § 1; 1939 c 107 § 2; RRS § 7388-1.]

**Effective date—1985 c 398:** "Sections 28 through 30 of this act shall take effect January 1, 1986." [1985 c 398 § 31.]

*Lake management districts: Chapter 36.61 RCW.*

**90.24.020 Contents of petition.** Such petition shall contain a complete description of the property surrounding said lake with the number of front feet contained in each tract with the name of the owner thereof and his address together with a brief statement of the reasons and necessity for such application; that the level sought to be established will in no wise interfere with the navigability of said lake or in any manner affect or interfere with fish or game fish which may be then contained or may thereafter be deposited in said lake, but that in order to protect fish or game fish in said lake the construction of fish ladders or other devices may be required to conserve and protect such fish or game fish, then in that event the property owners to be benefited by the establishment of said water level in such lake shall be required to pay the cost thereof, in proportion to lineal feet of water front owned by each. [1939 c 107 § 3; RRS § 7388-2.]

**90.24.030 Title of petition—Service of petition and order—Notice.** The petition shall be entitled "In the matter of fixing the level of Lake . . . . . in . . . . . county, Washington", and shall be filed with the clerk of the court and a copy thereof, together with a copy of the order fixing the time for hearing the petition, shall be served on each owner of

property abutting on the lake, not less than ten days before the hearing. Like copies shall also be served upon the director of fish and wildlife and the director of ecology. The copy of the petition and of the order fixing time for hearing shall be served in the manner provided by law for the service of summons in civil actions, or in such other manner as may be prescribed by order of the court. For the benefit of every riparian owner abutting on a stream or river flowing from such lake, a copy of the notice of hearing shall be published at least once a week for two consecutive weeks before the time set for hearing in a newspaper in each county or counties wherein located, said notice to contain a brief statement of the reasons and necessity for such application. [1994 c 264 § 88; 1988 c 36 § 67; 1987 c 109 § 105; 1963 c 243 § 1; 1959 c 258 § 2; 1947 c 210 § 1; 1939 c 107 § 4; Rem. Supp. 1947 § 7388-3.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.24.040 Hearing on petition—Order—Continuing jurisdiction.** At the hearing evidence shall be introduced in support of the petition and all interested parties may be heard for or against it. The court shall make findings and conclusions and enter an order granting or refusing the petition, and if the petition is granted, shall fix the water level to be maintained and direct the department of ecology to regulate and control the outflow of the lake so as to properly maintain the water level so far as practicable within maximum and minimum limits when the proper control devices are installed: PROVIDED, That the court shall have continuing jurisdiction after a petition is once granted and shall, upon subsequent petition filed and heard in accordance with the preceding sections, make such further findings and conclusions and enter such further orders as are necessary to accomplish fully the objectives sought in the initial petition: AND PROVIDED FURTHER, That shall the court find any such riparian owners abutting on a stream or river flowing from such lake be adversely affected in any way by the granting of such a petition, such petition shall be refused. [1985 c 398 § 29; 1959 c 258 § 3; 1939 c 107 § 5; RRS § 7388-4.]

**Effective date—1985 c 398:** See note following RCW 90.24.010.

**90.24.050 Devices to protect the fish—Cost—Special fund.** In the event the court shall find that to protect fish and game fish in said lake that fish ladders or other devices should be constructed therein or that other construction shall be necessary in order to maintain the determined lake level, the court shall find the proper device to be constructed, the probable cost thereof and by its order and judgment shall apportion the cost thereof among the persons whose property abuts on said lake in proportion to the lineal feet of waterfront owned by each, which sum so found shall constitute a lien against said real property and shall be paid to the county treasurer and by him placed in a special fund to be known as "Lake . . . . Improvement Fund." The director of ecology shall appoint a suitable person to be compensated by the property owners to regulate the determined level as decreed by the court. [1988 c 127 § 82; 1939 c 107 § 6; RRS § 7388-5.]

[Title 90 RCW—page 36]

**90.24.060 Installation of devices.** Such improvement or device in said lake for the protection of the fish and game fish therein shall be installed by and under the direction of the board of county commissioners of said county with the approval of the respective directors of the department of fish and wildlife and the department of ecology of the state of Washington and paid for out of the special fund provided for in RCW 90.24.050. [1994 c 264 § 89; 1988 c 36 § 68; 1987 c 109 § 106. Prior: 1939 c 107 § 7; RRS § 7388-6.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.24.066 Jurisdiction over weed control.** A superior court may continue its jurisdiction over weed control in those lakes that had been under the court's jurisdiction for such purposes prior to July 28, 1985. The continuing jurisdiction of a superior court for such weed control purposes shall be subject to the provisions of chapter 90.24 RCW in the same manner as the continuing jurisdiction of a superior court over the maintenance of lake water levels.

The superior court shall hold hearings under RCW 90.24.040 whenever subsequent petitions are filed with it concerning weed control on a lake over which it has continuing jurisdiction for weed control purposes. If the court finds that the weed control proposals are in the best interests of the abutting property owners, it shall determine what measures should be taken to accomplish these objectives, the probable annual cost thereof, and by its order apportion the cost among the persons whose property abuts on the lake in proportion to the lineal feet of waterfront owned by each, which sum shall constitute a lien against the real property. Payments of these sums shall be made to the county treasurer who shall place these payments into a special fund to be known as "Lake . . . . weed removal fund." The court shall appoint a suitable person, to be compensated by the property owners, to undertake weed control activities as decreed by the court. [1988 c 133 § 1.]

**90.24.070 Appellate review.** Any person aggrieved by the order of judgment of the superior court may seek appellate review in the same manner as in other civil actions. [1988 c 202 § 93; 1971 c 81 § 177; 1939 c 107 § 8; RRS § 7388-7.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

## Chapter 90.28 RCW

### MISCELLANEOUS RIGHTS AND DUTIES

#### Sections

90.28.010	Right to back and hold waters over roads, streets, and alleys—Procedure.
90.28.020	Right to back and hold waters over roads, streets, and alleys—Relocation—Acquisition of rights—Abandonment.
90.28.040	Limitation on number of irrigation ditches across land.
90.28.160	Fencing across streams.
90.28.170	Dams across streams.

**90.28.010 Right to back and hold waters over roads, streets, and alleys—Procedure.** The department of transportation may, in its sole discretion, grant to any person or corporation the right, privilege, and authority to perpetually back and hold the waters of any lake, river, stream, slough, or

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other body of water, upon or over any state, county, or permanent highway or road, or any street or alley within the limits of any town, or any part thereof, and overflow and inundate the same whenever the director of ecology deems it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use and shall so certify to the department of transportation. The decision of the department of transportation, in the absence of bad faith, arbitrary, capricious, or fraudulent action, is conclusive. But the right shall not be granted until it has been heretofore or is hereafter determined in a condemnation suit instituted by the person or corporation desiring to obtain the right or rights in the county wherein is situated that part of the road, highway, street, or alley so to be affected that the use for which the grant is sought is a public use, nor until there is filed with the clerk of the court in which the order or decree of public use was entered a bond or undertaking signed by the person or corporation seeking the grant, executed by a surety company authorized to do business in this state, conditioned to pay all costs and expenses of every kind and description connected with and incident to the relocation and reconstruction of any such highway, road, street, or alley, the same to be of substantially the same type and grade of construction as that of the highway, road, street, or alley to be overflowed or inundated, including any such relocation, reconstruction, and maintenance costs and expenses as may arise within a period of eighteen months after the new highway, road, street, or alley has been opened in its entirety to public travel, and also including any and all damages for which the state, county, city, or town may be liable because of the vacation of any such highway, road, street, or alley and the relocation thereof in the manner provided herein and to save harmless the state, county, city, or town from the payment of the same or any part thereof. The bond shall be in a penal sum of double the estimated amount of the expenses, costs, and damages referred to above. In the case of a state highway the estimate shall be made by the department of transportation. In case of a county road or permanent highway the estimate shall be made by the county legislative authority, and in the case of a street or alley of a town the estimate shall be made by the city or town council. The bond shall be approved by the department of transportation when the road to be affected is a state highway, and in all other cases by a judge of the superior court in which the order or decree of public use was entered. In the condemnation suit the state of Washington shall be made a party defendant when the road affected is a state highway. If the road is a county road or permanent highway the county in which the road or permanent highway is situated shall be made a party defendant, and when any street or alley in any town is affected the city or town shall be made a party defendant. Any person or corporation may acquire the right to overflow as against the owner of the fee in any such highway, road, street, or alley by making the owner of the fee or of any part thereof a party defendant in the condemnation suit provided for herein or by instituting a separate condemnation suit against any such owner. The damages sustained by any such owner as a result of the overflow of any such highway, road, street, or alley shall be determined as in other condemnation cases, separate and apart from any damage sustained by the state, county,

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city, or town. [1994 c 81 § 87; 1984 c 7 § 385; 1929 c 154 § 1; 1927 c 202 § 1; RRS § 7354-1.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

*Eminent domain by corporations:* Chapter 8.20 RCW.

*Private ways of necessity:* Chapter 8.24 RCW.

**90.28.020 Right to back and hold waters over roads, streets, and alleys—Relocation—Acquisition of rights—Abandonment.** It shall be the duty of the department of transportation, if the road to be affected shall be a state highway, or of the county legislative authority of the county in which such road is located, if the road to be affected shall be a county road, or permanent highway, or of the council of any town in which the road is located, if the road to be affected shall be a street or alley, within thirty days after entry of said order or decree of public use and the filing of the bond mentioned in RCW 90.28.010, to enter an appropriate order or resolution directing the relocation and reestablishment and completion forthwith of such highway, road, street or alley in place of that so to be overflowed or inundated, and promptly thereafter to acquire all property and rights of way necessary therefor, instituting and diligently prosecuting such condemnation suits as may be necessary in order to secure such property and rights of way. The decision of the committee, board or council as to relocation and reestablishment set forth in such order or resolution shall be final and conclusive as to all matters and things set forth therein, including the question of public use and necessity in any and all condemnation suits to be brought under RCW 90.28.010 and 90.28.020. After the reestablishment and relocation of any such highway, road, street or alley and the construction and opening thereof in its entirety to public travel and the signing of the grant authorized in RCW 90.28.010, the state highway, county road or permanent highway, street or alley or such part thereof described in said grant shall be deemed to be abandoned and thereafter cease to be a highway, road, street or alley. [1994 c 81 § 88; 1927 c 202 § 2; RRS § 7354-2.]

*Eminent domain by corporations:* Chapter 8.20 RCW.

*Private ways of necessity:* Chapter 8.24 RCW.

**90.28.040 Limitation on number of irrigation ditches across land.** No tract or parcel of improved or occupied land in this state shall, without the written consent of the owner thereof, be subjected to the burden of two or more irrigating ditches constructed for the purpose of conveying water through said property to lands adjoining or beyond the same, when the same object can feasibly and practicably be attained by uniting and conveying all the water necessary to be conveyed through such property in one ditch. [1890 p 717 § 39; RRS § 7401.]

**90.28.160 Fencing across streams.** Owners of land or their agents shall have the right to fence across all unmeandered streams at any time when such streams are not used for a public highway, or by making a fence that will not be an obstruction. [1891 c 120 § 3; no RRS.]

**90.28.170 Dams across streams.** There is hereby granted to persons, firms and corporations organized among other things, for irrigation and power purposes, the right to

construct and maintain dams and works incident thereto over, upon and across the beds of the rivers of the state of Washington in connection with such power and irrigation purposes, and there is hereby granted to such persons, firms and corporations an easement over, upon and across the beds of such rivers for such purposes. Such easement shall be limited however, to so much of the beds of such rivers as may be reasonably convenient and necessary for such uses. All such dams and works shall be completed within five years after the commencement of construction work upon the same. The rights and privileges granted by this section shall inure to the benefit of such persons, firms or corporations from the date of the commencement of construction work upon such dams and works incident thereto, and such construction work shall be diligently prosecuted to completion, and the rights, privileges and easements granted by this section shall continue so long as the same shall be utilized by the grantees for the purposes herein specified, and the failure to maintain and use such dams and works after the same shall have been constructed, for a continuous period of two years, shall operate as a forfeiture of all the rights hereby granted and the same shall revert to the state of Washington: PROVIDED, That nothing in this section shall be construed in such a way as to interfere with the use of said rivers for navigation purposes, and all of such rights, privileges and easements granted hereby shall be subject to the paramount control of such rivers for navigation purposes by the United States: AND, PROVIDED FURTHER, That the use and enjoyment of the grants and privileges of this section shall not interfere with the lawful and rightful diversion of the waters of said rivers by other parties under water appropriations in existence at the time any such persons, firms or corporations shall avail themselves of the benefits and privileges of this section, but no such persons, firms or corporations shall have any right to construct any such dams or works over, upon or across the land between ordinary high water and extreme low water of any river of this state without first having acquired the right to do so from the owner or owners of the lands adjoining the land between ordinary high water and extreme low water over or across which said dam or works are constructed. [1911 c 95 § 1; RRS § 7416.]

**Reviser's note:** For later enactment, see chapter 90.03 RCW.

*Height of dams on tributaries of Columbia river: Chapter 77.55 RCW.*

### Chapter 90.36 RCW ARTESIAN WELLS

#### Sections

90.36.010	Right-of-way to wells.
90.36.020	Flow limited during certain period—Exceptions.
90.36.030	Capping well—Exceptions.
90.36.040	Right of neighboring owner to cap well—Lien.
90.36.050	Penalty—1901 c 121.

*Aquifer protection areas: Chapter 36.36 RCW.*

**90.36.010 Right-of-way to wells.** Any person who may be entitled to water from any artesian well shall have the right to condemn the right-of-way for a ditch to convey such water for the purpose of irrigation over the lands intervening between such well and the place where the party owning such water wishes to use the same, and such right-of-way may be

condemned sufficient for the purposes of conveying the water, together with the right of ingress and egress, to construct, maintain and repair said ditch, \*as is hereinafter provided for in this act. [1890 p 711 § 18; RRS § 7403.]

**\*Reviser's note:** The language "as is hereinafter provided for in this act" refers to 1889-90 pp 706-728 §§ 1-67 which has since been repealed with the exception of those sections now codified as RCW 90.28.030 and 90.28.040. Compare the provisions of later enactment in chapter 90.03 RCW.

**90.36.020 Flow limited during certain period—Exceptions.** It shall be unlawful for any person, firm, corporation or company having possession or control of any artesian well within the state, whether as contractor, owner, lessee, agent or manager, to allow or permit water to flow or escape from such well between the fifteenth day of October in any year and the fifteenth day of March next ensuing; PROVIDED, That \*this act shall only apply to sections and communities wherein the use of water for the purpose of irrigation is necessary or customary; and PROVIDED FURTHER, That nothing herein contained shall prevent or prohibit the use of water from any such well between said fifteenth day of October and the fifteenth day of March next ensuing, for household, stock and domestic purposes only, water for said last named purposes to be taken from such well through a three-quarters inch stop and waste cock to be inserted in the piping of such well for that purpose. [1929 c 138 § 1; 1901 c 121 § 1; RRS § 7404.]

**\*Reviser's note:** "this act" refers to 1901 c 121 codified in RCW 90.36.020 through 90.36.050.

**90.36.030 Capping well—Exceptions.** It shall be the duty of every person, firm, corporation or company having possession or control of any artesian well, as provided in RCW 90.36.020, to securely cap the same over on or before the fifteenth day of October in each and every year in such manner as to prevent the flow or escape of water therefrom, and to keep the same securely capped and prevent the flow or escape of water therefrom until the fifteenth day of March next ensuing; PROVIDED, HOWEVER, It shall and may be lawful for any such person, firm, corporation or company to insert a three-quarters inch stop and waste cock in the piping of such well, and to take and use water therefrom through such stop and waste cock at any time for household, stock, or domestic purposes, but not otherwise. [1929 c 138 § 2; 1901 c 121 § 2; RRS § 7405.]

**90.36.040 Right of neighboring owner to cap well—Lien.** Whenever any person, firm, corporation or company in possession or control of an artesian well shall fail to comply with the provisions of \*this act, any person, firm, corporation or company lawfully in the possession of land situate adjacent to or in the vicinity or neighborhood of such well and within five miles thereof may enter upon the land upon which such well is situate, and take possession of such from which water is allowed to flow or escape in violation of the provisions of RCW 90.36.020, and cap such well and shut in and secure the flow or escape of water therefrom, and the necessary expenses incurred in so doing shall constitute a lien upon said well, and a sufficient quantity of land surrounding the same for the convenient use and operation thereof, which lien

may be foreclosed in a civil action in any court of competent jurisdiction, and the court in any such case shall allow the plaintiff a reasonable attorney's fee to be taxed as a part of the cost. This shall be in addition to the penalty provided for in RCW 90.36.050. [1901 c 121 § 4; RRS § 7407.]

\*Reviser's note: "this act," see note following RCW 90.36.020.

**90.36.050 Penalty—1901 c 121.** Any person whether as owner, lessee, agent or manager having possession or control of any such well, violating the provisions of \*this act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding two hundred dollars for each and every such offense, and the further sum of two hundred dollars for each ten days during which such violation shall continue. [1901 c 121 § 3; RRS § 7406.]

\*Reviser's note: "this act," see note following RCW 90.36.020.

## Chapter 90.38 RCW

### YAKIMA RIVER BASIN WATER RIGHTS

#### Sections

90.38.005	Findings—Purpose.
90.38.010	Definitions.
90.38.020	Acquisition or donation of trust water rights.
90.38.030	Water conservation projects—Contracts for financial assistance.
90.38.040	Trust water rights program.
90.38.050	Rules.
90.38.900	Existing policies not replaced.
90.38.901	Transfer of rights between irrigation districts not intended.
90.38.902	Existing rights not impaired.

**90.38.005 Findings—Purpose.** (1) The legislature finds that:

(a) Under present physical conditions in the Yakima river basin there is an insufficient supply of water to satisfy the needs of the basin;

(b) Pursuant to P.L. 96-162, which was urged for enactment by this state, the United States is now conducting a study of ways to provide needed waters through improvements of the federal water project presently existing in the Yakima river basin;

(c) The interests of the state will be served by developing programs, in cooperation with the United States and the various water users in the basin, that increase the overall ability to manage basin waters in order to better satisfy both present and future needs for water in the Yakima river basin.

(2) It is the purpose of this chapter, consistent with these findings, to improve the ability of the state to work with the United States and various water users of the Yakima river basin in a program designed to satisfy both existing rights, and other presently unmet as well as future needs of the basin.

(3) The provisions of this chapter apply only to waters of the Yakima river basin. [1989 c 429 § 1.]

**90.38.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Net water savings" means the amount of water that through hydrological analysis is determined to be conserved and usable for other purposes without impairing existing

water rights, reducing the ability to deliver water, or reducing the supply of water that otherwise would have been available to other water users.

(3) "Trust water right" means that portion of an existing water right, constituting net water savings, that is no longer required to be diverted for beneficial use due to the installation of a water conservation project that improves an existing system. The term "trust water right" also applies to any other water right acquired by the department under this chapter for management in the Yakima river basin trust water rights program.

(4) "Water conservation project" means any project funded to further the purposes of this chapter and that achieves physical or operational improvements of efficiency in existing systems for diversion, conveyance, or application of water under existing water rights. [1989 c 429 § 2.]

**90.38.020 Acquisition or donation of trust water rights.** (1)(a) The department may acquire water rights, including but not limited to storage rights, by purchase, lease, gift, or other appropriate means other than by condemnation, from any person or entity or combination of persons or entities. Once acquired, such rights are trust water rights. A water right acquired by the state that is expressly conditioned to limit its use to instream purposes shall be administered as a trust water right in compliance with that condition.

(b) If the holder of a right to water from a body of water chooses to donate all or a portion of the person's water right to the trust water system to assist in providing instream flows on a temporary or permanent basis, the department shall accept the donation on such terms as the person may prescribe as long as the donation satisfies the requirements of subsection (4) of this section and the other applicable requirements of this chapter and the terms prescribed are relevant and material to protecting any interest in the water right retained by the donor. Once accepted, such rights are trust water rights within the conditions prescribed by the donor.

(2) The department may make such other arrangements, including entry into contracts with other persons or entities as appropriate to ensure that trust water rights acquired in accordance with this chapter can be exercised to the fullest possible extent.

(3) The trust water rights may be acquired on a temporary or permanent basis.

(4) A water right donated under subsection (1)(b) of this section shall not exceed the extent to which the water right was exercised during the five years before the donation nor may the total of any portion of the water right remaining with the donor plus the donated portion of the water right exceed the extent to which the water right was exercised during the five years before the donation. A water right holder who believes his or her water right has been impaired by a trust water right donated under subsection (1)(b) of this section may request that the department review the impairment claim. If the department determines that exercising the trust water right resulting from the donation or exercising a portion of that trust water right donated under subsection (1)(b) of this section is impairing existing water rights in violation of RCW 90.38.902, the trust water right shall be altered by the department to eliminate the impairment. Any decision of the department to alter or not alter a trust water right donated

under subsection (1)(b) of this section is appealable to the pollution control hearings board under RCW 43.21B.230. A donated water right's status as a trust water right under this subsection is not evidence of the validity or quantity of the water right.

(5) Any water right conveyed to the trust water right system as a gift that is expressly conditioned to limit its use to instream purposes shall be managed by the department for public purposes to ensure that it qualifies as a gift that is deductible for federal income taxation purposes for the person or entity conveying the water right.

(6) If the department acquires a trust water right by lease, the amount of the trust water right shall not exceed the extent to which the water right was exercised during the five years before the acquisition was made nor may the total of any portion of the water right remaining with the original water right holder plus the portion of the water right leased by the department exceed the extent to which the water right was exercised during the five years before the acquisition. A water right holder who believes his or her water right has been impaired by a trust water right leased under this subsection may request that the department review the impairment claim. If the department determines that exercising the trust water right resulting from the leasing or exercising of a portion of that trust water right leased under this subsection is impairing existing water rights in violation of RCW 90.38.902, the trust water right shall be altered by the department to eliminate the impairment. Any decision of the department to alter or not to alter a trust water right leased under this subsection is appealable to the pollution control hearings board under RCW 43.21B.230. The department's leasing of a trust water right under this subsection is not evidence of the validity or quantity of the water right.

(7) For a water right donated to or acquired by the trust water rights program on a temporary basis, the full quantity of water diverted or withdrawn to exercise the right before the donation or acquisition shall be placed in the trust water rights program and shall revert to the donor or person from whom it was acquired when the trust period ends. [2002 c 329 § 7; 2001 c 237 § 28; 1989 c 429 § 3.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.38.030 Water conservation projects—Contracts for financial assistance.** (1) For the purposes of this chapter, the department is authorized to enter into contracts with water users for the purpose of providing moneys to users to assist in the financing of water conservation projects. In exchange for the financial assistance provided for the purposes of this chapter, the water users shall convey the trust water rights, created as a result of the assistance, to the department of ecology.

(2) No contract shall be entered into by the department with a water user under this chapter unless it appears to the department that, upon the completion of a water conservation project financed with moneys as provided in this section, a valid water right exists for conveyance to the department.

(3) The department shall cooperate fully with the United States in the implementation of this chapter. Trust water rights may be acquired through expenditure of funds pro-

vided by the United States and shall be treated in the same manner as trust water rights resulting from the expenditure of state funds.

(4) When water is proposed to be acquired by or conveyed to the department as a trust water right by an irrigation district, evidence of the district's authority to represent the water right holders must be submitted to, and for the satisfaction of, the department.

(5) The department shall not acquire an individual's water right under this chapter that is appurtenant to land lying within an irrigation district without the approval of the board of directors of the irrigation district. [1989 c 429 § 4.]

**90.38.040 Trust water rights program.** (1) All trust water rights acquired by the department shall be placed in the Yakima river basin trust water rights program to be managed by the department. The department shall issue a water right certificate in the name of the state of Washington for each trust water right it acquires.

(2) Trust water rights shall retain the same priority date as the water right from which they originated. Trust water rights may be modified as to purpose or place of use or point of diversion, including modification from a diversionary use to a nondiversionary instream use.

(3) Trust water rights may be held by the department for instream flows, irrigation use, or other beneficial use. Trust water rights may be acquired on a temporary or permanent basis. To the extent practicable and subject to legislative appropriation, trust water rights acquired in an area with an approved watershed plan developed under chapter 90.82 RCW shall be consistent with that plan if the plan calls for such acquisition.

(4) A schedule of the amount of net water saved as a result of water conservation projects carried out in accordance with this chapter, shall be developed annually to reflect the predicted hydrologic and water supply conditions, as well as anticipated water demands, for the upcoming irrigation season. This schedule shall serve as the basis for the distribution and management of trust water rights each year.

(5)(a) No exercise of a trust water right may be authorized unless the department first determines that no existing water rights, junior or senior in priority, will be impaired as to their exercise or injured in any manner whatever by such authorization.

(b) Before any trust water right is exercised, the department shall publish notice thereof in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in such other newspapers as the department determines are necessary, once a week for two consecutive weeks. At the same time the department may also send notice thereof containing pertinent information to the director of fish and wildlife.

(c) Subsections (4) and (5)(b) of this section do not apply to a trust water right resulting from a donation for instream flows described in RCW 90.38.020(1)(b) or from the lease of a water right under RCW 90.38.020(6) if the period of the lease does not exceed five years. However, the department shall provide the notice described in (b) of this subsection the first time the trust water right resulting from the donation is exercised.

(6) RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no applicability to trust water rights held by the department under this chapter or exercised under this section. [2001 c 237 § 29; 1994 c 264 § 90; 1989 c 429 § 5.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.38.050 Rules.** The department may adopt rules as appropriate to ensure full implementation of this chapter. [1989 c 429 § 6.]

**90.38.900 Existing policies not replaced.** The policies and purposes of this chapter shall not be construed as replacing or amending the policies or the purposes for which funds available under chapter 43.83B or 43.99E RCW may be used within or without the Yakima river basin. [1989 c 429 § 7.]

**90.38.901 Transfer of rights between irrigation districts not intended.** It is not the intent of this chapter to facilitate the transfer of water rights from one irrigation district to another. [1989 c 429 § 8.]

**90.38.902 Existing rights not impaired.** Nothing in this chapter shall authorize the impairment or operate to impair any existing water rights. [1989 c 429 § 9.]

## Chapter 90.40 RCW

### WATER RIGHTS OF UNITED STATES

#### Sections

90.40.010	Eminent domain by the United States.
90.40.020	Right to use water courses.
90.40.030	Notice and certificate, effect of.
90.40.040	Appropriation of water—Title to beds and shores.
90.40.050	Reservation of needed lands—Procedure.
90.40.060	Restrictions on sale of state lands within project.
90.40.070	Federal water users' association—Exemption from fees.
90.40.080	Federal water users' association—Records by county auditor.
90.40.090	Permit for Grand Coulee project.
90.40.100	Columbia Basin Project—Water appropriated pursuant to RCW 90.40.030—Periodic renewal not required.

**90.40.010 Eminent domain by the United States.** The United States is hereby granted the right to exercise the power of eminent domain to acquire the right to the use of any water, to acquire or extinguish any rights, and to acquire any lands or other property, for the construction, operation, repairs to, maintenance or control of any plant or system of works for the storage, conveyance, or use of water for irrigation purposes, and whether such water, rights, lands or other property so to be acquired belong to any private party, association, corporation or to the state of Washington, or any municipality thereof; and such power of eminent domain shall be exercised under and by the same procedure as now is or may be hereafter provided by the law of this state for the exercise of the right of eminent domain by ordinary railroad corporations, except that the United States may exercise such right in the proper court of the United States as well as the proper state court. [1905 c 88 § 1; RRS § 7408.]

*Condemnation by corporations: Chapter 8.20 RCW.*

*Eminent domain, railroads—Corporate powers and duties: RCW 81.36.010.*

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*Special railroad eminent domain proceedings: RCW 8.20.140, 28B.20.330, 81.36.020, 81.36.060, 81.52.040, 81.53.180.*

**90.40.020 Right to use water courses.** The United States shall have the right to turn into any natural or artificial water course, any water that it may have acquired the right to store, divert, or store and divert, and may again divert and reclaim said waters from said water course for irrigation purposes subject to existing rights. [1905 c 88 § 2; RRS § 7409.]

**90.40.030 Notice and certificate, effect of.** Whenever the secretary of the interior of the United States, or any officer of the United States duly authorized, shall notify the commissioner of public lands of this state that pursuant to the provisions of the act of congress approved June 17, 1902, entitled, "An act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands," or any amendment of said act or substitute therefor, the United States intends to make examinations or surveys for the utilization of certain specified waters, the waters so described shall not thereafter be subject to appropriation under any law of this state for a period of one year from and after the date of the receipt of such notice by such commissioner of public lands; but such notice shall not in any wise affect the appropriation of any water theretofore in good faith initiated under any law of this state, but such appropriation may be completed in accordance with the law in the same manner and to the same extent as though such notice had not been given. No adverse claim to any of such waters initiated subsequent to the receipt by the commissioner of public lands of such notice shall be recognized, under the laws of this state, except as to such amount of the waters described in such notice or certificate hereinafter provided as may be formally released in writing by a duly authorized officer of the United States. If the said secretary of the interior or other duly authorized officer of the United States shall, before the expiration of said period of one year, certify in writing to the said commissioner of public lands that the project contemplated in such notice appears to be feasible and that the investigation will be made in detail, the waters specified in such notice shall not be subject to appropriation under any law of this state for the further period of three years following the date of receipt of such certificate, and such further time as the commissioner of public lands may grant, upon application of the United States or some one of its authorized officers and notice thereof first published once in each week for four consecutive weeks in a newspaper published in the county where the works for the utilization of such waters are to be constructed, and if such works are to be in or extend into two or more counties, then for the same period in a newspaper in each of such counties: PROVIDED, That in case such certificate shall not be filed with said commissioner of public lands within the period of one year herein limited therefor the waters specified in such notice shall, after the expiration of said period of one year, become unaffected by such notice and subject to appropriation as they would have been had such notice never been given: AND PROVIDED FURTHER, That in case such certificate be filed within said one year and the United States does not authorize the construction of works for the utilization of such waters within said three

years after the filing of said certificate, then the waters specified in such notice and certificate shall, after the expiration of said last named period of three years, become unaffected by such notice or certificate and subject to appropriation as they would have been had such notice never been given and such certificate never filed. [1905 c 88 § 3; RRS § 7410.]

**Reviser's note:** This section refers to the "commissioner of public lands" in several instances. Note that a later act, the 1917 Water Code, in section 27 (RCW 90.03.250) states in part:

"PROVIDED, FURTHER, That nothing in this act contained shall be deemed to affect chapter 88 of the Laws of 1905 except that the notice and certificate therein provided for in section 3 thereof shall be addressed to the state hydraulic engineer after the passage of this act, and the state hydraulic engineer shall exercise the powers and perform the duties prescribed by said section 3."

Chapter 88, Laws of 1905 referred to in the above quotation is the instant chapter and "section 3" is the instant section. The language "this act" in the above quotation refers to the 1917 Water Code codified as chapter 90.03 RCW. The "state hydraulic engineer" referred to in the quotation has been changed throughout the remainder of this title because of the devolution of the powers and duties to "supervisor of water resources", see note following the title digest. Thus, the language "commissioner of public lands" is retained in the instant section and in RCW 90.40.050 and 90.40.060 because while some of the duties have been transferred to the hydraulic engineer thence to the supervisor of water resources not all of such duties prescribed in this chapter have so devolved.

**90.40.040 Appropriation of water—Title to beds and shores.** Whenever said secretary of the interior or other duly authorized officer of the United States shall cause to be let a contract for the construction of any irrigation works or any works for the storage of water for use in irrigation, or any portion or section thereof, for which the withdrawal has been effected as provided in RCW 90.40.030, any authorized officer of the United States, either in the name of the United States or in such name as may be determined by the secretary of the interior, may appropriate, in behalf of the United States, so much of the unappropriated waters of the state as may be required for the project, or projects, for which water has been withdrawn or reserved under RCW 90.40.030, including any and all divisions thereof, theretofore constructed, in whole or in part, by the United States or proposed to be thereafter constructed by the United States, such appropriation to be made, maintained and perfected in the same manner and to the same extent as though such appropriation had been made by a private person, corporation or association, except that the date of priority as to all rights under such appropriation in behalf of the United States shall relate back to the date of the first withdrawal or reservation of the waters so appropriated, and in case of filings on water previously withdrawn under RCW 90.40.030, no payment of fees will be required. Such appropriation by or on behalf of the United States shall inure to the United States, and its successors in interest, in the same manner and to the same extent as though said appropriation had been made by a private person, corporation or association. The title to the beds and shores of any navigable lake or stream utilized by the construction of any reservoir or other irrigation works created or constructed as a part of such appropriation hereinbefore in this section provided for, shall vest in the United States to the extent necessary for the maintenance, operation and control of such reservoir or other irrigation works. [1929 c 95 § 1; 1905 c 88 § 4; RRS § 7411.]

**90.40.050 Reservation of needed lands—Procedure.**

When the notice provided for in RCW 90.40.030 shall be given to the commissioner of public lands the proper officers of the United States may file with the said commissioner a list of lands (including in the term "lands" as here used, the beds and shores of any lake, river, stream, or other waters) owned by the state, over or upon which the United States may require rights-of-way for canals, ditches or laterals or sites for reservoirs and structures therefor or appurtenant thereto, or such additional rights-of-way and quantity of land as may be required for the operation and maintenance of the completed works for the irrigation project contemplated in such notice, and the filing of such list shall constitute a reservation from the sale or other disposal by the state of such lands so described, which reservation shall, upon the completion of such works and upon the United States by its proper officers filing with the commissioner of public lands of the state a description of such lands by metes and bounds or other definite description, ripen into a grant from the state to the United States. The state, in the disposal of lands granted from the United States to the state, shall reserve for the United States rights-of-way for ditches, canals, laterals, telephone and transmission lines which may be required by the United States for the construction, operation and maintenance of irrigation works. [1905 c 88 § 5; RRS § 7412.]

**Reviser's note:** See note following RCW 90.40.030.

**90.40.060 Restrictions on sale of state lands within project.**

After the receipt by the commissioner of public lands of the notice from the secretary of the interior or other officer of the United States provided for in RCW 90.40.030, no lands belonging to the state, susceptible of irrigation and within the area to be irrigated from the works projected by the United States and specified in such notice shall be sold except in conformity to the classification of farm units by the United States, and the title to such lands shall not pass from the state until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works and shall produce the evidence thereof duly issued: PROVIDED, That the restrictions upon the sale or other disposal by the state of any state lands provided for in this section shall continue for the same periods, respectively, and upon the same conditions, as specified in RCW 90.40.030 for the withdrawal of waters from appropriation: AND PROVIDED FURTHER, That in case the authorization by the United States for the construction of irrigation works pursuant to RCW 90.40.030 shall be made within the period of three years specified therefor in said section, then the restrictions upon and conditions prescribed for the sale or other disposal of said lands in this section shall continue so long as any such lands shall remain unsold or not disposed of. [1905 c 88 § 6; RRS § 7413.]

**Reviser's note:** See note following RCW 90.40.030.

**90.40.070 Federal water users' association—Exemption from fees.**

Any water users' association which is organized in conformity with the requirements of the United States under said act of congress, and which under its articles of incorporation is authorized to furnish water only to its

stockholders, shall be exempt from the payment of any incorporation tax, and from the payment of any annual franchise tax; but shall be required to pay, as preliminary to its incorporation, only a fee of twenty dollars for the filing and recording of its articles of incorporation and the issuance of certificates of incorporation. Whenever, with the consent of the secretary of the interior of the United States, the stockholders of any such association shall adopt any other form of organization to manage the affairs of such reclamation project in connection with which any such water users' association has been organized, such association may dissolve or disincorporate itself by the procedure and subject to the laws relating to the disincorporation of corporations in this state when such dissolution is authorized by a vote of two-thirds of all the stockholders represented at a meeting of the stockholders called for such purpose. [1919 c 42 § 1; 1905 c 88 § 7; RRS § 7414.]

*Corporations and associations (nonprofit): Title 24 RCW.*

**90.40.080 Federal water users' association—Records by county auditor.** It shall be the duty of the county auditor to provide record books containing printed forms of the articles of incorporation and stock subscriptions to the stock of water users' associations organized in conformity with the requirements of the United States under said act of congress, and to use such books for recording stock subscriptions of such associations; and the charges for the recording thereof shall be made on the basis of the number of words actually written therein and not for the printed form. [1905 c 88 § 8; RRS § 7415.]

**90.40.090 Permit for Grand Coulee project.** An application filed by the department of ecology or its assignee, the United States Bureau of Reclamation, for a permit to appropriate waters of the Columbia River under chapter 90.03 RCW, for the development of the Grand Coulee project shall be perfected in the same manner and to the same extent as though such appropriation had been made by a private person, corporation or association, but no fees, as provided for in RCW 90.03.470, shall be required. [1988 c 127 § 83; 1933 ex.s. c 13 § 4; RRS § 7399-1, pocket part.]

**Severability—1933 ex.s. c 13:** "The adjudication of invalidity of any section, clause, or part of a section of this act, shall not impair or otherwise affect the validity of the act as a whole or any part thereof." [1933 ex.s. c 13 § 6; RRS § 7399-2.]

**90.40.100 Columbia Basin Project—Water appropriated pursuant to RCW 90.40.030—Periodic renewal not required.** Any water withdrawn from appropriation pursuant to RCW 90.40.030 associated with the Columbia Basin Project shall continue as withdrawn from appropriation, without need for periodic renewal, until the project is declared completed or abandoned by the United States acting by and through the secretary of the interior or such other duly authorized officer of the United States. [1987 c 491 § 1.]

## Chapter 90.42 RCW

### WATER RESOURCE MANAGEMENT

#### Sections

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**90.42.005 Policy—Findings.** (1) It is the policy of the state of Washington to recognize and preserve water rights in accordance with RCW 90.03.010.

(2) The legislature finds that:

(a) The state of Washington is faced with a shortage of water with which to meet existing and future needs, particularly during the summer and fall months and in dry years when the demand is greatest;

(b) Consistent with RCW 90.54.180, issuance of new water rights, voluntary water transfers, and conservation and water use efficiency programs, including storage, all are acceptable methods of addressing water uses because they can relieve current critical water situations, provide for presently unmet needs, and assist in meeting future water needs. Presently unmet needs or current needs includes the water required to increase the frequency of occurrence of base or minimum flow levels in streams of the state, the water necessary to satisfy existing water rights, or the water necessary to provide full supplies to existing water systems with current supply deficiencies;

(c) The interests of the state and its citizens will be served by developing programs and regional water resource plans, in cooperation with local governments, federally recognized tribal governments, appropriate federal agencies, private citizens, and the various water users and water interests in the state, that increase the overall ability to manage the state's waters in order to resolve conflicts and to better satisfy both present and future needs for water; and

(d) Water banking as a function of the trust water [rights] program and as authorized by this chapter can provide an effective means to facilitate the voluntary transfer of water rights established through conservation, purchase, lease, or donation, to preserve water rights and provide water for presently unmet and future needs; and to achieve a variety of water resource management objectives throughout the state, including drought response, improving streamflows on a voluntary basis, providing water mitigation, or reserving water supply for future uses. [2003 c 144 § 1; 1991 c 347 § 1.]

**Effective date—2003 c 144:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 144 § 8.]

**Purposes—1991 c 347:** "The purposes of this act are to:

(1) Improve the ability of the state to work with the United States, local governments, federally recognized tribal governments, water right holders,

water users, and various water interests in water conservation and water use efficiency programs designed to satisfy existing rights, presently unmet needs, and future needs, both instream and out-of-stream;

(2) Establish new incentives, enhance existing incentives, and remove disincentives for efficient water use;

(3) Establish improved means to disseminate information to the public and provide technical assistance regarding ways to improve the efficiency of water use;

(4) Create a trust water rights mechanism for the acquisition of water rights on a voluntary basis to be used to meet presently unmet needs and future needs;

(5) Prohibit the sale of nonconforming plumbing fixtures and require the marking and labeling of fixtures meeting state standards;

(6) Reduce tax disincentives to water conservation, reuse, and improved water use efficiency; and

(7) Add achievement of water conservation as a factor to be considered by water supply utilities in setting water rates." [1991 c 347 § 2.]

**90.42.010 Findings—Intent.** The legislature finds that a need exists to develop and test a means to facilitate the voluntary transfer of water and water rights, including conserved water, to provide water for presently unmet needs and emerging needs. Further, the legislature finds that water conservation activities have the potential of affecting the quantity of return flow waters to which existing water right holders have a right to and rely upon. It is the intent of the legislature that persons holding rights to water, including return flows, not be adversely affected in the implementation of the provisions of this chapter. [1998 c 245 § 173. Prior: 1993 sp.s. c 4 § 14; 1993 c 98 § 1; 1991 c 347 § 5.]

**Findings—Grazing lands—1993 sp.s. c 4:** See RCW 79.13.600.

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**90.42.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Net water savings" means the amount of water that is determined to be conserved and usable within a specified stream reach or reaches for other purposes without impairment or detriment to water rights existing at the time that a water conservation project is undertaken, reducing the ability to deliver water, or reducing the supply of water that otherwise would have been available to other existing water uses.

(3) "Trust water right" means any water right acquired by the state under this chapter for management in the state's trust water rights program.

(4) "Pilot planning areas" means the geographic areas designated under RCW 90.54.045(2).

(5) "Water conservation project" means any project or program that achieves physical or operational improvements that provide for increased water use efficiency in existing systems of diversion, conveyance, application, or use of water under water rights existing on July 28, 1991. [1991 c 347 § 6.]

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**90.42.030 Contracts to finance water conservation projects—Public benefits—Trust water rights.** (1) For purposes of this chapter, the state may enter into contracts to provide moneys to assist in the financing of water conservation projects. In consideration for the financial assistance provided, the state shall obtain public benefits defined in guidelines developed under RCW 90.42.050.

(2) If the public benefits to be obtained require conveyance or modification of a water right, the recipient of funds shall convey to the state the recipient's interest in that part of the water right or claim constituting all or a portion of the resulting net water savings for deposit in the trust water rights program. The amount to be conveyed shall be finitely determined by the parties, in accordance with the guidelines developed under RCW 90.42.050, before the expenditure of state funds. Conveyance may consist of complete transfer, lease contracts, or other legally binding agreements. When negotiating for the acquisition of conserved water or net water savings, or a portion thereof, the state may require evidence of a valid water right.

(3) As part of the contract, the water right holder and the state shall specify the process to determine the amount of water the water right holder would continue to be entitled to once the water conservation project is in place.

(4) The state shall cooperate fully with the United States in the implementation of this chapter. Trust water rights may be acquired through expenditure of funds provided by the United States and shall be treated in the same manner as trust water rights resulting from the expenditure of state funds.

(5) If water is proposed to be acquired by or conveyed to the state as a trust water right by an irrigation district, evidence of the district's authority to represent the water right holders shall be submitted to and for the satisfaction of the department.

(6) The state shall not contract with any person to acquire a water right served by an irrigation district without the approval of the board of directors of the irrigation district. Disapproval by a board shall be factually based on probable adverse effects on the ability of the district to deliver water to other members or on maintenance of the financial integrity of the district. [1993 c 98 § 2; 1991 c 347 § 7.]

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**90.42.040 Trust water rights program—Water right certificate—Notice of creation or modification.** (1) All trust water rights acquired by the state shall be placed in the state trust water rights program to be managed by the department. Trust water rights acquired by the state shall be held or authorized for use by the department for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans for pilot planning areas, or to resolve critical water supply problems. To the extent practicable and subject to legislative appropriation, trust water rights acquired in an area with an approved watershed plan developed under chapter 90.82 RCW shall be consistent with that plan if the plan calls for such acquisition.

(2) The department shall issue a water right certificate in the name of the state of Washington for each permanent trust water right conveyed to the state indicating the reach or reaches of the stream, the quantity, and the use or uses to which it may be applied. A superseding certificate shall be issued that specifies the amount of water the water right holder would continue to be entitled to as a result of the water conservation project. The superseding certificate shall retain the same priority date as the original right. For nonpermanent conveyances, the department shall issue certificates or such

other instruments as are necessary to reflect the changes in purpose or place of use or point of diversion or withdrawal.

(3) A trust water right retains the same priority date as the water right from which it originated, but as between them the trust right shall be deemed to be inferior in priority unless otherwise specified by an agreement between the state and the party holding the original right.

(4) Exercise of a trust water right may be authorized only if the department first determines that neither water rights existing at the time the trust water right is established, nor the public interest will be impaired. If impairment becomes apparent during the time a trust water right is being exercised, the department shall cease or modify the use of the trust water right to eliminate the impairment.

(5) Before any trust water right is created or modified, the department shall, at a minimum, require that a notice be published in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in other newspapers as the department determines is necessary, once a week for two consecutive weeks. At the same time the department shall send a notice containing pertinent information to all appropriate state agencies, potentially affected local governments and federally recognized tribal governments, and other interested parties.

(6) RCW 90.14.140 through 90.14.230 have no applicability to trust water rights held by the department under this chapter or exercised under this section.

(7) RCW 90.03.380 has no applicability to trust water rights acquired by the state through the funding of water conservation projects.

(8) Subsections (4) and (5) of this section do not apply to a trust water right resulting from a donation for instream flows described in RCW 90.42.080(1)(b) or to a trust water right leased under RCW 90.42.080(8) if the period of the lease does not exceed five years. However, the department shall provide the notice described in subsection (5) of this section the first time the trust water right resulting from the donation is exercised.

(9) Where a portion of an existing water right that is acquired or donated to the trust water rights program will assist in achieving established instream flows, the department shall process the change or amendment of the existing right without conducting a review of the extent and validity of the portion of the water right that will remain with the water right holder. [2002 c 329 § 8; 2001 c 237 § 30; 1993 c 98 § 3; 1991 c 347 § 8.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**90.42.050 Guidelines governing trust water rights—Submission of guidelines to joint select committee.** The department, in cooperation with federally recognized Indian tribes, local governments, state agencies, and other interested parties, shall establish guidelines by July 1, 1992, governing the acquisition, administration, and management of trust water rights. The guidelines shall address at a minimum the following:

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(1) Methods for determining the net water savings resulting from water conservation projects or programs carried out in accordance with this chapter, and other factors to be considered in determining the quantity or value of water available for potential designation as a trust water right;

(2) Criteria for determining the portion of net water savings to be conveyed to the state under this chapter;

(3) Criteria for prioritizing water conservation projects;

(4) A description of potential public benefits that will affect consideration for state financial assistance in RCW 90.42.030;

(5) Procedures for providing notification to potentially interested parties;

(6) Criteria for the assignment of uses of trust water rights acquired in areas of the state not addressed in a regional water resource plan or critical area agreement; and

(7) Contracting procedures and other procedures not specifically addressed in this section.

These guidelines shall be submitted to the joint select committee on water resource policy before adoption. [1991 c 347 § 9.]

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**90.42.060 Chapter 43.83B or 43.99E RCW not replaced or amended.** The policies and purposes of this chapter shall not be construed as replacing or amending the policies or the purposes for which funds available under chapter 43.83B or 43.99E RCW may be used. [1991 c 347 § 10.]

**Purposes—1991 c 347:** See notes following RCW 90.42.005.

**90.42.070 Involuntary impairment of existing water rights not authorized.** Nothing in this chapter authorizes the involuntary impairment of any existing water rights. [1991 c 347 § 11.]

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**90.42.080 Trust water rights—Acquisition, donation, exercise, and transfer—Appropriation required for expenditure of funds.** (1)(a) The state may acquire all or portions of existing water rights, by purchase, gift, or other appropriate means other than by condemnation, from any person or entity or combination of persons or entities. Once acquired, such rights are trust water rights. A water right acquired by the state that is expressly conditioned to limit its use to instream purposes shall be administered as a trust water right in compliance with that condition.

(b) If the holder of a right to water from a body of water chooses to donate all or a portion of the person's water right to the trust water system to assist in providing instream flows on a temporary or permanent basis, the department shall accept the donation on such terms as the person may prescribe as long as the donation satisfies the requirements of subsection (4) of this section and the other applicable requirements of this chapter and the terms prescribed are relevant and material to protecting any interest in the water right retained by the donor. Once accepted, such rights are trust water rights within the conditions prescribed by the donor.

(2) The department may enter into leases, contracts, or such other arrangements with other persons or entities as

appropriate, to ensure that trust water rights acquired in accordance with this chapter may be exercised to the fullest possible extent.

(3) Trust water rights may be acquired by the state on a temporary or permanent basis.

(4) A water right donated under subsection (1)(b) of this section shall not exceed the extent to which the water right was exercised during the five years before the donation nor may the total of any portion of the water right remaining with the donor plus the donated portion of the water right exceed the extent to which the water right was exercised during the five years before the donation. A water right holder who believes his or her water right has been impaired by a trust water right donated under subsection (1)(b) of this section may request that the department review the impairment claim. If the department determines that exercising the trust water right resulting from the donation or exercising a portion of that trust water right donated under subsection (1)(b) of this section is impairing existing water rights in violation of RCW 90.42.070, the trust water right shall be altered by the department to eliminate the impairment. Any decision of the department to alter or not to alter a trust water right donated under subsection (1)(b) of this section is appealable to the pollution control hearings board under RCW 43.21B.230. A donated water right's status as a trust water right under this subsection is not evidence of the validity or quantity of the water right.

(5) The provisions of RCW 90.03.380 and 90.03.390 do not apply to donations for instream flows described in subsection (1)(b) of this section, but do apply to other transfers of water rights under this section.

(6) No funds may be expended for the purchase of water rights by the state pursuant to this section unless specifically appropriated for this purpose by the legislature.

(7) Any water right conveyed to the trust water right system as a gift that is expressly conditioned to limit its use to instream purposes shall be managed by the department for public purposes to ensure that it qualifies as a gift that is deductible for federal income taxation purposes for the person or entity conveying the water right.

(8) If the department acquires a trust water right by lease, the amount of the trust water right shall not exceed the extent to which the water right was exercised during the five years before the acquisition was made nor may the total of any portion of the water right remaining with the original water right holder plus the portion of the water right leased by the department exceed the extent to which the water right was exercised during the five years before the acquisition. A water right holder who believes his or her water right has been impaired by a trust water right leased under this subsection may request that the department review the impairment claim. If the department determines that exercising the trust water right resulting from the leasing or exercising of a portion of that trust water right leased under this subsection is impairing existing water rights in violation of RCW 90.42.070, the trust water right shall be altered by the department to eliminate the impairment. Any decision of the department to alter or not to alter a trust water right leased under this subsection is appealable to the pollution control hearings board under RCW 43.21B.230. The department's leasing of a trust water right

under this subsection is not evidence of the validity or quantity of the water right.

(9) For a water right donated to or acquired by the trust water rights program on a temporary basis, the full quantity of water diverted or withdrawn to exercise the right before the donation or acquisition shall be placed in the trust water rights program and shall revert to the donor or person from whom it was acquired when the trust period ends. [2002 c 329 § 9; 2001 c 237 § 31; 1993 c 98 § 4; 1991 c 347 § 12.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**90.42.090 Jurisdictional authorities not altered.** It is the intent of the legislature that jurisdictional authorities that exist in law not be expanded, diminished, or altered in any manner whatsoever by this chapter. [1991 c 347 § 13.]

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**90.42.100 Water banking.** (1) The department is hereby authorized to use the trust water rights program in the Yakima river basin for water banking purposes.

(2) Water banking may be used for one or more of the following purposes:

(a) To authorize the use of trust water rights to mitigate for water resource impacts, future water supply needs, or any beneficial use under chapter 90.03, 90.44, or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users;

(b) To document transfers of water rights to and from the trust water rights program; and

(c) To provide a source of water rights the department can make available to third parties on a temporary or permanent basis for any beneficial use under chapter 90.03, 90.44, or 90.54 RCW.

(3) The department shall not use water banking to:

(a) Cause detriment or injury to existing rights;

(b) Issue temporary water rights or portions thereof for new potable uses requiring an adequate and reliable water supply under RCW 19.27.097;

(c) Administer federal project water rights, including federal storage rights; or

(d) Allow carryover of stored water from one water year to another water year.

(4) For purposes of this section and RCW 90.42.135, "total water supply available" shall be defined as provided in the 1945 consent decree between the United States and water users in the Yakima river basin, and consistent with later interpretation by state and federal courts. [2003 c 144 § 2.]

**Effective date—2003 c 144:** See note following RCW 90.42.005.

**90.42.110 Water banking—Application to transfer water rights.** (1) The department, with the consent of the water right holder, may identify trust water rights for admin-

istration for water banking purposes, including trust water rights established before May 7, 2003.

(2) An application to transfer a water right to the trust water [rights] program shall be reviewed under RCW 90.03.380 at the time the water right is transferred to the trust water [rights] program for administration for water banking purposes, and notice of the application shall be published by the applicant as provided under RCW 90.03.280. The application must indicate the reach or reaches of the stream where the trust water right will be established before the transfer of the water right or portion thereof from the trust water [rights] program, and identify reasonably foreseeable future temporary or permanent beneficial uses for which the water right or portion thereof may be used by a third party upon transfer from the trust water right[s] program. In the event the future place of use, period of use, or other elements of the water right are not specifically identified at the time of the transfer into the trust water [rights] program, another review under RCW 90.03.380 will be necessary at the time of a proposed transfer from the trust water [rights] program. [2003 c 144 § 3.]

**Effective date—2003 c 144:** See note following RCW 90.42.005.

**90.42.120 Water banking—Transfer of water rights—Requirements—Appeals.** (1) The department shall transfer a water right or portion thereof being administered for water banking purposes from the trust water [rights] program to a third party upon occurrence of all of the following:

(a) The department receives a request for transfer of a water right or portion thereof currently administered by the department for water banking purposes;

(b) The request is consistent with any previous review under RCW 90.03.380 of the water right and future temporary or permanent beneficial uses;

(c) The request is consistent with any condition, limitation, or agreement affecting the water right, including but not limited to any trust water right transfer agreement executed at the time the water right was transferred to the trust water rights program; and

(d) The request is accompanied by and is consistent with an assignment of interest or portion thereof from a person or entity retaining an interest in the trust water right or portion thereof to the party requesting transfer of the water right or portion thereof.

(2) The priority date of the water right or portion thereof transferred by the department from the trust water [rights] program for water banking purposes shall be the priority date of the underlying water right.

(3) The department shall issue documentation for that water right or portion thereof to the new water right holder based on the requirements applicable to the transfer of other water rights from the trust water rights program. Such documentation shall include a description of the property to which the water right will be appurtenant after the water right or portion thereof is transferred from the trust water [rights] program to a third party.

(4) The department's decision on the transfer of a water right or portion thereof from the trust water [rights] program for water banking purposes may be appealed to the pollution control hearings board under RCW 43.21B.230, or to a supe-

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rior court conducting a general adjudication under RCW 90.03.210. [2003 c 144 § 4.]

**Effective date—2003 c 144:** See note following RCW 90.42.005.

**90.42.130 Water banking—Input from affected entities—Reports.** (1) The department shall seek input from agricultural organizations, federal agencies, tribal governments, local governments, watershed groups, conservation groups, and developers on water banking, including water banking procedures and identification of areas in Washington state where water banking could assist in providing water supplies for instream and out-of-stream uses. The department shall summarize any comments received on water banking and submit a report, including any recommendations, to the appropriate committees of the legislature for their consideration in the subsequent legislative session.

(2) By December 31st of every even-numbered year, the department shall submit a report to the appropriate committees of the legislature on water banking activities authorized under RCW 90.42.100. The report shall:

(a) Evaluate the effectiveness of water banking in meeting the policies and objectives of this chapter;

(b) Describe any statutory, regulatory, or other impediments to water banking in other areas of the state; and

(c) Identify other basins or regions that may benefit from authorization for the department to use the trust water [rights] program for water banking purposes. [2003 c 144 § 5.]

**Effective date—2003 c 144:** See note following RCW 90.42.005.

**90.42.135 Limitations of act—2003 c 144.** Nothing in chapter 144, Laws of 2003 shall:

(1) Cause detriment or injury to existing rights or to the operation of the federal Yakima project to provide water for irrigation purposes, existing water supply contracts, or existing water rights;

(2) Diminish in any way existing rights or the total water supply available for irrigation and other purposes in the Yakima basin;

(3) Affect or modify the authority of a court conducting a general adjudication pursuant to RCW 90.03.210; or

(4) Affect or modify the rights of any person or entity under a water rights adjudication or under any order of the court conducting a water rights adjudication. [2003 c 144 § 6.]

**Effective date—2003 c 144:** See note following RCW 90.42.005.

**90.42.138 Construction—2003 c 144.** Nothing in chapter 144, Laws of 2003 may be construed to:

(1) Affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under state or federal law;

(2) Affect or modify the rights or jurisdictions of the United States, the state of Washington, the Yakama Nation, or other person or entity over waters of any river or stream or over any ground water resource;

(3) Alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the states;

(4) Alter, establish, or impair the respective rights of states, the United States, the Yakama Nation, or any other

person or entity with respect to any water or water-related right;

(5) Alter, diminish, or abridge the rights and obligations of any federal, state, or local agency, the Yakama Nation, or other person or entity;

(6) Affect or modify the rights of the Yakama Indian Nation or its successors in interest to, and management and regulation of, those water resources arising or used, within the external boundaries of the Yakama Indian Reservation;

(7) Affect or modify the settlement agreement between the United States and the state of Washington filed in Yakima county superior court with regard to federal reserved water rights other than those rights reserved by the United States for the benefit of the Yakama Indian Nation and its members; or

(8) Affect or modify the rights of any federal, state, or local agency, the Yakama Nation, or any other person or entity, public or private, with respect to any unresolved and unsettled claims in any water right adjudications, or court decisions, including *State v. Acquavella*, or constitute evidence in any such proceeding in which any water or water-related right is adjudicated. [2003 c 144 § 7.]

**Effective date—2003 c 144:** See note following RCW 90.42.005.

**90.42.900 Severability—1991 c 347.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 347 § 30.]

## Chapter 90.44 RCW

### REGULATION OF PUBLIC GROUND WATERS

#### Sections

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*Aquifer protection areas: Chapter 36.36 RCW.*

**90.44.020 Purpose of chapter.** This chapter regulating and controlling ground waters of the state of Washington shall be supplemental to chapter 90.03 RCW, which regulates the surface waters of the state, and is enacted for the purpose of extending the application of such surface water statutes to the appropriation and beneficial use of ground waters within the state. [1945 c 263 § 1; Rem. Supp. 1945 § 7400-1.]

**90.44.030 Chapter not to affect surface water rights.** The rights to appropriate the surface waters of the state and the rights acquired by the appropriation and use of surface waters shall not be affected or impaired by any of the provisions of this supplementary chapter and, to the extent that any underground water is part of or tributary to the source of any surface stream or lake, or that the withdrawal of ground water may affect the flow of any spring, water course, lake, or other body of surface water, the right of an appropriator and owner of surface water shall be superior to any subsequent right hereby authorized to be acquired in or to ground water. [1945 c 263 § 2; Rem. Supp. 1945 § 7400-2.]

**90.44.035 Definitions.** For purposes of this chapter:

- (1) "Department" means the department of ecology;
- (2) "Director" means the director of ecology;
- (3) "Ground waters" means all waters that exist beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water within the boundaries of this state, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves. There is a recognized distinction between natural ground water and artificially stored ground water;
- (4) "Natural ground water" means water that exists in underground storage owing wholly to natural processes;
- (5) "Artificially stored ground water" means water that is made available in underground storage artificially, either intentionally, or incidentally to irrigation and that otherwise would have been dissipated by natural processes; and
- (6) "Underground artificial storage and recovery project" means any project in which it is intended to artificially store water in the ground through injection, surface spreading and infiltration, or other department-approved method, and to make subsequent use of the stored water. However, (a) this subsection does not apply to irrigation return flow, or to operational and seepage losses that occur during the irrigation of land, or to water that is artificially stored due to the construction, operation, or maintenance of an irrigation district project, or to projects involving water reclaimed in accordance with chapter 90.46 RCW; and (b) RCW 90.44.130

applies to those instances of claimed artificial recharge occurring due to the construction, operation, or maintenance of an irrigation district project or operational and seepage losses that occur during the irrigation of land, as well as other forms of claimed artificial recharge already existing at the time a ground water subarea is established. [2000 c 98 § 2; 1987 c 109 § 107; 1973 c 94 § 2; 1945 c 263 § 3; RRS § 7400-3. Formerly RCW 90.44.010.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**Purpose—1973 c 94:** "It is the purpose of this 1973 amendatory act to state as well as reaffirm the intent of the legislature that "ground waters," as defined in chapter 263, Laws of 1945, means all waters within the state existing beneath the land surface, and to remove any possible ambiguity which may exist as a result of the dissenting opinion in *State v. Ponten*, 77 Wn.2d 463 (1969), or otherwise, with regard to the meaning of "ground waters" in the present wording of RCW 90.44.035. The definition set forth in section 2 of this 1973 amendatory act accords with the interpretation given by all of the various administrative agencies having responsibility for administration of the act since its enactment in 1945." [1973 c 94 § 1.] This applies to the amendment to RCW 90.44.035 by 1973 c 94 § 2.

**90.44.040 Public ground waters subject to appropriation.** Subject to existing rights, all natural ground waters of the state as defined in RCW 90.44.035, also all artificial ground waters that have been abandoned or forfeited, are hereby declared to be public ground waters and to belong to the public and to be subject to appropriation for beneficial use under the terms of this chapter and not otherwise. [1945 c 263 § 4; Rem. Supp. 1945 § 7400-4.]

**90.44.050 Permit to withdraw.** After June 6, 1945, no withdrawal of public ground waters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public ground waters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW 90.44.052, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter: PROVIDED, HOWEVER, That the department from time to time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal: PROVIDED, FURTHER, That at the option of the party making withdrawals of ground waters of the state not exceeding five thousand gallons per day, applications under this section or declarations under RCW 90.44.090 may be filed and permits and certificates obtained in the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day. [2003 c 307 § 1; 1987 c 109 § 108; 1947 c 122 § 1; 1945 c 263 § 5; Rem. Supp. 1947 § 7400-5.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

(2006 Ed.)

**90.44.052 Whitman county clustered residential developments pilot project—Exemption from permit requirements—Reports.** (1) On a pilot project basis, the use of water for domestic use in clustered residential developments is exempt as described in subsection (2) of this section from the permit requirements of RCW 90.44.050 in Whitman county. The department must review the use of water under this section and its impact on water resources in the county and report to the legislature by December 31st of each even-numbered year through 2016 regarding its review.

(2) For the pilot project, the domestic use of water for a clustered residential development is exempt from the permit requirements of RCW 90.44.050 for an amount of water that is not more than one thousand two hundred gallons a day per residence for a residential development that has an overall density equal to or less than one residence per ten acres and a minimum of six homes.

(3) No new right to use water may be established for a clustered development under this section where the first residential use of water for the development begins after December 31, 2015. [2003 c 307 § 2.]

**90.44.055 Applications for water right or amendment—Consideration of water impoundment or other resource management technique.** The department shall, when evaluating an application for a water right or an amendment filed pursuant to RCW 90.44.050 or 90.44.100 that includes provision for any water impoundment or other resource management technique, take into consideration the benefits and costs, including environmental effects, of any water impoundment or other resource management technique that is included as a component of the application. The department's consideration shall extend to any increased water supply that results from the impoundment or other resource management technique, including but not limited to any recharge of ground water that may occur, as a means of making water available or otherwise offsetting the impact of the withdrawal of ground water proposed in the application for the water right or amendment in the same water resource inventory area. Provision for an impoundment or other resource management technique in an application shall be made solely at the discretion of the applicant and shall not be made by the department as a condition for approving an application that does not include such provision.

This section does not lessen, enlarge, or modify the rights of any riparian owner, or any existing water right acquired by appropriation or otherwise. [1997 c 360 § 3; 1996 c 306 § 2.]

**Findings—Purpose—1997 c 360:** See note following RCW 90.03.255.

**90.44.060 Laws governing withdrawal.** Applications for permits for appropriation of underground water shall be made in the same form and manner provided in RCW 90.03.250 through 90.03.340, as amended, the provisions of which sections are hereby extended to govern and to apply to ground water, or ground water right certificates and to all permits that shall be issued pursuant to such applications, and the rights to the withdrawal of ground water acquired thereby shall be governed by RCW 90.03.250 through 90.03.340, inclusive: PROVIDED, That each application to withdraw

public ground water by means of a well or wells shall set forth the following additional information: (1) the name and post office address of the applicant; (2) the name and post office address of the owner of the land on which such well or wells or works will be located; (3) the location of the proposed well or wells or other works for the proposed withdrawal; (4) the ground water area, sub-area, or zone from which withdrawal is proposed, provided the department has designated such area, sub-area, or zone in accord with RCW 90.44.130; (5) the amount of water proposed to be withdrawn, in gallons a minute and in acre feet a year, or millions of gallons a year; (6) the depth and type of construction proposed for the well or wells or other works: AND PROVIDED FURTHER, That any permit issued pursuant to an application for constructing a well or wells to withdraw public ground water may specify an approved type and manner of construction for the purposes of preventing waste of said public waters and of conserving their head. [1987 c 109 § 109; 1945 c 263 § 6; Rem. Supp. 1945 § 7400-6.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.44.062 Use of reclaimed water by wastewater treatment facility—Permit requirements inapplicable.**

The permit requirements of RCW 90.44.060 do not apply to the use of reclaimed water by the owner of a wastewater treatment facility under the provisions of RCW 90.46.120 and do not apply to the use of agricultural industrial process water as provided under RCW 90.46.150. [2001 c 69 § 7; 1997 c 444 § 3.]

**Severability—1997 c 444:** See note following RCW 90.46.010.

**90.44.070 Limitations on granting permit.** No permit shall be granted for the development or withdrawal of public ground waters beyond the capacity of the underground bed or formation in the given basin, district, or locality to yield such water within a reasonable or feasible pumping lift in case of pumping developments, or within a reasonable or feasible reduction of pressure in the case of artesian developments. The department shall have the power to determine whether the granting of any such permit will injure or damage any vested or existing right or rights under prior permits and may in addition to the records of the department, require further evidence, proof, and testimony before granting or denying any such permits. [1987 c 109 § 110; 1945 c 263 § 7; Rem. Supp. 1945 § 7400-7.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.44.080 Certificate—Showing required.** Upon a showing to the department that construction has been completed in compliance with the terms of any permit issued under the provisions of this chapter, it shall be the duty of the department to issue to the permittee a certificate of ground water right stating that the appropriation has been perfected under such permit: PROVIDED, HOWEVER, That such showing shall include the following information: (1) the location of each well or other means of withdrawal constructed under the permit, both with respect to official land surveys and in terms of distance and direction to any preexisting well or wells or works constructed under an earlier per-

mit or approved declaration of a vested right, provided the distance to such pre-existing well or works is not more than a quarter of a mile; (2) the depth and diameter of each well or the depth and general specifications of any other works constructed under the terms of the permit; (3) the thickness in feet and the physical character of each bed, stratum, or formation penetrated by each well; (4) the length and position, in feet below the land surface, and the commercial specifications of all casing, also of each screen or perforated zone in the casing of each well constructed; (5) the tested capacity of each well in gallons a minute, as determined by measuring the discharge of the pump or pumps after continuous operation for at least four hours or, in the case of a flowing well, by measuring the natural flow at the land surface; (6) for each nonflowing well, the depth to the static ground water level as measured in feet below the land surface immediately before the well-capacity test herein provided, also the draw-down of the water level, in feet, at the end of said well-capacity test; (7) for each flowing well, the shut-in pressure measured in feet above the land surface or in pounds per square inch at the land surface; and (8) such additional factual information as reasonably may be required by the department to establish compliance with the terms of the permit and with the provisions of this chapter.

The well driller or other constructor of works for the withdrawal of public ground waters shall be obligated to furnish the permittee a certified record of the factual information necessary to show compliance with the provisions of this section. [1987 c 109 § 111; 1945 c 263 § 8; Rem. Supp. 1945 § 7400-8.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.44.090 Certificate of vested rights.** Any person, firm or corporation claiming a vested right to withdraw public ground waters of the state by virtue of prior beneficial use of such water shall, within three years after June 6, 1945, be entitled to receive from the department a certificate of ground water right to that effect: PROVIDED, That the issuance by the department of any such certificate of vested right shall be contingent on a declaration by the claimant in a form prescribed by the department, which declaration shall set forth: (1) the beneficial use for which such withdrawal has been made; (2) the date or approximate date of the earliest beneficial use of the water so withdrawn, and the continuity of such beneficial use; (3) the amount of water claimed; (4) if the beneficial use has been for irrigation, the description of the land to which such water has been applied and the name of the owner thereof; and (5) so far as it may be available, descriptive information concerning each well or other works for the withdrawal of public ground water, as required of original permittees under the provisions of RCW 90.44.080: PROVIDED, HOWEVER, That in case of failure to comply with the provisions of this section within the three years allotted, the claimant may apply to the department for a reasonable extension of time, which shall not exceed two additional years and which shall be granted only upon a showing of good cause for such failure.

Each such declaration shall be certified, either on the basis of the personal knowledge of the declarant or on the basis of information and belief. With respect to each such

declaration there shall be publication, and findings in the same manner as provided in RCW 90.44.060 in the case of an original application to appropriate water. If the department's findings sustain the declaration, the department shall approve said declaration, which then shall be recorded at length with the department and may also be recorded in the office of the county auditor of the county within which the claimed withdrawal and beneficial use of public ground water have been made. When duly approved and recorded as herein provided, each such declaration or copies thereof shall have the same force and effect as an original permit granted under the provisions of RCW 90.44.060, with a priority as of the date of the earliest beneficial use of the water.

Declarations heretofore filed with the department in substantial compliance with the provisions of this section shall have the same force and effect as if filed after June 6, 1945.

The same fees shall be collected by the department in the case of applications for the issuance of certificates of vested rights, as are required to be collected in the case of application for permits for withdrawal of ground waters and for the issuance of certificates of ground water withdrawal rights under this chapter. [1987 c 109 § 112; 1947 c 122 § 2; 1945 c 263 § 9; Rem. Supp. 1947 § 7400-9.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.44.100 Amendment to permit or certificate—Replacement or new additional wells—Exemption for small irrigation impoundments.** (1) After an application to, and upon the issuance by the department of an amendment to the appropriate permit or certificate of ground water right, the holder of a valid right to withdraw public ground waters may, without losing the holder's priority of right, construct wells or other means of withdrawal at a new location in substitution for or in addition to those at the original location, or the holder may change the manner or the place of use of the water.

(2) An amendment to construct replacement or a new additional well or wells at a location outside of the location of the original well or wells or to change the manner or place of use of the water shall be issued only after publication of notice of the application and findings as prescribed in the case of an original application. Such amendment shall be issued by the department only on the conditions that: (a) The additional or replacement well or wells shall tap the same body of public ground water as the original well or wells; (b) where a replacement well or wells is approved, the use of the original well or wells shall be discontinued and the original well or wells shall be properly decommissioned as required under chapter 18.104 RCW; (c) where an additional well or wells is constructed, the original well or wells may continue to be used, but the combined total withdrawal from the original and additional well or wells shall not enlarge the right conveyed by the original permit or certificate; and (d) other existing rights shall not be impaired. The department may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment, as provided in RCW 90.44.080 in the case of an original permit.

(3) The construction of a replacement or new additional well or wells at the location of the original well or wells shall be allowed without application to the department for an

amendment. However, the following apply to such a replacement or new additional well: (a) The well shall tap the same body of public ground water as the original well or wells; (b) if a replacement well is constructed, the use of the original well or wells shall be discontinued and the original well or wells shall be properly decommissioned as required under chapter 18.104 RCW; (c) if a new additional well is constructed, the original well or wells may continue to be used, but the combined total withdrawal from the original and additional well or wells shall not enlarge the right conveyed by the original water use permit or certificate; (d) the construction and use of the well shall not interfere with or impair water rights with an earlier date of priority than the water right or rights for the original well or wells; (e) the replacement or additional well shall be located no closer than the original well to a well it might interfere with; (f) the department may specify an approved manner of construction of the well; and (g) the department shall require a showing of compliance with the conditions of this subsection (3).

(4) As used in this section, the "location of the original well or wells" is the area described as the point of withdrawal in the original public notice published for the application for the water right for the well.

(5) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection shall not be construed as requiring an amendment of any existing water right to enable the holder of the right to store water governed by the right. [2003 c 329 § 3; 1997 c 316 § 2; 1987 c 109 § 113; 1945 c 263 § 10; Rem. Supp. 1945 § 7400-10.]

**Intent—1997 c 316:** "The legislature intends that the holder of a valid permit or certificate of ground water right be permitted by the department of ecology to amend a valid permit or certificate to allow full and complete development of the valid right by the construction of replacement or additional wells at the original location or new locations." [1997 c 316 § 1.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.44.105 Amendment to permit or certificate—Consolidation of rights for exempt wells.** Upon the issuance by the department of an amendment to the appropriate permit or certificate of ground water right, the holder of a valid right to withdraw public ground waters may consolidate that right with a ground water right exempt from the permit requirement under RCW 90.44.050, without affecting the priority of either of the water rights being consolidated. Such a consolidation amendment shall be issued only after publication of a notice of the application, a comment period, and a determination made by the department, in lieu of meeting the conditions required for an amendment under RCW 90.44.100, that: (1) The exempt well taps the same body of public ground water as the well to which the water right of the exempt well is to be consolidated; (2) use of the exempt well shall be discontinued upon approval of the consolidation amendment to the permit or certificate; (3) legally enforceable agreements have been entered to prohibit the construction of another exempt well to serve the area previously served by the exempt well to be discontinued, and such agreements are binding upon subsequent owners of the land through appro-

appropriate binding limitations on the title to the land; (4) the exempt well or wells the use of which is to be discontinued will be properly decommissioned in accordance with chapter 18.104 RCW and the rules of the department; and (5) other existing rights, including ground and surface water rights and minimum stream flows adopted by rule, shall not be impaired. The notice shall be published by the applicant in a newspaper of general circulation in the county or counties in which the wells for the rights to be consolidated are located once a week for two consecutive weeks. The applicant shall provide evidence of the publication of the notice to the department. The comment period shall be for thirty days beginning on the date the second notice is published.

The amount of the water to be added to the holder's permit or certificate upon discontinuance of the exempt well shall be the average withdrawal from the well, in gallons per day, for the most recent five-year period preceding the date of the application, except that the amount shall not be less than eight hundred gallons per day for each residential connection or such alternative minimum amount as may be established by the department in consultation with the department of health, and shall not exceed five thousand gallons per day. The department shall presume that an amount identified by the applicant as being the average withdrawal from the well during the most recent five-year period is accurate if the applicant establishes that the amount identified for the use or uses of water from the exempt well is consistent with the average amount of water used for similar use or uses in the general area in which the exempt well is located. The department shall develop, in consultation with the department of health, a schedule of average household and small-area landscaping water usages in various regions of the state to aid the department and applicants in identifying average amounts used for these purposes. The presumption does not apply if the department finds credible evidence of nonuse of the well during the required period or credible evidence that the use of water from the exempt well or the intensity of the use of the land supported by water from the exempt well is substantially different than such uses in the general area in which the exempt well is located. The department shall also accord a presumption in favor of approval of such consolidation if the requirements of this subsection are met and the discontinuance of the exempt well is consistent with an adopted coordinated water system plan under chapter 70.116 RCW, an adopted comprehensive land use plan under chapter 36.70A RCW, or other comprehensive watershed management plan applicable to the area containing an objective of decreasing the number of existing and newly developed small ground water withdrawal wells. The department shall provide a priority to reviewing and deciding upon applications subject to this subsection, and shall make its decision within sixty days of the end of the comment period following publication of the notice by the applicant or within sixty days of the date on which compliance with the state environmental policy act, chapter 43.21C RCW, is completed, whichever is later. The applicant and the department may by prior mutual agreement extend the time for making a decision. [1997 c 446 § 1.]

#### **90.44.110 Waste of water prohibited—Exceptions.**

No public ground waters that have been withdrawn shall be wasted without economical beneficial use. The department

shall require all wells producing waters which contaminate other waters to be plugged or capped. The department shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be completely stopped when the wells are not in use under the terms of their respective permits or approved declarations of vested rights. Likewise, the department shall also require both flowing and non-flowing wells to be so constructed and maintained as to prevent the waste of public ground waters through leaky casings, pipes, fittings, valves, or pumps—either above or below the land surface: PROVIDED, HOWEVER, That the withdrawal of reasonable quantities of public ground water in connection with the construction, development, testing, or repair of a well shall not be construed as waste; also, that the inadvertent loss of such water owing to breakage of a pump, valve, pipe, or fitting shall not be construed as waste if reasonable diligence is shown by the permittee in effecting the necessary repair.

In the issuance of an original permit, or of an amendment to an original permit or certificate of vested right to withdraw and appropriate public ground waters under the provisions of this chapter, the department may, as in his judgment is necessary, specify for the proposed well or wells or other works a manner of construction adequate to accomplish the provisions of this section. [1987 c 109 § 114; 1949 c 63 § 1; 1945 c 263 § 11; Rem. Supp. 1949 § 7400-11.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.44.120 Penalty for waste or unauthorized use of water.** The unauthorized use of ground water to which another person is entitled, or the wilful or negligent waste of ground water, or the failure, when required by the department, to cap flowing wells or equip the same with valves, fittings, or casings to prevent waste of ground waters, or to cap or plug wells producing waters which contaminate other waters, shall be a misdemeanor. [1987 c 109 § 115; 1949 c 63 § 2; 1947 c 122 § 3; Rem. Supp. 1949 § 7400-11A.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.44.130 Priorities as between appropriators—Department in charge of ground water withdrawals—Establishment and modification of ground water areas and depth zones—Declarations by claimant of artificially stored water.** As between appropriators of public ground water, the prior appropriator shall as against subsequent appropriators from the same ground water body be entitled to the preferred use of such ground water to the extent of his appropriation and beneficial use, and shall enjoy the right to have any withdrawals by a subsequent appropriator of ground water limited to an amount that will maintain and provide a safe sustaining yield in the amount of the prior appropriation. The department shall have jurisdiction over the withdrawals of ground water and shall administer the ground water rights under the principle just set forth, and it shall have the jurisdiction to limit withdrawals by appropriators of ground water so as to enforce the maintenance of a safe sustaining yield from the ground water body. For this purpose, the department shall have authority and it shall be its duty from time to time, as adequate factual data become available, to designate ground

water areas or sub-areas, to designate separate depth zones within any such area or sub-area, or to modify the boundaries of such existing area, or sub-area, or zones to the end that the withdrawals therefrom may be administratively controlled as prescribed in RCW 90.44.180 in order that overdraft of public ground waters may be prevented so far as is feasible. Each such area or zone shall, as nearly as known facts permit, be so designated as to enclose a single and distinct body of public ground water. Each such sub-area may be so designated as to enclose all or any part of a distinct body of public ground water, as the department deems will most effectively accomplish the purposes of this chapter.

Designation of, or modification of the boundaries of such a ground water area, sub-area, or zone may be proposed by the department on its own motion or by petition to the department signed by at least fifty or one-fourth, whichever is the lesser number, of the users of ground water in a proposed ground water area, sub-area, or zone. Before any proposed ground water area, sub-area, or zone shall be designated, or before the boundaries or any existing ground water area, sub-area, or zone shall be modified the department shall publish a notice setting forth: (1) In terms of the appropriate legal subdivisions a description of all lands enclosed within the proposed area, sub-area, or zone, or within the area, sub-area, or zone whose boundaries are proposed to be modified; (2) the object of the proposed designation or modification of boundaries; and (3) the day and hour, and the place where written objections may be submitted and heard. Such notice shall be published in three consecutive weekly issues of a newspaper of general circulation in the county or counties containing all or the greater portion of the lands involved, and the newspaper of publication shall be selected by the department. Publication as just prescribed shall be construed as sufficient notice to the landowners and water users concerned.

Objections having been heard as herein provided, the department shall make and file in its office written findings of fact with respect to the proposed designation or modification and, if the findings are in the affirmative, shall also enter a written order designating the ground water area, or sub-area, or zone or modifying the boundaries of the existing area, sub-area, or zone. Such findings and order shall also be published substantially in the manner herein prescribed for notice of hearing, and when so published shall be final and conclusive unless an appeal therefrom is taken within the period and in the manner prescribed by RCW 43.21B.310. Publication of such findings and order shall give force and effect to the remaining provisions of this section and to the provisions of RCW 90.44.180, with respect to the particular area, sub-area, or zone.

Priorities of right to withdraw public ground water shall be established separately for each ground water area, sub-area, or zone and, as between such rights, the first in time shall be the superior in right. The priority of the right acquired under a certificate of ground water right shall be the date of filing of the original application for a withdrawal with the department, or the date or approximate date of the earliest beneficial use of water as set forth in a certificate of a vested ground water right, under the provisions of RCW 90.44.090.

Within ninety days after the designation of a ground water area, sub-area or zone as herein provided, any person, firm or corporation then claiming to be the owner of arti-

cially stored ground water within such area, sub-area, or zone shall file a certified declaration to that effect with the department on a form prescribed by the department. Such declaration shall cover: (1) The location and description of the works by whose operation such artificial ground water storage is purported to have been created, and the name or names of the owner or owners thereof; (2) a description of the lands purported to be underlain by such artificially stored ground water, and the name or names of the owner or owners thereof; (3) the amount of such water claimed; (4) the date or approximate date of the earliest artificial storage; (5) evidence competent to show that the water claimed is in fact water that would have been dissipated naturally except for artificial improvements by the claimant; and (6) such additional factual information as reasonably may be required by the department. If any of the purported artificially stored ground water has been or then is being withdrawn, the claimant also shall file (1) the declarations which this chapter requires of claimants to a vested right to withdraw public ground waters, and (2) evidence competent to show that none of the water withdrawn under those declarations is in fact public ground water from the area, sub-area, or zone concerned: **PROVIDED, HOWEVER,** That in case of failure to file a declaration within the ninety-day period herein provided, the claimant may apply to the department for a reasonable extension of time, which shall not exceed two additional years and which shall be granted only upon a showing of good cause for such failure.

Following publication of the declaration and findings—as in the case of an original application, permit, or certificate of right to appropriate public ground waters—the department shall accept or reject such declaration or declarations with respect to ownership or withdrawal of artificially stored ground water. Acceptance of such declaration or declarations by the department shall convey to the declarant no right to withdraw public ground waters from the particular area, sub-area, or zone, nor to impair existing or subsequent rights to such public waters.

Any person, firm or corporation hereafter claiming to be the owner of ground water within a designated ground water area, sub-area, or zone by virtue of its artificial storage subsequent to such designation shall, within three years following the earliest artificial storage file a declaration of claim with the department, as herein prescribed for claims based on artificial storage prior to such designation: **PROVIDED, HOWEVER,** That in case of such failure the claimant may apply to the department for a reasonable extension of time, which shall not exceed two additional years and which shall be granted upon a showing of good cause for such failure.

Any person, firm or corporation hereafter withdrawing ground water claimed to be owned by virtue of artificial storage subsequent to designation of the relevant ground water area, sub-area, or zone shall, within ninety days following the earliest such withdrawal, file with the department the declarations required by this chapter with respect to withdrawals of public ground water. [1987 c 109 § 116; 1947 c 122 § 4; 1945 c 263 § 12; Rem. Supp. 1947 § 7400-12. Formerly RCW 90.44.130 through 90.44.170.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.44.180 Hearing to adjust supply to current needs.**

At any time the department may hold a hearing on its own motion, and shall hold a hearing upon petition of at least fifty or one-fourth, whichever is the lesser number, of the holders of valid rights to withdraw public ground waters from any designated ground water area, sub-area, or zone, to determine whether the water supply in such area, sub-area, or zone is adequate for the current needs of all such holders. Notice of any such hearing, and the findings and order resulting therefrom shall be published in the manner prescribed in RCW 90.44.130 with respect to the designation or modification of a ground water area, or sub-area, or zone.

If such hearing finds that the total available supply is inadequate for the current needs of all holders of valid rights to withdraw public ground waters from the particular ground water area, sub-area, or zone, the department shall order the aggregate withdrawal from such area, sub-area, or zone decreased so that it shall not exceed such available supply. Such decrease shall conform to the priority of the pertinent valid rights and shall prevail for the term of shortage in the available supply. Except that by mutual agreement among the respective holders and with the department, the ordered decrease in aggregate withdrawal may be accomplished by the waiving of all or some specified part of a senior right or rights in favor of a junior right or rights: PROVIDED, That such waiving of a right or rights by agreement shall not modify the relative priorities of such right or rights as recorded in the department. [1987 c 109 § 117; 1945 c 263 § 13; Rem. Supp. 1945 § 7400-13.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.44.200 Water supervisors—Duties—Compensation.** The department, as in its judgment is deemed necessary and advisable, may appoint one or more ground water supervisors for each designated ground water area, sub-area, or zone, or may appoint one or more ground water supervisors-at-large. Within their respective jurisdictions and under the direction of the department, such supervisor and supervisors-at-large shall supervise the withdrawal of public ground waters and the carrying out of orders issued by the department under the provisions of this chapter.

The duties, compensation, and authority of such supervisors or supervisors-at-large shall be those prescribed for water masters under the terms of RCW 90.03.060 and 90.03.070. [1987 c 109 § 118; 1945 c 263 § 15; Rem. Supp. 1945 § 7400-15.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Water master's power of arrest:* RCW 90.03.090.

**90.44.220 Proceedings to determine rights to water.**

In its discretion or upon the application of any party claiming right to the withdrawal and use of public ground water, the department may file a petition with the superior court of the county for the determination of the rights of appropriators of any particular ground water body and all the provisions of RCW 90.03.110 through 90.03.240 as heretofore amended, shall govern and apply to the adjudication and determination of such ground water body and to the ownership thereof. Hereafter, in any proceedings for the adjudication and deter-

mination of water rights—either rights to the use of surface water or to the use of ground water, or both—pursuant to chapter 90.03 RCW as heretofore amended, all appropriators of ground water or of surface water in the particular basin or area may be included as parties to such adjudication, as pertinent. [1987 c 109 § 119; 1945 c 263 § 17; Rem. Supp. 1945 § 7400-17.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Additional powers and duties enumerated—Payment from reclamation account:* RCW 89.16.055.

*Application of RCW sections to specific proceedings:* RCW 90.14.200.

*Determination of water rights*

*scope:* RCW 90.03.245.

*state to bear its expenses incurred in and on appeal:* RCW 90.03.243.

**90.44.230 Effect of findings and judgment.** In any determination of the right to withdrawal of ground water under RCW 90.44.220, the department's findings and the court's findings and judgment shall determine the priority of right and the quantity of water to which each appropriator who is a party to the proceedings shall be entitled, shall determine the level below which the ground water body shall not be drawn down by appropriators, or shall reserve jurisdiction for the determination of a safe sustaining water yield as necessary from time to time to preserve the rights of the several appropriators and to prevent depletion of the ground water body. [1987 c 109 § 120; 1945 c 263 § 18; Rem. Supp. 1945 § 7400-18.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.44.250 Investigations—Reports of appropriators.** The department is hereby authorized to make such investigations as may be necessary to determine the location, extent, depth, volume, and flow of all ground waters within the state and in making such examination, hereby is authorized and directed to cooperate with the federal government, with any county or municipal corporation, or any person, firm, association or corporation, and upon such terms as may seem appropriate to it.

In connection with such investigation, the department from time to time may require reports from each ground water appropriator as to the amount of public ground water being withdrawn and as to the manner and extent of the beneficial use. Such reports shall be in a form prescribed by the department. [1987 c 109 § 121; 1945 c 263 § 19; Rem. Supp. 1945 § 7400-19. Formerly RCW 90.44.210.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.44.400 Ground water management areas—Purpose—Standards—Identification—Designation.** (1) This legislation is enacted for the purpose of identifying ground water management procedures that are consistent with both local needs and state water resource policies and management objectives; including the protection of water quality, assurance of quantity, and efficient management of water resources to meet future needs.

In recognition of existing water rights and the need to manage ground water aquifers for future use, the department

of ecology shall, by rule, establish standards, criteria, and a process for the designation of specific ground water areas or sub-areas, or separate depth zones within such area or sub-area, and provide for either the department of ecology, local governments, or ground water users of the area to initiate development of a ground water management program for each area or sub-area, consistent with state and local government objectives, policies, and authorities. The department shall develop and adopt these rules by January 1, 1986.

(2) The department of ecology, in cooperation with other state agencies, local government, and user groups, shall identify probable ground water management areas or sub-areas. The department shall also prepare a general schedule for the development of ground water management programs that recognizes the available local or state agency staff and financial resources to carry out the intent of RCW 90.44.400 through 90.44.420. The department shall also provide the option for locally initiated studies and for local government to assume the lead agency role in developing the ground water management program and in implementing the provisions of RCW 90.44.400 through 90.44.420. The criteria to guide identification of the ground water areas or sub-areas shall include but not be limited to, the following:

(a) Aquifer systems that are declining due to restricted recharge or over-utilization;

(b) Aquifer systems in which over-appropriation may have occurred and adjudication of water rights has not yet been completed;

(c) Aquifer systems currently being considered for water supply reservation under chapter 90.54 RCW for future beneficial uses;

(d) Aquifers identified as the primary source of supply for public water supply systems;

(e) Aquifers designated as a sole source aquifer by the federal environmental protection agency; and

(f) Geographical areas where land use may result in contamination or degradation of the ground water quality.

(3) In developing the ground water management programs, priority shall be given to areas or sub-areas where water quality is imminently threatened. [1985 c 453 § 1.]

**90.44.410 Requirements for ground water management programs—Review of programs.** (1) The ground water area or sub-area management programs shall include:

(a) A description of the specific ground water area or sub-areas, or separate depth zones within any such area or sub-area, and the relationship of this zone or area to the land use management responsibilities of county government;

(b) A management program based on long-term monitoring and resource management objectives for the area or sub-area;

(c) Identification of water resources and the allocation of the resources to meet state and local needs;

(d) Projection of water supply needs for existing and future identified user groups and beneficial uses;

(e) Identification of water resource management policies and/or practices that may impact the recharge of the designated area or policies that may affect the safe yield and quantity of water available for future appropriation;

(f) Identification of land use and other activities that may impact the quality and efficient use of the ground water,

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including domestic, industrial, solid, and other waste disposal, underground storage facilities, or storm water management practices;

(g) The design of the program necessary to manage the resource to assure long-term benefits to the citizens of the state;

(h) Identification of water quality objectives for the aquifer system which recognize existing and future uses of the aquifer and that are in accordance with department of ecology and department of social and health services drinking and surface water quality standards;

(i) Long-term policies and construction practices necessary to protect existing water rights and subsequent facilities installed in accordance with the ground water area or sub-area management programs and/or other water right procedures;

(j) Annual withdrawal rates and safe yield guidelines which are directed by the long-term management programs that recognize annual variations in aquifer recharge;

(k) A description of conditions and potential conflicts and identification of a program to resolve conflicts with existing water rights;

(l) Alternative management programs to meet future needs and existing conditions, including water conservation plans; and

(m) A process for the periodic review of the ground water management program and monitoring of the implementation of the program.

(2) The ground water area or sub-area management programs shall be submitted for review in accordance with the state environmental policy act. [1988 c 186 § 1; 1985 c 453 § 2.]

**Effective date—1988 c 186 § 1:** "Section 1 of this act shall take effect June 30, 1998." [1988 c 186 § 2.]

**90.44.420 Ground water management programs—Consideration by department of ecology—Public hearing—Findings—Adoption of regulations, ordinances, and programs.** The department of ecology shall consider the ground water area or sub-area management plan for adoption in accordance with this chapter and chapter 90.54 RCW.

Upon completion of the ground water area or sub-area management program, the department of ecology shall hold a public hearing within the designated ground water management area for the purpose of taking public testimony on the proposed program. Following the public hearing, the department of ecology and affected local governments shall (1) prepare findings which either provide for the subsequent adoption of the program as proposed or identify the revisions necessary to ensure that the program is consistent with the intent of this chapter, and (2) adopt regulations, ordinances, and/or programs for implementing those provisions of the ground water management program which are within their respective jurisdictional authorities. [1985 c 453 § 3.]

**90.44.430 Ground water management programs—Guidance to local governments and certain departments.** The department of ecology, the department of social and health services, and affected local governments shall be guided by the adopted program when reviewing and considering approval of all studies, plans, and facilities that may uti-

lize or impact the implementation of the program. [1985 c 453 § 4.]

**90.44.440 Existing rights not affected.** RCW 90.44.400 through 90.44.430 shall not affect any water rights existing as of May 21, 1985. [1985 c 453 § 5.]

**90.44.445 Acreage expansion program—Authorization—Certification.** In any acreage expansion program adopted by the department as an element of a ground water management program, the authorization for a water right certificate holder to participate in the program shall be on an annual basis for the first two years. After the two-year period, the department may authorize participation for ten-year periods. The department may authorize participation for ten-year periods for certificate holders who have already participated in an acreage expansion program for two years. The department may require annual certification that the certificate holder has complied with all requirements of the program. The department may terminate the authority of a certificate holder to participate in the program for one calendar year if the certificate holder fails to comply with the requirements of the program. [1993 c 99 § 1.]

**90.44.450 Metering or measuring ground water withdrawals—Reports.** The department of ecology may require withdrawals of ground water to be metered, or measured by other approved methods, as a condition for a new water right permit. The department may also require, as a condition for such permits, reports regarding such withdrawals as to the amount of water being withdrawn. These reports shall be in a form prescribed by the department. [1989 c 348 § 7.]

**Severability—1989 c 348:** See note following RCW 90.54.020.

**Rights not impaired—1989 c 348:** See RCW 90.54.920.

**90.44.460 Reservoir permits.** The legislature recognizes the importance of sound water management. In an effort to promote new and innovative methods of water storage, the legislature authorizes the department of ecology to issue reservoir permits that enable an entity to artificially store and recover water in any underground geological formation, which qualifies as a reservoir under RCW 90.03.370. [2000 c 98 § 1.]

**90.44.500 Civil penalties.** See RCW 90.03.600.

**90.44.510 Superseding water right permit or certificate—Water delivered from federal Columbia basin project.** The department shall issue a superseding water right permit or certificate for a ground water right where the source of water is an aquifer for which the department adopts rules establishing a ground water management subarea and water from the federal Columbia basin project is delivered for use by a person who holds such a ground water right. The superseding water right permit or certificate shall designate that portion of the ground water right that is replaced by water from the federal Columbia basin project as a standby or reserve right that may be used when water delivered by the federal project is curtailed or otherwise not available. The

period of curtailment or unavailability shall be deemed a low flow period under RCW 90.14.140(2)(b). The total number of acres irrigated by the person under the ground water right and through the use of water delivered from the federal project must not exceed the quantity of water used and number of acres irrigated under the person's water right permit or certificate for the use of water from the aquifer. [2004 c 195 § 3.]

**90.44.520 Odessa ground water subarea—Involuntary nonuse of water rights—Conditions—Notice—Report to the legislature. (Expires July 1, 2021.)** (1) In order to encourage more efficient use of water, where the source of water is an aquifer within the Odessa ground water subarea as defined in chapter 173-128A WAC:

(a) Any period of nonuse of a right to withdraw ground water from the aquifer is deemed to be involuntary due to a drought or low flow period under RCW 90.14.140(2)(b); and

(b) Such unused water is deemed a standby or reserve water supply that may again be used after the period of nonuse, as long as: (i) Reductions in water use are a result of conservation practices, irrigation or water use efficiencies, long or short-term changes in the types or rotations of crops grown, economic hardship, pumping or system infrastructure costs, unavailability or unsuitability of water, or willing and documented participation in cooperative efforts to reduce aquifer depletion and optimize available water resources; (ii) withdrawal or diversion facilities are maintained in good operating condition; and (iii) the department has not issued a superseding water right permit or certificate to designate a portion of the ground water right replaced by federal Columbia basin project water as a standby or reserve right under RCW 90.44.510.

(2)(a) A water right holder choosing to not exercise a water right in accordance with the provisions of this section must provide notice to the department in writing within one hundred eighty days of such choice. The notice shall include the name of the water right holder and the number of the permit, certificate, or claim.

(b) When a water right holder chooses to discontinue nonuse under the provisions of this section, notice of such action must be provided to the department in writing. Notice is not required under this subsection (2)(b) for seasonal fluctuations in use if the right is not fully exercised as reflected in the notice provided under (a) of this subsection.

(3) The provisions of this section relating to the nonuse of all or a portion of a water right are in addition to any other provisions relating to such nonuse under existing law.

(4) If water from the federal Columbia basin project has been delivered to a place of use authorized under a right to withdraw ground water from the aquifer, the provisions of RCW 90.44.510 apply and supersede the provisions of this section.

(5) Portions of rights protected under this section may not be transferred outside Odessa subarea boundaries as defined in WAC 173-128A-040. Transfers within Odessa subarea boundaries remain subject to the provisions of RCW 90.03.380, 90.03.390, 90.44.100, and WAC 173-130A-200.

(6) The department shall submit a report to the legislature as to the status of the aquifer, participation in the nonuse program set forth in this section, and the outcome of the

United States bureau of reclamation's study on feasible alternatives to Odessa ground water use. This report must be submitted six months after completion of the United States bureau of reclamation's study, which is expected to be completed in February 2011. The department's report must also suggest viable solutions and the actions needed by the state to move forward with such solutions. [2006 c 168 § 2.]

**Expiration date—2006 c 168 § 2:** "Section 2 of this act expires July 1, 2021." [2006 c 168 § 3.]

**Effective date—2006 c 168:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2006]." [2006 c 168 § 4.]

**Findings—2006 c 168:** "(1) The legislature finds that the department of ecology adopted ground water management subarea rules to manage aquifer depletions in the Odessa subarea, which includes undeveloped portions of the federal Columbia basin project.

(2) The legislature also finds that deep well agricultural irrigation was permitted within the Odessa subarea under the expectation that federal Columbia basin project water would be delivered to replace the temporary ground water withdrawals in time to stabilize aquifer levels.

(3) The legislature further finds that because federal project water has not been delivered as anticipated, aquifer levels have continued to decline despite department of ecology and community efforts to manage ground water withdrawals in a sustainable manner.

(4) The legislature further finds that, because substantial project expansion and aquifer recharge is a long-term effort, the continued availability of ground water for domestic, municipal, industrial, and agricultural uses in the region is in great jeopardy.

(5) The legislature therefore declares that immediate relief is needed to encourage more efficient use of water and to protect the region's citizens from economic hardships and public health and safety risks that can result from declining aquifer levels." [2006 c 168 § 1.]

## Chapter 90.46 RCW

### RECLAIMED WATER USE

#### Sections

90.46.005	Findings—Coordination of efforts—Development of facilities encouraged.
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90.46.150	Agricultural industrial process water—Permit—Use—Referral to department of health.
90.46.160	Industrial reuse water—Permit.

**90.46.005 Findings—Coordination of efforts—Development of facilities encouraged.** The legislature finds that by encouraging the use of reclaimed water while assuring the health and safety of all Washington citizens and the protection of its environment, the state of Washington will continue to use water in the best interests of present and future generations.

To facilitate the use of reclaimed water as soon as is practicable, the legislature encourages the cooperative efforts of the public and private sectors and the use of pilot projects to effectuate the goals of this chapter. The legislature further directs the department of health and the department of ecology to coordinate efforts towards developing an efficient and streamlined process for creating and implementing processes for the use of reclaimed water.

It is hereby declared that the people of the state of Washington have a primary interest in the development of facilities to provide reclaimed water to replace potable water in nonpotable applications, to supplement existing surface and ground water supplies, and to assist in meeting the future water requirements of the state.

The legislature further finds and declares that the utilization of reclaimed water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife habitat creation and enhancement purposes, including wetland enhancement, will contribute to the peace, health, safety, and welfare of the people of the state of Washington. To the extent reclaimed water is appropriate for beneficial uses, it should be so used to preserve potable water for drinking purposes. Use of reclaimed water constitutes the development of new basic water supplies needed for future generations.

The legislature further finds and declares that the use of reclaimed water is not inconsistent with the policy of antidegradation of state waters announced in other state statutes, including the water pollution control act, chapter 90.48 RCW and the water resources act, chapter 90.54 RCW.

The legislature finds that other states, including California, Florida, and Arizona, have successfully used reclaimed water to supplement existing water supplies without threatening existing resources or public health.

It is the intent of the legislature that the department of ecology and the department of health undertake the necessary steps to encourage the development of water reclamation facilities so that reclaimed water may be made available to help meet the growing water requirements of the state.

The legislature further finds and declares that reclaimed water facilities are water pollution control facilities as defined in chapter 70.146 RCW and are eligible for financial assistance as provided in chapter 70.146 RCW. The legislature finds that funding demonstration projects will ensure the future use of reclaimed water. The demonstration projects in RCW 90.46.110 are varied in nature and will provide the experience necessary to test different facets of the standards and refine a variety of technologies so that water purveyors can begin to use reclaimed water technology in a more cost-effective manner. This is especially critical in smaller cities and communities where the feasibility for such projects is

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great, but there are scarce resources to develop the necessary facilities.

The legislature further finds that the agricultural processing industry can play a critical and beneficial role in promoting the efficient use of water by having the opportunity to develop and reuse agricultural industrial process water from food processing. [2001 c 69 § 1; 1997 c 355 § 1; 1995 c 342 § 1; 1992 c 204 § 1.]

**Construction—1995 c 342:** "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1995 c 342 § 10.]

**Effective date—1995 c 342:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 342 § 11.]

**90.46.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agricultural industrial process water" means water that has been used for the purpose of agricultural processing and has been adequately and reliably treated, so that as a result of that treatment, it is suitable for other agricultural water use.

(2) "Agricultural processing" means the processing of crops or milk to produce a product primarily for wholesale or retail sale for human or animal consumption, including but not limited to potato, fruit, vegetable, and grain processing.

(3) "Agricultural water use" means the use of water for irrigation and other uses related to the production of agricultural products. These uses include, but are not limited to, construction, operation, and maintenance of agricultural facilities and livestock operations at farms, ranches, dairies, and nurseries. Examples of these uses include, but are not limited to, dust control, temperature control, and fire control.

(4) "Beneficial use" means the use of reclaimed water, that has been transported from the point of production to the point of use without an intervening discharge to the waters of the state, for a beneficial purpose.

(5) "Constructed beneficial use wetlands" means those wetlands intentionally constructed on nonwetland sites to produce or replace natural wetland functions and values. Constructed beneficial use wetlands are considered "waters of the state."

(6) "Constructed treatment wetlands" means those wetlands intentionally constructed on nonwetland sites and managed for the primary purpose of polishing reclaimed water or aesthetics. Constructed treatment wetlands are considered part of the collection and treatment system and are not considered "waters of the state."

(7) "Direct recharge" means the controlled subsurface addition of water directly to the ground water basin that results in the replenishment of ground water.

(8) "Greywater" means wastewater having the consistency and strength of residential domestic type wastewater. Greywater includes wastewater from sinks, showers, and laundry fixtures, but does not include toilet or urinal waters.

(9) "Ground water recharge criteria" means the contaminant criteria found in the drinking water quality standards adopted by the state board of health pursuant to chapter 43.20

RCW and the department of health pursuant to chapter 70.119A RCW.

(10) "Industrial reuse water" means water that has been used for the purpose of industrial processing and has been adequately and reliably treated so that, as a result of that treatment, it is suitable for other uses.

(11) "Land application" means use of reclaimed water as permitted under this chapter for irrigation or landscape enhancement for residential, business, and governmental purposes.

(12) "Person" means any state, individual, public or private corporation, political subdivision, governmental subdivision, governmental agency, municipality, copartnership, association, firm, trust estate, or any other legal entity whatever.

(13) "Planned ground water recharge project" means any reclaimed water project designed for the purpose of recharging ground water, via direct recharge or surface percolation.

(14) "Reclaimed water" means effluent derived in any part from sewage from a wastewater treatment system that has been adequately and reliably treated, so that as a result of that treatment, it is suitable for a beneficial use or a controlled use that would not otherwise occur and is no longer considered wastewater.

(15) "Reclamation criteria" means the criteria set forth in the water reclamation and reuse interim standards and subsequent revisions adopted by the department of ecology and the department of health.

(16) "Sewage" means water-carried human wastes from residences, buildings, industrial and commercial establishments, or other places, together with such ground water infiltration, surface waters, or industrial wastewater as may be present.

(17) "Streamflow augmentation" means the discharge of reclaimed water to rivers and streams of the state or other surface water bodies, but not wetlands.

(18) "Surface percolation" means the controlled application of water to the ground surface for the purpose of replenishing ground water.

(19) "User" means any person who uses reclaimed water.

(20) "Wastewater" means water and wastes discharged from homes, businesses, and industry to the sewer system.

(21) "Wetland or wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands regulated under this chapter shall be delineated in accordance with the manual adopted by the department of ecology pursuant to RCW 90.58.380. [2006 c 279 § 4; 2002 c 329 § 3; 2001 c 69 § 2; 1997 c 444 § 5; 1995 c 342 § 2; 1992 c 204 § 2.]

**Alphabetization—2006 c 279:** "The code reviser shall alphabetize and renumber the definitions in RCW 90.46.010." [2006 c 279 § 12.]

**Severability—1997 c 444:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 444 § 11.]

**Construction—Effective date—1995 c 342:** See notes following RCW 90.46.005.

**90.46.015 Rules—Coordination with department of health—Consultation with advisory committee.** (1) The department of ecology shall, in coordination with the department of health, adopt rules for reclaimed water use consistent with this chapter. The rules must address all aspects of reclaimed water use, including commercial and industrial uses, land applications, direct recharge, wetland discharge, surface percolation, constructed wetlands, and stream flow augmentation. The department of health shall, in coordination with the department of ecology, adopt rules for greywater reuse. The rules must also designate whether the department of ecology or the department of health will be the lead permitting or regulatory agency responsible for a particular aspect of reclaimed water use. In developing the rules, the departments of health and ecology shall amend or rescind any existing rules on reclaimed water in conflict with the new rules.

(2) All rules required to be adopted pursuant to this section must be completed no later than December 31, 2010, although the department of ecology is encouraged to adopt the final rules as soon as possible.

(3) The department of ecology must consult with the advisory committee created under RCW 90.46.050 in all aspects of rule development required under this section. [2006 c 279 § 1.]

**Interim reports—2006 c 279:** "The department of ecology must present interim reports to the appropriate committees of the legislature by January 1, 2008, and January 1, 2009, that summarize the steps taken to that date towards the final rule making required by section 1 of this act. The reports must include, at a minimum, a summary of participation in the advisory group and the topics considered by the department." [2006 c 279 § 3.]

**90.46.020 Interim standards for pilot projects for use of reclaimed water.** (1) The department of ecology shall, in coordination with the department of health, develop interim standards for pilot projects under subsection (3) of this section on or before July 1, 1992, for the use of reclaimed water in land applications.

(2) The department of health shall, in coordination with the department of ecology, develop interim standards for pilot projects under subsection (3) of this section on or before November 15, 1992, for the use of reclaimed water in commercial and industrial activities.

(3) The department of ecology and the department of health shall assist interested parties in the development of pilot projects to aid in achieving the purposes of this chapter. [1992 c 204 § 3.]

**90.46.030 Standards, procedures, and guidelines for industrial and commercial use of reclaimed water—Reclaimed water permits—Fee structure for permits—Formal agreements between the departments of health and ecology.** (1)(a) The department of health shall, in coordination with the department of ecology, adopt a single set of standards, procedures, and guidelines on or before August 1, 1993, for the industrial and commercial use of reclaimed water.

(b) Standards adopted under this section are superseded by any rules adopted by the department of ecology pursuant to RCW 90.46.015 as they relate to the industrial and commercial use of reclaimed water.

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(2) Unless the department of ecology adopts rules pursuant to RCW 90.46.015 that relate to the industrial and commercial use of reclaimed water specifying otherwise, the department of health may issue a reclaimed water permit for industrial and commercial uses of reclaimed water to the generator of reclaimed water who may then distribute the water, subject to provisions in the permit governing the location, rate, water quality, and purposes of use. Permits issued after the adoption of rules under RCW 90.46.015 must be consistent with the adopted rules.

(3) The department of health in consultation with the advisory committee established in RCW 90.46.050, shall develop recommendations for a fee structure for permits issued under subsection (2) of this section. Fees shall be established in amounts to fully recover, and not exceed, expenses incurred by the department of health in processing permit applications and modifications, monitoring and evaluating compliance with permits, and conducting inspections and supporting the reasonable overhead expenses that are directly related to these activities. Permit fees may not be used for research or enforcement activities. The department of health shall not issue permits under this section until a fee structure has been established.

(4) A permit under this section for use of reclaimed water may be issued only to:

(a) A municipal, quasi-municipal, or other governmental entity;

(b) A private utility as defined in RCW 36.94.010; or

(c) The holder of a waste discharge permit issued under chapter 90.48 RCW.

(5) The authority and duties created in this section are in addition to any authority and duties already provided in law with regard to sewage and wastewater collection, treatment, and disposal for the protection of health and safety of the state's waters. Nothing in this section limits the powers of the state or any political subdivision to exercise such authority.

(6) Unless the department of ecology adopts rules pursuant to RCW 90.46.015 that relate to the industrial and commercial use of reclaimed water specifying otherwise, the department of health may implement the requirements of this section through the department of ecology by execution of a formal agreement between the departments. Upon execution of such an agreement, the department of ecology may issue reclaimed water permits for industrial and commercial uses of reclaimed water by issuance of permits under chapter 90.48 RCW, and may establish and collect fees as required for permits issued under chapter 90.48 RCW.

(7) Unless the department of ecology adopts rules pursuant to RCW 90.46.015 that relate to the industrial and commercial use of reclaimed water specifying otherwise, and before deciding whether to issue a permit under this section to a private utility, the department of health may require information that is reasonable and necessary to determine whether the private utility has the financial and other resources to ensure the reliability, continuity, and supervision of the reclaimed water facility. [2006 c 279 § 5; 2005 c 59 § 1; 2002 c 329 § 4; 1992 c 204 § 4.]

**90.46.040 Standards, procedures, and guidelines for land applications of reclaimed water—Permits—Referral**

**to department of health.** (1)(a) The department of ecology shall, in coordination with the department of health, adopt a single set of standards, procedures, and guidelines, on or before August 1, 1993, for land applications of reclaimed water.

(b) Standards adopted under this section are superseded by any rules adopted by the department of ecology pursuant to RCW 90.46.015 as they relate to the land application of reclaimed water.

(2) A permit is required for any land application of reclaimed water. The department of ecology may issue a reclaimed water permit under chapter 90.48 RCW to the generator of reclaimed water who may then distribute the water, subject to provisions in the permit governing the location, rate, water quality, and purpose of use. The department of ecology shall not issue more than one permit for any individual land application of reclaimed water to a single generator.

(3) In cases where the department of ecology determines, in land applications of reclaimed water, that a significant risk to the public health exists, the department shall refer the application to the department of health for review and consultation and the department of health may require fees appropriate for review and consultation from the applicant pursuant to RCW 43.70.250.

(4) A permit under this section for use of reclaimed water may be issued only to:

(a) A municipal, quasi-municipal, or other governmental entity;

(b) A private utility as defined under RCW 36.94.010; or

(c) The holder of a waste discharge permit issued under chapter 90.48 RCW.

(5) The authority and duties created in this section are in addition to any authority and duties already provided in law. Nothing in this section limits the powers of the state or any political subdivision to exercise such authority.

(6) Before deciding whether to issue a permit under this section to a private utility, the department of ecology may require information that is reasonable and necessary to determine whether the private utility has the financial and other resources to ensure the reliability, continuity, and supervision of the reclaimed water facility. [2006 c 279 § 6; 2005 c 59 § 2; 1992 c 204 § 5.]

**90.46.042 Standards, procedures, and guidelines for direct recharge.** (1) The department of ecology shall, in consultation with the department of health, adopt a single set of standards, procedures, and guidelines, on or before December 31, 1996, for direct recharge using reclaimed water. The standards shall address both water quality considerations and avoidance of property damage from excessive recharge.

(2) Standards adopted under this section are superseded by any rules adopted by the department of ecology pursuant to RCW 90.46.015 as they relate to direct recharge using reclaimed water. [2006 c 279 § 7; 1995 c 342 § 6.]

**Construction—Effective date—1995 c 342:** See notes following RCW 90.46.005.

**90.46.044 Standards, procedures, and guidelines for discharge to wetlands.** (1) The department of ecology shall, in consultation with the department of health, adopt a single

set of standards, procedures, and guidelines, on or before June 30, 1996, for discharge of reclaimed water to wetlands.

(2) Standards adopted under this section are superseded by any rules adopted by the department of ecology pursuant to RCW 90.46.015 as they relate to discharge of reclaimed water to wetlands. [2006 c 279 § 8; 1995 c 342 § 7.]

**Construction—Effective date—1995 c 342:** See notes following RCW 90.46.005.

**90.46.050 Advisory committee—Development of standards, procedures, and guidelines.** The department of ecology shall, before July 1, 2006, form an advisory committee, in coordination with the department of health and the department of agriculture, which will provide technical assistance in the development of standards, procedures, and guidelines required by this chapter. The advisory committee shall be composed of a broad range of interested individuals representing the various stakeholders that utilize or are potentially impacted by the use of reclaimed water. The advisory committee must also contain individuals with technical expertise and knowledge of new advancements in technology. [2006 c 279 § 2; 1995 c 342 § 9; 1992 c 204 § 6.]

**Construction—Effective date—1995 c 342:** See notes following RCW 90.46.005.

**90.46.060 Enforcement powers—Secretary of health.** The secretary of health has all of the enforcement powers granted to the secretary of health under chapter 43.70 RCW to enforce this chapter. [1992 c 204 § 7.]

**90.46.070 Exemption from standards, procedures, and guidelines.** Any person lawfully using reclaimed water before April 2, 1992, may continue to do so and is not required to comply with the standards, procedures, and guidelines under chapter 90.46 RCW before July 1, 1995. [1992 c 204 § 8.]

**90.46.072 Conflict resolution—Reclaimed water projects and chapter 372-32 WAC.** On or before December 31, 1995, the department of ecology and department of health shall, in consultation with local interested parties, jointly review and, if required, propose amendments to chapter 372-32 WAC to resolve conflicts between the development of reclaimed water projects in the Puget Sound region and chapter 372-32 RCW [WAC]. [1995 c 342 § 8.]

**Construction—Effective date—1995 c 342:** See notes following RCW 90.46.005.

**90.46.080 Use of reclaimed water for surface percolation—Establishment of discharge limit for contaminants.** (1) Except as otherwise provided in this section, reclaimed water may be beneficially used for surface percolation provided the reclaimed water meets the ground water recharge criteria as measured in ground water beneath or down gradient of the recharge project site, and has been incorporated into a sewer or water comprehensive plan, as applicable, adopted by the applicable local government and approved by the department of health or department of ecology as applicable.

(2) If the state ground water recharge criteria as defined by RCW 90.46.010 do not contain a standard for a constituent

or contaminant, the department of ecology shall establish a discharge limit consistent with the goals of this chapter, except as otherwise provided in this section.

(3) Except as otherwise provided in this section, reclaimed water that does not meet the ground water recharge criteria may be beneficially used for surface percolation where the department of ecology, in consultation with the department of health, has specifically authorized such use at such lower standard.

(4) The provisions of this section are superseded by any rules adopted by the department of ecology pursuant to RCW 90.46.015 as they relate to surface percolation. [2006 c 279 § 9; 1997 c 444 § 6; 1995 c 342 § 3.]

**Severability—1997 c 444:** See note following RCW 90.46.010.

**Construction—Effective date—1995 c 342:** See notes following RCW 90.46.005.

**90.46.090 Use of reclaimed water for discharge into constructed beneficial use wetlands and constructed treatment wetlands—Standards for discharge.** (1) Reclaimed water may be beneficially used for discharge into constructed beneficial use wetlands and constructed treatment wetlands provided the reclaimed water meets the class A or B reclaimed water standards as defined in the reclamation criteria, and the discharge is incorporated into a sewer or water comprehensive plan, as applicable, adopted by the applicable local government and approved by the department of health or department of ecology as applicable.

(2) Reclaimed water that does not meet the class A or B reclaimed water standards may be beneficially used for discharge into constructed treatment wetlands where the department of ecology, in consultation with the department of health, has specifically authorized such use at such lower standards.

(3)(a) The department of ecology and the department of health must develop appropriate standards for discharging reclaimed water into constructed beneficial use wetlands and constructed treatment wetlands. These standards must be considered as part of the approval process under subsections (1) and (2) of this section.

(b) Standards adopted under this section are superseded by any rules adopted by the department of ecology pursuant to RCW 90.46.015 as they relate to discharge into constructed beneficial use wetlands and constructed treatment wetlands. [2006 c 279 § 10; 1997 c 444 § 7; 1995 c 342 § 4.]

**Severability—1997 c 444:** See note following RCW 90.46.010.

**Construction—Effective date—1995 c 342:** See notes following RCW 90.46.005.

**90.46.100 Discharge of reclaimed water for streamflow augmentation.** (1) Reclaimed water intended for beneficial reuse may be discharged for streamflow augmentation provided the reclaimed water meets the requirements of the federal water pollution control act, chapter 90.48 RCW, and is incorporated into a sewer or water comprehensive plan, as applicable, adopted by the applicable local government and approved by the department of health or department of ecology as applicable.

(2) Standards adopted under this section are superseded by any rules adopted by the department of ecology pursuant to RCW 90.46.015 as they relate to discharge of reclaimed

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water for streamflow augmentation. [2006 c 279 § 11; 1995 c 342 § 5.]

**Construction—Effective date—1995 c 342:** See notes following RCW 90.46.005.

**90.46.110 Reclaimed water demonstration program—Demonstration projects.** (1) The department of ecology shall establish and administer a reclaimed water demonstration program for the purposes of funding and monitoring the progress of five demonstration projects. The department shall work in cooperation with the department of health.

(2) The five demonstration projects will be:

(a) The city of Ephrata, to use class A reclaimed water for surface spreading that will recharge the groundwater and reduce the nitrate concentrations that currently exceed drinking water standards in domestic wells;

(b) Lincoln county, for a study of the use of reclaimed water to transport twenty-two million gallons a day from Spokane to water sources that will rehydrate and restore long depleted streambeds;

(c) The city of Royal City to replace an interim emergency sprayfield by using one hundred percent of its discharge as class A reclaimed water to enhance local wetlands and lakes in the winter, and potentially irrigate a golf course;

(d) The city of Sequim to implement a tertiary treatment system and reuse one hundred percent of the city's wastewater to reopen an existing shellfish closure area to benefit state and tribal resources, improve streamflows in the Dungeness river, and provide a sustainable water supply for irrigation purposes;

(e) The city of Yelm to use one hundred percent of its wastewater to provide alternative water supply for irrigation and industrial uses in order to offset increased demand for water supply, to protect the Nisqually river chum salmon runs, and to develop experimental artificial wetlands to test low cost treatment options.

(3) By September 30, 1997, the department of ecology shall enter into a grant agreement with the demonstration project jurisdictions that includes reporting requirements, timelines, and a fund disbursement schedule based on the agreed project milestones.

(4) Upon completion of the projects, the department of ecology shall report to the appropriate committees of the legislature on the results of the program.

(5) Demonstration projects which will discharge or otherwise deliver reclaimed water to federal reclamation project facilities or irrigation district facilities shall meet the requirements of the facilities' operating entity for such discharges or deliveries.

(6) No irrigation district, its directors, officers, employees, or agents operating and maintaining irrigation works for any purpose authorized by law, including the production of food for human consumption and other agricultural and domestic purposes, is liable for damages to persons or property arising from the implementation of the demonstration projects in this section. [1997 c 355 § 2.]

**90.46.120 Use of water from wastewater treatment facility—Consideration in regional water supply plan or potable water supply service planning.** (1) The owner of a

wastewater treatment facility that is reclaiming water with a permit issued under this chapter has the exclusive right to any reclaimed water generated by the wastewater treatment facility. Use and distribution of the reclaimed water by the owner of the wastewater treatment facility is exempt from the permit requirements of RCW 90.03.250 and 90.44.060. Revenues derived from the reclaimed water facility shall be used only to offset the cost of operation of the wastewater utility fund or other applicable source of system-wide funding.

(2) If the proposed use or uses of reclaimed water are intended to augment or replace potable water supplies or create the potential for the development of additional potable water supplies, such use or uses shall be considered in the development of the regional water supply plan or plans addressing potable water supply service by multiple water purveyors. The owner of a wastewater treatment facility that proposes to reclaim water shall be included as a participant in the development of such regional water supply plan or plans.

(3) Where opportunities for the use of reclaimed water exist within the period of time addressed by a water supply plan or coordinated water system plan developed under chapter 43.20 or 70.116 RCW, these plans must be developed and coordinated to ensure that opportunities for reclaimed water are evaluated. The requirements of this subsection (3) do not apply to water system plans developed under chapter 43.20 RCW for utilities serving less than one thousand service connections. [2003 1st sp.s. c 5 § 13; 1997 c 444 § 1.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**Severability—1997 c 444:** See note following RCW 90.46.010.

**90.46.130 Impairment of water rights downstream from freshwater discharge points.** (1) Except as provided in subsection (2) of this section, facilities that reclaim water under this chapter shall not impair any existing water right downstream from any freshwater discharge points of such facilities unless compensation or mitigation for such impairment is agreed to by the holder of the affected water right.

(2) Agricultural water use of agricultural industrial process water and use of industrial reuse water under this chapter shall not impair existing water rights within the water source that is the source of supply for the agricultural processing plant or the industrial processing and, if the water source is surface water, the existing water rights are downstream from the agricultural processing plant's discharge points existing on July 22, 2001, or from the industrial processing's discharge points existing on June 13, 2002. [2002 c 329 § 5; 2001 c 69 § 4; 1997 c 444 § 4.]

**Severability—1997 c 444:** See note following RCW 90.46.010.

**90.46.140 Greywater reuse—Standards, procedures, and guidelines—Rules.** (1) The department of health shall develop standards, procedures, and guidelines for the reuse of greywater, consistent with RCW 43.20.230(2), by January 1, 1998.

(2) Standards, procedures, and guidelines developed by the department of health for reuse of greywater shall encourage the application of this technology for conserving water resources, or reducing the wastewater load, on domestic wastewater facilities, individual on-site sewage treatment and

disposal systems, or community on-site sewage treatment and disposal systems.

(3) The department of health and local health officers may permit the reuse of greywater according to rules adopted by the department of health. [1997 c 444 § 8.]

**Severability—1997 c 444:** See note following RCW 90.46.010.

**90.46.150 Agricultural industrial process water—Permit—Use—Referral to department of health.** The permit to apply agricultural industrial process water to agricultural water use shall be the permit issued under chapter 90.48 RCW to the owner of the agricultural processing plant who may then distribute the water through methods including, but not limited to, irrigation systems, subject to provisions in the permit governing the location, rate, water quality, and purpose. In cases where the department of ecology determines that a significant risk to public health exists, in land application of the water, the department must refer the application to the department of health for review and consultation.

The owner of the agricultural processing plant who obtains a permit under this section has the exclusive right to the use of any agricultural industrial process water generated from the plant and to the distribution of such water through facilities including irrigation systems. Use and distribution of the water by the owner is exempt from the permit requirements of RCW 90.03.250, 90.03.380, 90.44.060, and 90.44.100.

Nothing in chapter 69, Laws of 2001 shall be construed to affect any right to reuse agricultural industrial discharge water in existence on or before July 22, 2001. [2001 c 69 § 3.]

**90.46.160 Industrial reuse water—Permit.** (1) The permit to use industrial reuse water shall be the permit issued under chapter 90.48 RCW to the owner of the plant that is the source of the industrial process water, who may then distribute the water according to provisions in the permit governing the location, rate, water quality, and purpose. In cases where the department of ecology determines that a proposed use may pose a significant risk to public health, the department shall refer the permit application to the department of health for review and consultation.

(2) The owner of the industrial plant who obtains a permit under this section has the exclusive right to the use of any industrial reuse water generated from the plant and to the distribution of such water. Use and distribution of the water by the owner is exempt from the permit requirements of RCW 90.03.250, 90.03.380, 90.44.060, and 90.44.100.

(3) Nothing in this section affects any right to reuse industrial process water in existence on or before June 13, 2002. [2002 c 329 § 6.]

## Chapter 90.48 RCW

### WATER POLLUTION CONTROL

#### Sections

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*County water and sewerage systems, approval of the department of social and health services and the department of ecology: RCW 36.94.100.*

*Domestic waste treatment plants—Certification and regulation of operators: Chapter 70.95B RCW.*

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*Shellfish, sanitary control: RCW 69.30.130.*

*Washington clean air act: Chapter 70.94 RCW.*

*Water-sewer district powers as to mutual systems, approval of exercise by pollution control commission: RCW 57.08.065.*

*Water pollution control facilities, tax exemptions and credits: Chapter 82.34 RCW.*

*Water resources act of 1971: Chapter 90.54 RCW.*

**90.48.010 Policy enunciated.** It is declared to be the public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the

state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington. Consistent with this policy, the state of Washington will exercise its powers, as fully and as effectively as possible, to retain and secure high quality for all waters of the state. The state of Washington in recognition of the federal government's interest in the quality of the navigable waters of the United States, of which certain portions thereof are within the jurisdictional limits of this state, proclaims a public policy of working cooperatively with the federal government in a joint effort to extinguish the sources of water quality degradation, while at the same time preserving and vigorously exercising state powers to insure that present and future standards of water quality within the state shall be determined by the citizenry, through and by the efforts of state government, of the state of Washington. [1973 c 155 § 1; 1945 c 216 § 1; Rem. Supp. 1945 § 10964a.]

**90.48.020 Definitions.** Whenever the word "person" is used in this chapter, it shall be construed to include any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual or any other entity whatsoever.

Wherever the words "waters of the state" shall be used in this chapter, they shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.

Whenever the word "pollution" is used in this chapter, it shall be construed to mean such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Wherever the word "department" is used in this chapter it shall mean the department of ecology.

Whenever the word "director" is used in this chapter it shall mean the director of ecology.

Whenever the words "aquatic noxious weed" are used in this chapter, they have the meaning prescribed under RCW 17.26.020.

Whenever the words "general sewer plan" are used in this chapter they shall be construed to include all sewerage general plans, sewer general comprehensive plans, plans for a system of sewerage, and other plans for sewer systems adopted by a local government entity including but not limited to cities, towns, public utility districts, and water-sewer districts. [2002 c 161 § 4; 1995 c 255 § 7; 1987 c 109 § 122; 1967 c 13 § 1; 1945 c 216 § 2; Rem. Supp. 1945 § 10964b.]

**Severability—Effective date—1995 c 255:** See RCW 17.26.900 and 17.26.901.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.030 Jurisdiction of department.** The department shall have the jurisdiction to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington. [1987 c 109 § 123; 1945 c 216 § 10; Rem. Supp. 1945 § 10964j. FORMER PART OF SECTION: 1945 c 216 § 11; Rem. Supp. 1945 § 10964k, now codified as RCW 90.48.035.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.035 Rule-making authority.** The department shall have the authority to, and shall promulgate, amend, or rescind such rules and regulations as it shall deem necessary to carry out the provisions of this chapter, including but not limited to rules and regulations relating to standards of quality for waters of the state and for substances discharged therein in order to maintain the highest possible standards of all waters of the state in accordance with the public policy as declared in RCW 90.48.010. [1987 c 109 § 124; 1970 ex.s. c 88 § 11; 1967 c 13 § 6; 1945 c 216 § 11; Rem. Supp. 1945 § 10964k. Formerly RCW 90.48.030, part.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.037 Authority of department to bring enforcement actions.** The department, with the assistance of the attorney general, is authorized to bring any appropriate action at law or in equity, including action for injunctive relief, in the name of the people of the state of Washington as may be necessary to carry out the provisions of this chapter or chapter 90.56 RCW. [1991 c 200 § 1102; 1987 c 109 § 125; 1967 c 13 § 7.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.039 Hazardous substance remedial actions—Procedural requirements not applicable.** The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 19.]

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**90.48.045 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provi-

sions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 26.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**90.48.080 Discharge of polluting matter in waters prohibited.** It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of the department, as provided for in this chapter. [1987 c 109 § 126; 1967 c 13 § 8; 1945 c 216 § 14; Rem. Supp. 1945 § 10964n.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.090 Right of entry—Special inspection requirements for metals mining and milling operations.** The department or its duly appointed agent shall have the right to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to the pollution of or the possible pollution of any of the waters of this state.

The department shall have special inspection requirements for metals mining and milling operations regulated under chapter 232, Laws of 1994. The department shall inspect these mining and milling operations at least quarterly in order to ensure compliance with the intent and any permit issued pursuant to this chapter. The department shall conduct additional inspections as needed during the construction phase of these mining operations in order to ensure compliance with this chapter. [1994 c 232 § 21; 1987 c 109 § 127; 1945 c 216 § 15; Rem. Supp. 1945 § 10964o.]

**Severability—1994 c 232:** See RCW 78.56.900.

**Effective date—1994 c 232 §§ 6-8 and 18-22:** See RCW 78.56.902.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.095 Authority of department to compel attendance and testimony of witnesses, production of books and papers—Contempt proceedings to enforce—Fees.** In carrying out the purposes of this chapter or chapter 90.56 RCW the department shall, in conjunction with either the adoption of rules, consideration of an application for a waste discharge permit or the termination or modification of such permit, or proceedings in adjudicative hearings, have the authority to issue process and subpoena witnesses effective throughout the state on its own behalf or that of an interested party, compel their attendance, administer oaths, take the testimony of any person under oath and, in connection therewith require the production for examination of any books or papers relating to the matter under consideration by the department. In case of disobedience on the part of any person to comply with any subpoena issued by the department, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, it shall be the duty of the superior court of any county, or of the judge thereof, on application of the department, to compel obedience by proceedings for contempt, as in the case of disobedience of the

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requirements of a subpoena issued from such court or a refusal to testify therein. In connection with the authority granted under this section no witness or other person shall be required to divulge trade secrets or secret processes. Persons responding to a subpoena as provided herein shall be entitled to fees as are witnesses in superior court. [1991 c 200 § 1103; 1987 c 109 § 128; 1967 c 13 § 9.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.100 Request for assistance.** The department shall have the right to request and receive the assistance of any educational institution or state agency when it is deemed necessary by the department to carry out the provisions of this chapter or chapter 90.56 RCW. [1991 c 200 § 1104; 1987 c 109 § 129; 1945 c 216 § 16; Rem. Supp. 1945 § 10964p.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.110 Plans and proposed methods of operation and maintenance of sewerage or disposal systems to be submitted to department—Exceptions—Time limitations.** (1) Except under subsection (2) of this section, all engineering reports, plans, and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage systems or sewage treatment or disposal plants, and the proposed method of future operation and maintenance of said facility or facilities, shall be submitted to and be approved by the department, before construction thereof may begin. No approval shall be given until the department is satisfied that said plans and specifications and the methods of operation and maintenance submitted are adequate to protect the quality of the state's waters as provided for in this chapter.

(2) To promote efficiency in service delivery and inter-governmental cooperation in protecting the quality of the state's waters, the department may delegate the authority for review and approval of engineering reports, plans, and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage system or sewage treatment or disposal plants, and the proposed method of future operations and maintenance of said facility or facilities and industrial pretreatment systems, to local units of government requesting such delegation and meeting criteria established by the department.

(3) For any new or revised general sewer plan submitted for review under this section, the department shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The department may extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general sewer plan. For rejections of plans or extensions of the timeline, the department shall provide in writing to the

local government entity the reason for such action. In addition, the governing body of the local government entity and the department may mutually agree to an extension of the deadlines contained in this section. [2002 c 161 § 5; 1994 c 118 § 1; 1987 c 109 § 130; 1967 c 13 § 10; 1945 c 216 § 17; Rem. Supp. 1945 § 10964q.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.112 Plan evaluation—Consideration of reclaimed water.** The evaluation of any plans submitted under RCW 90.48.110 must include consideration of opportunities for the use of reclaimed water as defined in RCW 90.46.010. Wastewater plans submitted under RCW 90.48.110 must include a statement describing how applicable reclamation and reuse elements will be coordinated as required under RCW 90.46.120(2). [2003 1st sp.s. c 5 § 12; 1997 c 444 § 9.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**Severability—1997 c 444:** See note following RCW 90.46.010.

**90.48.120 Notice of department's determination that violation has or will occur—Report to department of compliance with determination—Order or directive to be issued—Notice.** (1) Whenever, in the opinion of the department, any person shall violate or creates a substantial potential to violate the provisions of this chapter or chapter 90.56 RCW, or fails to control the polluting content of waste discharged or to be discharged into any waters of the state, the department shall notify such person of its determination by registered mail. Such determination shall not constitute an order or directive under RCW 43.21B.310. Within thirty days from the receipt of notice of such determination, such person shall file with the department a full report stating what steps have been and are being taken to control such waste or pollution or to otherwise comply with the determination of the department. Whereupon the department shall issue such order or directive as it deems appropriate under the circumstances, and shall notify such person thereof by registered mail.

(2) Whenever the department deems immediate action is necessary to accomplish the purposes of this chapter or chapter 90.56 RCW, it may issue such order or directive, as appropriate under the circumstances, without first issuing a notice or determination pursuant to subsection (1) of this section. An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed. [1992 c 73 § 25; 1987 c 109 § 131; 1985 c 316 § 3; 1973 c 155 § 2; 1967 c 13 § 11; 1945 c 216 § 18; Rem. Supp. 1945 § 10964r.]

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Appeal of orders under RCW 90.48.120(2): RCW 43.21B.310.*

**90.48.140 Penalty.** Any person found guilty of willfully violating any of the provisions of this chapter or chapter 90.56 RCW, or any final written orders or directive of the department or a court in pursuance thereof is guilty of a gross misdemeanor, and upon conviction thereof shall be punished

by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter or chapter 90.56 RCW occurs may be deemed a separate and additional violation. [2003 c 53 § 419; 1992 c 73 § 26; 1973 c 155 § 8; 1945 c 216 § 20; Rem. Supp. 1945 § 10964t.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**90.48.142 Violations—Liability in damages for injury or death of fish, animals, vegetation—Action to recover.** (1) Any person who:

(a)(i) Violates any of the provisions of this chapter or chapter 90.56 RCW;

(ii) Fails to perform any duty imposed by this chapter or chapter 90.56 RCW;

(iii) Violates an order or other determination of the department or the director made pursuant to the provisions of this chapter or chapter 90.56 RCW;

(iv) Violates the conditions of a waste discharge permit issued pursuant to RCW 90.48.160; or

(v) Otherwise causes a reduction in the quality of the state's waters below the standards set by the department or, if no standards have been set, causes significant degradation of water quality, thereby damaging the same; and

(b) Causes the death of, or injury to, fish, animals, vegetation, or other resources of the state;

shall be liable to pay the state and affected counties and cities damages in an amount determined pursuant to RCW 90.48.367.

(2) No action shall be authorized under this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to RCW 90.48.160. [1991 c 200 § 810; 1989 c 262 § 2; 1988 c 36 § 69; 1987 c 109 § 132; 1985 c 316 § 6; 1970 ex.s. c 88 § 12; 1967 ex.s. c 139 § 13.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Findings—1989 c 262:** "The legislature finds that there is confusion regarding the measure of damages authorized under RCW 90.48.142. The intent of this act is to clarify existing law on the measure of damages authorized under RCW 90.48.142, not to change the law." [1989 c 262 § 1.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**Severability—1967 ex.s. c 139:** See RCW 82.34.900.

**90.48.144 Violations—Civil penalty—Procedure.**

Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, every person who:

(1) Violates the terms or conditions of a waste discharge permit issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

(2) Conducts a commercial or industrial operation or other point source discharge operation without a waste discharge permit as required by RCW 90.48.160 or 90.48.260 through 90.48.262, or

(3) Violates the provisions of RCW 90.48.080, or other sections of this chapter or chapter 90.56 RCW or rules or orders adopted or issued pursuant to either of those chapters, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the violation's impact on public health and/or the environment in addition to other relevant factors. The penalty herein provided for shall be imposed pursuant to the procedures set forth in RCW 43.21B.300. [1995 c 403 § 636; 1992 c 73 § 27; 1987 c 109 § 17; 1985 c 316 § 2; 1973 c 155 § 9; 1970 ex.s. c 88 § 13; 1967 ex.s. c 139 § 14.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**Severability—1967 ex.s. c 139:** See RCW 82.34.900.

**90.48.150 Construction of chapter.** This chapter shall not be construed as repealing any of the laws governing the pollution of the waters of the state, but shall be held and construed as ancillary to and supplementing the same and in addition to the laws now in force, except as the same may be in direct conflict herewith. [1945 c 216 § 21; Rem. Supp. 1945 § 10964u.]

**90.48.153 Cooperation with federal government—Federal funds.** The department is authorized to cooperate with the federal government and to accept grants of federal funds for carrying out the purposes of this chapter. The department is empowered to make any application or report required by an agency of the federal government as an incident to receiving such grants. [1987 c 109 § 133; 1949 c 58 § 1; Rem. Supp. 1949 § 10964pp. Formerly RCW 90.48.040.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.156 Cooperation with other states and provinces—Interstate and state-provincial projects.** The department is authorized to cooperate with appropriate agencies of neighboring states and neighboring provinces, to enter into contracts, and make contributions toward interstate and state-provincial projects to carry out the purposes of this chapter and chapter 90.56 RCW. [1991 c 200 § 1105; 1987 c 109 § 134; 1949 c 58 § 2; Rem. Supp. 1949 § 10964pp-1. Formerly RCW 90.48.050.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

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**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.160 Waste disposal permit—Required—Exemptions.** Any person who conducts a commercial or industrial operation of any type which results in the disposal of solid or liquid waste material into the waters of the state, including commercial or industrial operators discharging solid or liquid waste material into sewerage systems operated by municipalities or public entities which discharge into public waters of the state, shall procure a permit from either the department or the \*thermal power plant site evaluation council as provided in RCW 90.48.262(2) before disposing of such waste material: PROVIDED, That this section shall not apply to any person discharging domestic sewage only into a sewerage system.

The department may, through the adoption of rules, eliminate the permit requirements for disposing of wastes into publicly operated sewerage systems for:

(1) Categories of or individual municipalities or public corporations operating sewerage systems; or

(2) Any category of waste disposer; if the department determines such permit requirements are no longer necessary for the effective implementation of this chapter. The department may by rule eliminate the permit requirements for disposing of wastes by upland finfish rearing facilities unless a permit is required under the federal clean water act's national pollutant discharge elimination system. [1989 c 293 § 2; 1973 c 155 § 3; 1967 c 13 § 13; 1955 c 71 § 1.]

**\*Reviser's note:** The "thermal power plant site evaluation council" was redesignated the "energy facility site evaluation council" by 1975-'76 2nd ex.s. c 108.

**90.48.162 Waste disposal permits required of counties, municipalities and public corporations.** Any county or any municipal or public corporation operating or proposing to operate a sewerage system, including any system which collects only domestic sewerage, which results in the disposal of waste material into the waters of the state shall procure a permit from the department of ecology before so disposing of such materials. This section is intended to extend the permit system of RCW 90.48.160 to counties and municipal or public corporations and the provisions of RCW 90.48.170 through \*90.48.210 and 90.52.040 shall be applicable to the permit requirement imposed under this section. [1972 ex.s. c 140 § 1.]

**\*Reviser's note:** RCW 90.48.210 was repealed by 1987 c 109 § 159.

**90.48.165 Waste disposal permits required of counties, municipalities and public corporations—Cities, towns or municipal corporations may be granted authority to issue permits—Revocation—Termination of permits.** Any city, town or municipal corporation operating a sewerage system including treatment facilities may be granted authority by the department to issue permits for the discharge of wastes to such system provided the department ascertains to its satisfaction that the sewerage system and the inspection and control program operated and conducted by the city, town or municipal corporation will protect the public interest in the quality of the state's waters as provided for in

this chapter. Such authority may be granted by the department upon application by the city, town or municipal corporation and may be revoked by the department if it determines that such city, town, or municipal corporation is not, thereafter, operated and conducted in a manner to protect the public interest. Persons holding municipal permits to discharge into sewerage systems operated by a municipal corporation authorized by this section to issue such permits shall not be required to secure a waste discharge permit provided for in RCW 90.48.160 as to the wastes discharged into such sewerage systems. Authority granted by the department to cities, towns, or municipal corporations to issue permits under this section shall be in addition to any authority or power now or hereafter granted by law to cities, towns and municipal corporations for the regulation of discharges into sewerage systems operated by such cities, towns, or municipal corporations. Permits issued under this section shall automatically terminate if the authority to issue the same is revoked by the department. [1987 c 109 § 135; 1967 c 13 § 14.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.170 Waste disposal permits required of counties, municipalities and public corporations—Application—Notice as to new operation or increase in volume—Investigation—Notice to other state departments.** Applications for permits shall be made on forms prescribed by the department and shall contain the name and address of the applicant, a description of the applicant's operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other relevant information deemed necessary by the department. Application for permits shall be made at least sixty days prior to commencement of any proposed discharge or permit expiration date, whichever is applicable. Upon receipt of a proper application relating to a new operation, or an operation previously under permit for which an increase in volume of wastes or change in character of effluent is requested over that previously authorized, the department shall instruct the applicant to publish notices thereof by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the disposal of waste material is proposed to be made and in such other appropriate information media as the department may direct. Said notice shall include a statement that any person desiring to present his or her views to the department with regard to said application may do so in writing to the department, or any person interested in the department's action on an application for a permit, may submit his or her views or notify the department of his or her interest within thirty days of the last date of publication of notice. Such notification or submission of views to the department shall entitle said persons to a copy of the action taken on the application. Upon receipt by the department of an application, it shall immediately send notice thereof containing pertinent information to the director of fish and wildlife and to the secretary of social and health services. When an application complying with the provisions of this chapter and the rules and regulations of the department has been filed with the department, it shall be its duty to investigate the applica-

tion, and determine whether the use of public waters for waste disposal as proposed will pollute the same in violation of the public policy of the state. [1994 c 264 § 91; 1988 c 36 § 70; 1987 c 109 § 136; 1967 c 13 § 15; 1955 c 71 § 2.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.180 Waste disposal permits required of counties, municipalities and public corporations—Issuance—Conditions—Duration.** The department shall issue a permit unless it finds that the disposal of waste material as proposed in the application will pollute the waters of the state in violation of the public policy declared in RCW 90.48.010. The department shall have authority to specify conditions necessary to avoid such pollution in each permit under which waste material may be disposed of by the permittee. Permits may be temporary or permanent but shall not be valid for more than five years from date of issuance. [1987 c 109 § 137; 1967 c 13 § 16; 1955 c 71 § 3.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.190 Waste disposal permits required of counties, municipalities and public corporations—Termination—Grounds.** A permit shall be subject to termination upon thirty days' notice in writing if the department finds:

- (1) That it was procured by misrepresentation of any material fact or by lack of full disclosure in the application;
- (2) That there has been a violation of the conditions thereof;
- (3) That a material change in quantity or type of waste disposal exists. [1987 c 109 § 138; 1967 c 13 § 17; 1955 c 71 § 4. (1987 3rd ex.s. c 2 § 43 repealed by 1989 c 2 § 24, effective March 1, 1989.)]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.195 Waste disposal permits required of counties, municipalities and public corporations—Modification or additional conditions may be ordered.** In the event that a material change in the condition of the state waters occurs the department may, by appropriate order, modify permit conditions or specify additional conditions in permits previously issued. [1987 c 109 § 139; 1967 c 13 § 18.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.200 Waste disposal permits required of counties, municipalities and public corporations—Nonaction upon application—Temporary permit—Duration.** In the event of failure of the department to act upon an application within sixty days after it has been filed the applicant shall be deemed to have received a temporary permit. Said permit shall authorize the applicant to discharge wastes into waters of the state as requested in its application only until such time as the department shall have taken action upon said application. [1987 c 109 § 140; 1967 c 13 § 19; 1955 c 71 § 5.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.215 Upland finfish facilities—Waste discharge standards—Waste disposal permit.** (1) The following definition shall apply to this section: "Upland finfish hatching and rearing facilities" means those facilities not located within waters of the state where finfish are hatched, fed, nurtured, held, maintained, or reared to reach the size of release or for market sale. This shall include fish hatcheries, rearing ponds, spawning channels, and other similarly constructed or fabricated public or private facilities.

(2) Not later than September 30, 1989, the department shall adopt standards pursuant to chapter 34.05 RCW for waste discharges from upland finfish hatching and rearing facilities. In establishing these standards, the department shall incorporate, to the extent applicable, studies conducted by the United States environmental protection agency on finfish rearing facilities and other relevant information. The department shall also issue a general permit as authorized by the federal clean water act, 33 U.S.C. 1251 et seq., or RCW 90.48.160 by September 30, 1989, for upland finfish hatching and rearing facilities. The department shall approve or deny applications for coverage under the general permit for upland finfish hatching and rearing facilities within one hundred eighty days from the date of application, unless a longer time is required to satisfy public participation requirements in the permit process in accordance with applicable rules, or compliance with the requirements of the state environmental policy act under chapter 43.21C RCW. The department shall notify applicants for coverage by a general permit as soon as it determines that a proposed discharge meets or fails to comply with the standards or general permit conditions set forth pursuant to this section, or that a time period longer than one hundred eighty days is necessary to satisfy public participation requirements or the state environmental policy act. [1989 c 293 § 1.]

**90.48.220 Marine finfish rearing facilities—Waste discharge standards—Discharge permit applications—Exemption.** (1) For the purposes of this section "marine finfish rearing facilities" means those private and public facilities located within the salt water of the state where finfish are fed, nurtured, held, maintained, or reared to reach the size of release or for market sale.

(2) Not later than October 31, 1994, the department shall adopt criteria under chapter 34.05 RCW for allowable sediment impacts from organic enrichment due to marine finfish rearing facilities.

(3) Not later than June 30, 1995, the department shall adopt standards under chapter 34.05 RCW for waste discharges from marine finfish rearing facilities. In establishing these standards, the department shall review and incorporate, to the extent possible, studies conducted by state and federal agencies on waste discharges from marine finfish rearing facilities, and any reports and other materials prepared by technical committees on waste discharges from marine finfish rearing facilities. The department shall approve or deny discharge permit applications for marine finfish rearing facilities within one hundred eighty days from the date of application, unless a longer time is required to satisfy public participation requirements in the permit process in accordance with applicable rules, or compliance with the requirements of the state environmental policy act under chapter 43.21C RCW.

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The department shall notify applicants as soon as it determines that a proposed discharge meets or fails to comply with the standards adopted pursuant to this section, or if a time period longer than one hundred eighty days is necessary to satisfy public participation requirements of the state environmental policy act.

(4) The department may adopt rules to exempt marine finfish rearing facilities not requiring national pollutant discharge elimination system permits under the federal water pollution control act from the discharge permit requirement. [1993 c 296 § 1.]

**90.48.230 Application of administrative procedure law to rule making and adjudicative proceedings.** The provisions of chapter 34.05 RCW, the Administrative Procedure Act, apply to all rule making and adjudicative proceedings authorized by or arising under the provisions of this chapter. [1989 c 175 § 181; 1967 c 13 § 21.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**90.48.240 Water pollution orders for conditions requiring immediate action—Appeal.** Notwithstanding any other provisions of this chapter or chapter 90.56 RCW, whenever it appears to the director that water quality conditions exist which require immediate action to protect the public health or welfare, or that a person required by RCW 90.48.160 to obtain a waste discharge permit prior to discharge is discharging without the same, or that a person conducting an operation which is subject to a permit issued pursuant to RCW 90.48.160 conducts the same in violation of the terms of said permit, causing water quality conditions to exist which require immediate action to protect the public health or welfare, the director may issue a written order to the person or persons responsible without prior notice or hearing, directing and affording the person or persons responsible the alternative of either (1) immediately discontinuing or modifying the discharge into the waters of the state, or (2) appearing before the department at the time and place specified in said written order for the purpose of providing to the department information pertaining to the violations and conditions alleged in said written order. The responsible person or persons shall be afforded not less than twenty-four hours notice of such an information meeting. If following such a meeting the department determines that water quality conditions exist which require immediate action as described herein, the department may issue a written order requiring immediate discontinuance or modification of the discharge into the waters of the state. In the event an order is not immediately complied with the attorney general, upon request of the department, shall seek and obtain an order of the superior court of the county in which the violation took place directing compliance with the order of the department. Such an order is appealable pursuant to RCW 43.21B.310. [1991 c 200 § 1106; 1987 c 109 § 15; 1967 c 13 § 22.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.250 Agreements or contracts to monitor waters and effluent discharge.** The department is authorized to

make agreements and enter into such contracts as are appropriate to carry out a program of monitoring the condition of the waters of the state and the effluent discharged therein, including contracts to monitor effluent discharged into public waters when such monitoring is required by the terms of a waste discharge permit or as part of the approval of a sewerage system, if adequate compensation is provided to the department as a term of the contract. [1987 c 109 § 141; 1967 c 13 § 23.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.260 Federal clean water act—Department designated as state agency, authority—Delegation of authority—Powers, duties, and functions.** The department of ecology is hereby designated as the State Water Pollution Control Agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the \*Puget Sound water quality authority. The department of ecology may delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and duties regarding animal feeding operations and concentrated animal feeding operations, to the department of agriculture through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology. Adoption or issuance and implementation shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws. The powers granted herein include, among others, and notwithstanding any other provisions of chapter 90.48 RCW or otherwise, the following:

(1) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: (a) Effluent treatment and limitation requirements together with timing requirements related thereto; (b) applicable receiving water quality standards requirements; (c) requirements of standards of performance for new sources; (d) pretreatment requirements; (e) termination and modification of permits for cause; (f) requirements for public notices and opportunities for public hearings; (g) appropriate relationships with the secretary of the army in the administration of his responsibilities which relate to anchorage and navigation, with the administrator of

the environmental protection agency in the performance of his duties, and with other governmental officials under the federal clean water act; (h) requirements for inspection, monitoring, entry, and reporting; (i) enforcement of the program through penalties, emergency powers, and criminal sanctions; (j) a continuing planning process; and (k) user charges.

(2) The power to establish and administer state programs in a manner which will insure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

(3) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

The governor shall have authority to perform those actions required of him or her by the federal clean water act. [2003 c 325 § 7; 1988 c 220 § 1; 1983 c 270 § 1; 1979 ex.s. c 267 § 1; 1973 c 155 § 4; 1967 c 13 § 24.]

**\*Reviser's note:** The Puget Sound water quality authority and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1995, and repealed June 30, 1996. See 1990 c 115 §§ 11 and 12. Powers, duties, and functions of the Puget Sound water quality authority pertaining to cleanup and protection of Puget Sound transferred to the Puget Sound action team by 1996 c 138 § 11. See RCW 90.71.903.

**Intent—Finding—2003 c 325:** See note following RCW 90.64.030.

**Severability—1983 c 270:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 270 § 5.]

**90.48.261 Exercise of powers under RCW 90.48.260—Aquatic resource mitigation.** When exercising its powers under RCW 90.48.260, the department shall, at the request of the project proponent, follow the guidance contained in RCW 90.74.005 through 90.74.030. [1997 c 424 § 7.]

**90.48.262 Implementation of RCW 90.48.260—Permits for energy facilities—Rules and procedures.** (1) The powers established under RCW 90.48.260 shall be implemented by the department through the adoption of rules in every appropriate situation. The permit program authorized under RCW 90.48.260(1) shall constitute a continuation of the established permit program of RCW 90.48.160 and other applicable sections within chapter 90.48 RCW. The appropriate modifications as authorized in \*this 1973 amendatory act are designed to avoid duplication and other wasteful practices and to insure that the state permit program contains all required elements of and is compatible with the requirements of any national permit system.

(2) Permits for energy facilities subject to chapter 80.50 RCW shall be issued by the energy facility site evaluation council: PROVIDED, That such permits shall become effective only if the governor approves an application for certification and executes a certification agreement pursuant to said chapter. The council shall have all powers necessary to establish and administer a point source discharge permit program pertaining to such plants, consistent with applicable receiving water quality standards established by the department, and to qualify for full participation in any national waste discharge

or pollution discharge elimination permit system. The council and the department shall each adopt, by rules, procedures which will provide maximum coordination and avoid duplication between the two agencies with respect to permits in carrying out the requirements of \*this act including, but not limited to, monitoring and enforcement of certification agreements, and in qualifying for full participation in any such national system. [1975-'76 2nd ex.s. c 108 § 41; 1973 c 155 § 5.]

**\*Reviser's note:** "This 1973 amendatory act" and "this act" apparently refer to 1973 c 155, which consists of this section, amendments to RCW 90.48.010, 90.48.120, 90.48.140, 90.48.144, 90.48.160, and 90.48.260, and the repeal of RCW 90.48.070.

**Severability—Effective date—1975-'76 2nd ex.s. c 108:** See notes following RCW 43.21F.010.

**90.48.264 Federal clean water act—Rules for on-site sewage disposal systems adjacent to marine waters.** In implementing this chapter and in participating in programs under the federal clean water act, the department may consult with the department of social and health services concerning standards for repair of existing, failing on-site sewage disposal systems that are adjacent to marine waters. By January 1, 1989, the department of social and health services shall propose rules for adoption by the state board of health identifying the standards for repair of existing, failing on-site sewage disposal systems at single-family residences that were legally occupied prior to June 9, 1988, and that are adjacent to marine waters. The rules may specify the design, operation and maintenance standards for such repaired systems so as to ensure protection of the public health, attainment of state water quality standards and the protection of shellfish and other public resources. The rules shall also provide that any proposed discharge to marine water shall be considered only if on-site sewage disposal systems are not feasible and that such discharges shall meet the requirements of this chapter and department of ecology regulations. The state board of health shall adopt such proposed rules unless the board finds modification or rejection of them necessary to protect the public health. [1988 c 220 § 2.]

**90.48.270 Sewage drainage basins—Authority of department to delineate and establish.** The department shall have authority to delineate and establish sewage drainage basins in the state for the purpose of developing and/or adopting comprehensive plans for the control and abatement of water pollution within such basins. Basins may include, but are not limited to, rivers and their tributaries, streams, coastal waters, sounds, bays, lakes, and portions or combinations thereof, as well as the lands drained thereby. [1987 c 109 § 142; 1967 c 13 § 26.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Aquifer protection areas: Chapter 36.36 RCW.*

**90.48.280 Sewage drainage basins—Comprehensive plans for sewage drainage basins.** The department is authorized to prepare and/or adopt a comprehensive water pollution control and abatement plan and to make subsequent amendments thereto, for each basin established pursuant to RCW 90.48.270. Comprehensive plans for sewage drainage

basins may be prepared by any municipality and submitted to the department for adoption.

Prior to adopting a comprehensive plan for any basin or any subsequent amendment thereof the department shall hold a public hearing thereon. Notice of such hearing shall be given by registered mail, together with copies of the proposed plan, to each municipality, or other political subdivision, within the basin exercising a sewage disposal function, at least twenty days prior to the hearing date. Such hearing may be continued from time to time and, at the termination thereof, the department may reject the plan proposed or adopt it with such modifications as it shall deem proper.

Following adoption of a comprehensive plan for any basin, the department shall require compliance with such plan by any municipality or person operating or constructing a sewage collection, treatment or disposal system or plant, or any improvement to or extension of an existing sewage collection, treatment or disposal system or plant, within the basin. [1987 c 109 § 143; 1967 c 13 § 27.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.48.285 Contracts with municipal or public corporations and political subdivisions to finance water pollution control projects—Requisites—Priorities.** The department is authorized to enter into contracts with any municipal or public corporation or political subdivision within the state for the purpose of assisting such agencies to finance the design and construction of water pollution control projects, whether procured through chapter 39.10 or 70.150 RCW, or otherwise, that are necessary to prevent the discharge of untreated or inadequately treated sewage or other waste into the waters of the state, including but not limited to, systems for the control of storm or surface waters which will provide for the removal of waste or polluting materials in a manner conforming to the comprehensive plan of water pollution control and abatement proposed by the agencies and approved by the department. Any such contract may provide for:

The payment by the department to a municipal or public corporation or political subdivision on a monthly, quarterly, or annual basis of varying amounts of moneys as advances which shall be repayable by said municipal or public corporation, or political subdivision under conditions determined by the department.

Contracts made by the department shall be subject to the following limitations:

(1) No contract shall be made unless the department shall find that the project cannot be financed at reasonable cost or within statutory limitations by the borrower without the making of such contract.

(2) No contract shall be made with any public or municipal corporation or political subdivision to assist in the financing of any project located within a sewage drainage basin for which the department shall have previously adopted a comprehensive water pollution control and abatement plan unless the project is found by the department to conform with the basin comprehensive plan.

(3) The department shall determine the interest rate, not to exceed ten percent per annum, which such advances shall bear.

(4) The department shall provide such reasonable terms and conditions of repayment of advances as it may determine.

(5) The total outstanding amount which the department may at any time be obligated to pay under all outstanding contracts made pursuant to this section shall not exceed the moneys available for such payment.

(6) Municipal or public corporations or political subdivisions shall meet such qualifications and follow such procedures in applying for contract assistance as shall be established by the department.

In making such contracts the department shall give priority to projects which will provide relief from actual or potential public health hazards or water pollution conditions and which provide substantial capacity beyond present requirements to meet anticipated future demand. [2005 c 469 § 4; 1987 c 109 § 144; 1980 c 32 § 13; 1969 ex.s. c 141 § 1.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**Severability—1969 ex.s. c 141:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected." [1969 ex.s. c 141 § 2.]

**90.48.290 Grants to municipal or public corporations or political subdivisions to aid water pollution control projects—Limitations.** The department is authorized to make and administer grants within appropriations authorized by the legislature to any municipal or public corporation, or political subdivision within the state for the purpose of aiding in the construction of water pollution control projects necessary to prevent the discharge of untreated or inadequately treated sewage or other waste into the waters of the state including, but not limited to, projects for the control of storm or surface waters which will provide for the removal of waste or polluting materials therefrom.

Grants so made by the department shall be subject to the following limitations:

(1) No grant shall be made in an amount which exceeds the recipient's contribution to the estimated cost of the project: PROVIDED, That the following shall be considered a part of the recipient's contribution:

(a) Any grant received by the recipient from the federal government pursuant to section 8(f) of the Federal Water Pollution Control Act (33 U.S.C. 466) for the project;

(b) Any expenditure which is made by any municipal or public corporation, or political subdivision within the state as a part of a joint effort with the recipient to carry out the project and which has not been used as a matching contribution for another grant made pursuant to this chapter, and

(c) Any expenditure for the project made by the recipient out of moneys advanced by the department from a revolving fund and repayable to said fund.

(2) No grant shall be made for any project which does not qualify for and receive a grant of federal funds under the provisions of the Federal Water Pollution Control Act as now or hereafter amended: PROVIDED, That this restriction shall not apply to state grants made in any biennium over and above the amount of such grants required to match all federal funds allocated to the state for such biennium.

(3) No grant shall be made to any municipal or public corporation, or political subdivision for any project located

within a drainage basin unless the department shall have previously adopted a comprehensive water pollution control and abatement plan and unless the project is found by the department to conform with such basin comprehensive plan: PROVIDED, That the requirement for a project to conform to a comprehensive water pollution control and abatement plan may be waived by the department for any grant application filed with the department prior to July 1, 1974, in those situations where the department finds the public interest would be served better by approval of any grant application made prior to adoption of such plan than by its denial.

(4) Recipients of grants shall meet such qualifications and follow such procedures in applying for grants as shall be established by the department.

(5) Grants may be made to reimburse recipients for expenditures made after July 1, 1967 for projects which meet the requirements of this section and were commenced after the recipient had filed a grant application with the department. [1987 c 109 § 145; 1969 ex.s. c 284 § 1; 1967 c 13 § 28.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**Severability—1969 ex.s. c 284:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 284 § 24.]

**90.48.300 Pollution control facilities—Tax exemptions and credits.** See chapter 82.34 RCW.

**90.48.364 Discharge of oil into waters of the state—Definitions.** For the purposes of this chapter, "technical feasibility" or "technically feasible" means that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the resource before the injury. [1991 c 200 § 811.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**90.48.366 Discharge of oil into waters of the state—Compensation schedule.** By July 1, 1991, the department, in consultation with the departments of \*fisheries, wildlife, and natural resources, and the parks and recreation commission, shall adopt rules establishing a compensation schedule for the discharge of oil in violation of this chapter and chapter 90.56 RCW. The amount of compensation assessed under this schedule shall be no less than one dollar per gallon of oil spilled and no greater than fifty dollars per gallon of oil spilled. The compensation schedule shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the spill and shall take into account:

(1) Characteristics of any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

(2) The sensitivity of the affected area as determined by such factors as: (a) The location of the spill; (b) habitat and living resource sensitivity; (c) seasonal distribution or sensi-

tivity of living resources; (d) areas of recreational use or aesthetic importance; (e) the proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law; (f) significant archaeological resources as determined by the \*\*office of archaeology and historic preservation; and (g) other areas of special ecological or recreational importance, as determined by the department. If the department has adopted rules for a compensation table prior to July 1, 1992, the sensitivity of significant archaeological resources shall only be included among factors to be used in the compensation table when the department revises the rules for the compensation table after July 1, 1992; and

(3) Actions taken by the party who spilled oil or any party liable for the spill that: (a) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or (b) enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife. [1994 sp.s. c 9 § 855; 1992 c 73 § 28; 1991 c 200 § 812; 1989 c 388 § 2.]

**Reviser's note:** \*(1) Powers, duties, and functions of the department of fisheries and the department of wildlife were transferred to the department of fish and wildlife by 1993 sp.s. c 2, effective July 1, 1994.

\*\*\*(2) Powers, duties, and functions of the office of archaeology and historic preservation were transferred to the department of archaeology and historic preservation pursuant to 2005 c 333 § 12.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Intent—Application—Captions—Severability—1989 c 388:** See notes following RCW 90.56.010.

**90.48.367 Discharge of oil into waters of the state—Assessment of compensation.** (1) After a spill or other incident causing damages to the natural resources of the state, the department shall conduct a formal preassessment screening as provided in RCW 90.48.368.

(2) The department shall use the compensation schedule established under RCW 90.48.366 to determine the amount of damages if the preassessment screening committee determines that: (a) Restoration or enhancement of the injured resources is not technically feasible; (b) damages are not quantifiable at a reasonable cost; and (c) the restoration and enhancement projects or studies proposed by the liable parties are insufficient to adequately compensate the people of the state for damages.

(3) If the preassessment screening committee determines that the compensation schedule should not be used, compensation shall be assessed for the amount of money necessary to restore any damaged resource to its condition before the injury, to the extent technically feasible, and compensate for the lost value incurred during the period between injury and restoration.

(4) Restoration shall include the cost to restock such waters, replenish or replace such resources, and otherwise restore the stream, lake, or other waters of the state, including

any estuary, ocean area, submerged lands, shoreline, bank, or other lands adjoining such waters to its condition before the injury, as such condition is determined by the department. The lost value of a damaged resource shall be equal to the sum of consumptive, nonconsumptive, and indirect use values, as well as lost taxation, leasing, and licensing revenues. Indirect use values may include existence, bequest, option, and aesthetic values. Damages shall be determined by generally accepted and cost-effective procedures, including, but not limited to, contingent valuation method studies.

(5) Compensation assessed under this section shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington and affected counties and cities in the superior court of Thurston county or any county in which damages occurred. Moneys recovered by the attorney general under this section shall be deposited in the coastal protection fund established under RCW 90.48.390, and shall only be used for the purposes stated in RCW 90.48.400.

(6) Compensation assessed under this section shall preclude claims under this chapter by local governments for compensation for damages to publicly owned resources resulting from the same incident. [1991 c 200 § 813; 1989 c 388 § 3.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Intent—Application—Captions—Severability—1989 c 388:** See notes following RCW 90.56.010.

**90.48.368 Discharge of oil into waters of the state—Preassessment screening.** (1) The department shall adopt rules establishing a formal process for preassessment screening of damages resulting from spills to the waters of the state causing the death of, or injury to, fish, animals, vegetation, or other resources of the state. The rules shall specify the conditions under which the department shall convene a preassessment screening committee. The preassessment screening process shall occur concurrently with reconnaissance activities. The committee shall use information obtained from reconnaissance activities as well as any other relevant resource and resource use information. For each incident, the committee shall determine whether a damage assessment investigation should be conducted, or, whether the compensation schedule authorized under RCW 90.48.366 and 90.48.367 should be used to assess damages. The committee may accept restoration or enhancement projects or studies proposed by the liable parties in lieu of some or all of: (a) The compensation schedule authorized under RCW 90.48.366 and 90.48.367; or (b) the claims from damage assessment studies authorized under RCW 90.48.142.

(2) A preassessment screening committee may consist of representatives of the departments of ecology, fish and wildlife, natural resources, social and health services, and emergency management, the parks and recreation commission, the \*office of archaeology and historic preservation, as well as other federal, state, and local agencies, and tribal and local governments whose presence would enhance the reconnaissance or damage assessment aspects of spill response. The department shall chair the committee and determine which representatives will be needed on a spill-by-spill basis.

(3) The committee shall consider the following factors when determining whether a damage assessment study authorized under RCW 90.48.367 should be conducted: (a) Whether evidence from reconnaissance investigations suggests that injury has occurred or is likely to occur to publicly owned resources; (b) the potential loss in services provided by resources injured or likely to be injured and the expected value of the potential loss; (c) whether a restoration project to return lost services is technically feasible; (d) the accuracy of damage quantification methods that could be used and the anticipated cost-effectiveness of applying each method; (e) the extent to which likely injury to resources can be verified with available quantification methods; and (f) whether the injury, once quantified, can be translated into monetary values with sufficient precision or accuracy.

(4) When a resource damage assessment is required for an oil spill in the navigable waters of the state, as defined in RCW 90.56.010, the state trustee agency responsible for the resource and habitat damaged shall conduct the damage assessment and pursue all appropriate remedies with the responsible party.

(5) Oil spill damage assessment studies authorized under RCW 90.48.367 may only be conducted if the committee, after considering the factors enumerated in subsection (3) of this section, determines that the damages to be investigated are quantifiable at a reasonable cost and that proposed assessment studies are clearly linked to quantification of the damages incurred.

(6) As new information becomes available, the committee may reevaluate the scope of damage assessment using the factors listed in subsection (3) of this section and may reduce or expand the scope of damage assessment as appropriate.

(7) The preassessment screening process shall provide for the ongoing involvement of persons who may be liable for damages resulting from an oil spill. The department may negotiate with a potentially liable party to perform restoration and enhancement projects or studies which may substitute for all or part of the compensation authorized under RCW 90.48.366 and 90.48.367 or the damage assessment studies authorized under RCW 90.48.367.

(8) For the purposes of this section and RCW 90.48.367, the cost of a damage assessment shall be considered "reasonable" when the anticipated cost of the damage assessment is expected to be less than the anticipated damage that may have occurred or may occur. [1994 c 264 § 92; 1992 c 73 § 29; 1991 c 200 § 814; 1989 c 388 § 4.]

**\*Reviser's note:** Powers, duties, and functions of the office of archaeology and historic preservation were transferred to the department of archaeology and historic preservation pursuant to 2005 c 333 § 12.

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Intent—Application—Captions—Severability—1989 c 388:** See notes following RCW 90.56.010.

#### **90.48.386 Department of natural resources leases.**

After May 15, 1991, the department of natural resources shall include in its leases for onshore and offshore facilities the following provisions:

(1) Require those wishing to lease, sublease, or re-lease state-owned aquatic lands to comply with the provisions of this chapter;

(2) Require lessees and sublessees to operate according to the plan of operations and to keep the plan current in compliance with this chapter; and

(3) Include in its leases provisions that a violation by the lessee or sublessee of the provisions of this chapter may be grounds for termination of the lease. [1991 c 200 § 1101.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

#### **90.48.390 Coastal protection fund—Established—**

**Moneys credited to—Use.** The coastal protection fund is established to be used by the department as a revolving fund for carrying out the purposes of restoration of natural resources under this chapter and chapter 90.56 RCW. To this fund there shall be credited penalties, fees, damages, charges received pursuant to the provisions of this chapter and chapter 90.56 RCW, compensation for damages received under this chapter and chapter 90.56 RCW, and an amount equivalent to one cent per gallon from each marine use refund claim under RCW 82.36.330.

Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its powers, duties, and functions under RCW 90.48.142, 90.48.366, 90.48.367, and 90.48.368 shall be deposited with the state treasurer to the credit of the fund. [1991 sp.s. c 13 § 84; 1991 c 200 § 815; 1989 c 388 § 7; 1989 c 262 § 3; 1971 ex.s. c 180 § 4.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Intent—Application—Captions—Severability—1989 c 388:** See notes following RCW 90.56.010.

**Findings—1989 c 262:** See note following RCW 90.48.142.

#### **90.48.400 Coastal protection fund—Disbursal of moneys from.**

(1) Moneys in the coastal protection fund shall be disbursed for the following purposes and no others:

(a) Environmental restoration and enhancement projects intended to restore or enhance environmental, recreational, archaeological, or aesthetic resources for the benefit of Washington's citizens;

(b) Investigations of the long-term effects of oil spills; and

(c) Development and implementation of an aquatic land geographic information system.

(2) The director may allocate a portion of the fund to be devoted to research and development in the causes, effects, and removal of pollution caused by the discharge of oil or other hazardous substances.

(3) A steering committee consisting of representatives of the departments of ecology, fish and wildlife, and natural resources, and the parks and recreation commission shall authorize the expenditure of the moneys collected under RCW 90.48.366 through 90.48.368, after consulting impacted local agencies and local and tribal governments.

(4) Agencies may not be reimbursed from the coastal protection fund for the salaries and benefits of permanent

employees for routine operational support. Agencies may only be reimbursed under this section if money for reconnaissance and damage assessment activities is unavailable from other sources. [1994 c 264 § 93; 1992 c 73 § 30; 1991 c 200 § 816; 1990 c 116 § 14. Prior: 1989 c 388 § 8; 1989 c 262 § 4; 1971 ex.s. c 180 § 5.]

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**Intent—Application—Captions—Severability—1989 c 388:** See notes following RCW 90.56.010.

**Findings—1989 c 262:** See note following RCW 90.48.142.

**90.48.420 Water quality standards affected by forest practices—Department of ecology solely responsible for water quality standards—Forest practices rules—Adoption—Examination—Enforcement procedures.** (1) The department of ecology, pursuant to powers vested in it previously by chapter 90.48 RCW and consistent with the policies of said chapter and RCW 90.54.020(3), shall be solely responsible for establishing water quality standards for waters of the state. On or before January 1, 1975, the department of ecology shall examine existing rules containing water quality standards and other applicable rules of said department pertaining to waters of the state affected by non-point sources of pollution arising from forest practices and, when it appears appropriate to the department of ecology, modify said rules. In any such examination or modification the department of ecology shall consider such factors, among others, as uses of the receiving waters, diffusion, downstream cooling, and reasonable transient and short-term effects resulting from forest practices.

Adoption of forest practices rules pertaining to water quality by the forest practices board shall be accomplished after reaching agreement with the director of the department or the director's designee on the board. Adoption shall be accomplished so that compliance with such forest practice[s] rules will achieve compliance with water pollution control laws.

(2) The department of ecology shall monitor water quality to determine whether revisions in such water quality standards or revisions in such forest practices rules are necessary to accomplish the foregoing result, and either adopt appropriate revisions to such water quality standards or propose appropriate revisions to such forest practices rules or both.

(3) Notwithstanding any other provisions of chapter 90.48 RCW or of the rules adopted thereunder, no permit system pertaining to nonpoint sources of pollution arising from forest practices shall be authorized, and no civil or criminal penalties shall be imposed with respect to any forest practices conducted in full compliance with the applicable provisions of RCW 76.09.010 through 76.09.280, forest practices rules, and any approvals or directives of the department of natural resources thereunder.

(4) Prior to the department of ecology taking action under statutes or rules relating to water quality, regarding violations of water quality standards arising from forest practices, the department of ecology shall notify the department

of natural resources. [1999 sp.s. c 4 § 1101; 1975 1st ex.s. c 200 § 13; 1974 ex.s. c 137 § 30.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**Effective dates—1974 ex.s. c 137:** See RCW 76.09.925.

**Severability—1974 ex.s. c 137:** See RCW 76.09.935.

*Forest practices: Chapter 76.09 RCW.*

*Right of entry to administer this section: RCW 76.09.160.*

**90.48.422 Water quality standards—Compliance methods—Department authority.** (1) The legislature finds that the courts have rendered decisions in Elkhorn (*Public Utility District No. 1 v. Washington Department of Ecology*, 511 U.S. 700, 114 S. Ct. 1900, 128 L.Ed. 2d 716 (1994)) and Sullivan Creek (*Public Utility District No. 1 of Pend Oreille County v. Washington Department of Ecology*, 146 Wn.2d 778, 51 P.3d 744 (2002)) related to water quality certifications issued under section 401 of the clean water act, 33 U.S.C. 1251 et seq. Enactment of this legislation does not expand or contract the legal holdings of these decisions and does not affect in any way the application of these holdings to any future case or fact pattern related to water quality certifications issued for federally licensed hydropower facilities under section 401 of the clean water act, 33 U.S.C. 1251 et seq.

(2) When a water quality standard cannot be reasonably met through the issuance of permits or regulatory orders issued under the authority of this chapter, the department may use voluntary, incentive-based methods including funding of water conservation projects, lease and purchase of water rights, development of new storage projects, or habitat restoration projects in an attempt to meet water quality standards.

(3) The department may not abrogate, supersede, impair, or condition the ability of a water right holder to fully divert or withdraw water under a water right permit, certificate, statutory exemption, or claim granted or recognized under chapter 90.03, 90.14, or 90.44 RCW through the authority granted to the department in this chapter. However, nothing in chapter 15, Laws of 2003 1st sp. sess. shall be construed to affect the department's authority related to the issuance of certifications under section 401 of the federal clean water act, 33 U.S.C. 1251 et seq., with respect to the application of federally authorized water quality standards, for federal energy regulatory commission licensed hydropower projects as provided under this chapter and chapter 90.74 RCW. With respect to federal energy regulatory commission licensed hydropower projects, the department may only require a person to mitigate or remedy a water quality violation or problem to the extent there is substantial evidence such person has caused such violation or problem. [2003 1st sp.s. c 15 § 1.]

**90.48.425 Forest practices act and regulations relating to water quality protection to be utilized to satisfy federal water pollution act.** The forest practices act, chapter 76.09 RCW, and the forest practices regulations adopted thereunder relating to water quality protection shall be utilized to satisfy the planning and program requirements of sections 208, 209, and 305 of the federal Water Pollution Control Act, as regards silvicultural activities, unless it is determined by the department of ecology that extraordinary

conditions exist which make forest practices regulations unsuitable to satisfy such federal requirements. [1975 1st ex.s. c 200 § 14.]

*Provisions of state law pertaining to federal clean water act: RCW 90.48.260, 90.48.262.*

**90.48.430 Watershed restoration projects—Approval process—Waiver of public review.** A permit, certification, or other approval required by the department for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. Public review of proposed watershed restoration projects may be shortened or waived by the department. [1995 c 378 § 15.]

**90.48.445 Aquatic noxious weed control—Water quality permits—Definition.** (1) The director shall issue or approve water quality permits for use by federal, state, or local governmental agencies and licensed applicators for the purpose of using, for aquatic noxious weed control, herbicides and surfactants registered under state or federal pesticide control laws, and for the purpose of experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3. The issuance of the permits shall be subject only to compliance with: Federal and state pesticide label requirements, the requirements of the federal insecticide, fungicide, and rodenticide act, the Washington pesticide control act, the Washington pesticide application act, and the state environmental policy act, except that:

(a) When the director issues water quality permits for the purpose of using glyphosate and surfactants registered by the department of agriculture to control spartina, as defined by RCW 17.26.020, the water quality permits shall contain the following criteria:

(i) Spartina treatment shall occur between June 1st and October 31st of each year unless the department, the department of agriculture, and the department of fish and wildlife agree to add additional dates beyond this period, except that no aerial application shall be allowed on July 4th or Labor Day and for ground application on those days the applicator shall post signs at each corner of the treatment area;

(ii) The applicator shall take all reasonable precautions to prevent the spraying of nontarget vegetation and nonvegetated areas;

(iii) A period of fourteen days between treatments is required prior to re-treating the previously treated areas;

(iv) Aerial or ground broadcast application shall not be made when the wind speed exceeds ten miles per hour; and

(v) An application shall not be made when a tidal regime leaves the plants dry for less than four hours.

(b) The director shall issue water quality permits for the purpose of using herbicides or surfactants registered by the department of agriculture to control aquatic noxious weeds, other than spartina, and the permit shall state that aerial and ground broadcast applications may not be made when the wind speed exceeds ten miles per hour.

(c) The director shall issue water quality permits for the experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, when the department of agriculture has issued an experimental use permit, under the authority of RCW 15.58.405(3). Because of the small geographic areas

involved and the short duration of herbicide application, water quality permits issued under this subsection are not subject to state environmental policy act review.

(2) Applicable requirements established in an option or options recommended for controlling the noxious weed by a final environmental impact statement published under chapter 43.21C RCW by the department prior to May 5, 1995, by the department of agriculture, or by the department of agriculture jointly with other state agencies shall be considered guidelines for the purpose of granting the permits issued under this chapter. This section may not be construed as requiring the preparation of a new environmental impact statement to replace a final environmental impact statement published before May 5, 1995, but instead shall authorize the department of agriculture, as lead agency for the control of spartina under RCW 17.26.015, to supplement, amend, or issue addenda to the final environmental impact statement published before May 5, 1995, which may assess the environmental impact of the application of stronger concentrations of active ingredients, altered application patterns, or other changes as the department of agriculture deems appropriate.

(3) The director of ecology may not utilize this permit authority to otherwise condition or burden weed control efforts. Except for permits issued by the director under subsection (1)(c) of this section, permits issued under this section are effective for five years, unless a shorter duration is requested by the applicant. The director's authority to issue water quality modification permits for activities other than the application of surfactants and approved herbicides, to control aquatic noxious weeds or the experimental use of herbicides used on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, is unaffected by this section.

(4) As used in this section, "aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080. [1999 sp.s. c 11 § 1; 1995 c 255 § 3.]

**Effective date—1999 sp.s. c 11:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 7, 1999]." [1999 sp.s. c 11 § 2.]

**Severability—Effective date—1995 c 255:** See RCW 17.26.900 and 17.26.901.

**90.48.447 Aquatic plant management program—Commercial herbicide information—Experimental application of herbicides—Appropriation for study.** (1) The department of ecology shall update the final supplemental environmental impact statement completed in 1992 for the aquatic plant management program to reflect new information on herbicides evaluated in 1992 and new, commercially available herbicides. The department shall maintain the currency of the information on herbicides and evaluate new herbicides as they become commercially available.

(2) For the 1999 treatment season, the department shall permit by May 15, 1999, municipal experimental application of herbicides such as hydrothol 191 for algae control in lakes managed under chapter 90.24 RCW. If experimental use is determined to be ineffective, then the department shall within fourteen days consult with other state, federal, and local agencies and interested parties, and may permit the use of copper sulfate. The Washington institute for public policy shall contract for a study on the lake-wide effectiveness of

any herbicide used under this subsection. Prior to issuing the contract for the study, the institute for public policy shall determine the parameters of the study in consultation with licensed applicators who have recent experience treating the lake and with the nonprofit corporation that participated in centennial clean water fund phase one lake management studies for the lake. The parameters must include measurement of the lake-wide effectiveness of the application of the herbicide in maintaining beneficial uses of the lake, including any uses designated under state or federal water quality standards. The effectiveness of the application shall be determined by objective criteria such as turbidity of the water, the effectiveness in killing algae, any harm to fish or wildlife, any risk to human health, or other criteria developed by the institute. The results of the study shall be reported to the appropriate legislative committees by December 1, 1999. A general fund appropriation in the amount of \$35,000 is provided to the Washington institute for public policy for fiscal year 1999 for the study required under this subsection. [1999 c 255 § 2.]

**Findings—Purpose—1999 c 255:** "The legislature finds that the environmental, recreational, and aesthetic values of many of the state's lakes are threatened by the invasion of nuisance and noxious aquatic weeds. Once established, these nuisance and noxious aquatic weeds can colonize the shallow shorelines and other areas of lakes with dense surface vegetation mats that degrade water quality, pose a threat to swimmers, and restrict use of lakes. Algae can generate health and safety conditions dangerous to fish, wildlife, and humans. The current environmental impact statement is causing difficulty in responding to environmentally damaging weed and algae problems. Many commercially available herbicides have been demonstrated to be effective in controlling nuisance and noxious aquatic weeds and algae and do not pose a risk to the environment or public health. The purpose of this act is to allow the use of commercially available herbicides that have been approved by the environmental protection agency and the department of agriculture and subject to rigorous evaluation by the department of ecology through an environmental impact statement for the aquatic plant management program." [1999 c 255 § 1.]

**Effective date—1999 c 255:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 1999]." [1999 c 255 § 5.]

**90.48.448 Eurasian water milfoil—Pesticide 2,4-D application.** (1) Subject to restrictions in this section, a government entity seeking to control a limited infestation of Eurasian water milfoil may use the pesticide 2,4-D to treat the milfoil infestation, without obtaining a permit under RCW 90.48.445, if the milfoil infestation is either recently documented or remaining after the application of other control measures, and is limited to twenty percent or less of the littoral zone of the lake. Any pesticide application made under this section must be made according to all label requirements for the product and must meet the public notice requirements of subsection (2) of this section.

(2) Before applying 2,4-D, the government entity shall: (a) Provide at least twenty-one days' notice to the department of ecology, the department of fish and wildlife, the department of agriculture, the department of health, and all lake residents; (b) post notices of the intent to apply 2,4-D at all public access points; and (c) place informational buoys around the treatment area.

(3) The department of fish and wildlife may impose timing restrictions on the use of 2,4-D to protect salmon and other fish and wildlife.

(4) The department may prohibit the use of 2,4-D if the department finds the product contains dioxin in excess of the standard allowed by the United States environmental protection agency. Sampling protocols and analysis used by the department under this section must be consistent with those used by the United States environmental protection agency for testing this product.

(5) Government entities using this section to apply 2,4-D may apply for funds from the freshwater aquatic weeds account consistent with the freshwater aquatic weeds management program as provided in RCW 43.21A.660.

(6) Government entities using this section shall consider development of long-term control strategies for eradication and control of the Eurasian water milfoil.

(7) For the purpose of this section, "government entities" includes cities, counties, state agencies, tribes, special purpose districts, and county weed boards. [1999 c 255 § 3.]

**Findings—Purpose—Effective date—1999 c 255:** See notes following RCW 90.48.447.

**90.48.450 Discharges from agricultural activity—Consideration to be given as to whether enforcement action would contribute to conversion of land to nonagricultural use—Minimize the possibility.** (1) Prior to issuing a notice of violation related to discharges from agricultural activity on agricultural land, the department shall consider whether an enforcement action would contribute to the conversion of agricultural land to nonagricultural uses. Any enforcement action shall attempt to minimize the possibility of such conversion.

(2) As used in this section:

(a) "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay and dairy products.

(b) "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock or agricultural commodities. [1981 c 297 § 31.]

**Legislative finding, intent—1981 c 297:** See note following RCW 70.94.640.

**Severability—1981 c 297:** See note following RCW 15.36.201.

**90.48.455 Discharge of chlorinated organics—Engineering reports by pulp and paper mills—Permits limiting discharge.** (1) The department may require each pulp mill and paper mill discharging chlorinated organics to conduct and submit an engineering report on the cost of installing technology designed to reduce the amount of chlorinated organic compounds discharged into the waters of the state. The department shall allow at least twenty-four months from June 11, 1992, for each pulp mill and each paper mill to submit an engineering report.

(2) The department may not issue a permit establishing limits to the discharge of chlorinated organic compounds by a pulp mill or a paper mill under RCW 90.48.160 or 90.48.260 until at least nine months after receiving an engineering report from a kraft mill and at least fifteen months after receiving an engineering report from a sulfite mill.

(3) Nothing in this section shall apply to dioxin compounds. [1992 c 201 § 1.]

**90.48.465 Water discharge fees.** (1) The department shall establish annual fees to collect expenses for issuing and administering each class of permits under RCW 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be established by rule and be adjusted no more often than once every two years. This fee schedule shall apply to all permits, regardless of date of issuance, and fees shall be assessed prospectively. All fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and toxicity and be designed to encourage recycling and the reduction of the quantity of pollutants. Fees shall be established in amounts to fully recover and not to exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to operations of permittees, overseeing performance of delegated pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

(2) The annual fee paid by a municipality, as defined in 33 U.S.C. Sec. 1362, for all domestic wastewater facility permits issued under RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of fifteen cents per month per residence or residential equivalent contributing to the municipality's wastewater system.

(3) The department shall ensure that indirect dischargers do not pay twice for the administrative expense of a permit. Accordingly, administrative expenses for permits issued by a municipality under RCW 90.48.165 are not recoverable by the department.

(4) In establishing fees, the department shall consider the economic impact of fees on small dischargers and the economic impact of fees on public entities required to obtain permits for storm water runoff and shall provide appropriate adjustments.

(5) The fee for an individual permit issued for a dairy farm as defined under chapter 90.64 RCW shall be fifty cents per animal unit up to one thousand two hundred fourteen dollars for fiscal year 1999. The fee for a general permit issued for a dairy farm as defined under chapter 90.64 RCW shall be fifty cents per animal unit up to eight hundred fifty dollars for fiscal year 1999. Thereafter, these fees may rise in accordance with the fiscal growth factor as provided in chapter 43.135 RCW.

(6) The fee for a general permit or an individual permit developed solely as a result of the federal court of appeals decision in *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3rd 526 (9th Cir. 2001) is limited, until June 30, 2003, to a maximum of three hundred dollars. Such a permit is required only, and as long as, the interpretation of this court decision is not overturned or modified by future court rulings, administrative rule making, or clarification of scope by the United States environmental protection agency or legislative action. In such a case the department shall take appropriate action to rescind or modify these permits.

(7) All fees collected under this section shall be deposited in the water quality permit account hereby created in the state treasury. Moneys in the account may be appropriated

only for purposes of administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

(8) The department shall present a biennial progress report on the use of moneys from the account to the legislature. The report will be due December 31st of odd-numbered years. The report shall consist of information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years. [2002 c 361 § 2; 1998 c 262 § 16; 1997 c 398 § 2; 1996 c 37 § 3; 1992 c 174 § 17; 1991 c 307 § 1; 1989 c 2 § 13 (Initiative Measure No. 97, approved November 8, 1988).]

**Findings—Intent—2002 c 361:** "The legislature finds that the recent federal court of appeals decision in *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3rd 526 (9th Cir. 2001) imposes a duty to obtain a national pollutant discharge elimination system permit under the clean water act for the application of pesticides to irrigation canals. This duty is also extended to other individuals and organizations that apply pesticides to other waters, where no duty existed before the *Talent* decision.

The legislature finds that the costs associated with the issuance of the national pollutant discharge elimination system permit now required by the department of ecology as a result of the federal decision is burdensome to the affected individuals and organizations. The legislature intends to temporarily reduce the burden of the federal decision on those individuals and organizations." [2002 c 361 § 1.]

**Effective date—2002 c 361:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 4, 2002]." [2002 c 361 § 3.]

**Effective date—1998 c 262:** See RCW 90.64.900.

**Short title—Captions—Construction—Existing agreements—Effective date—Severability—1989 c 2:** See RCW 70.105D.900 through 70.105D.921, respectively.

**90.48.480 Reduction of sewer overflows—Plans—Compliance schedule.** The department of ecology shall work with local governments to develop reasonable plans and compliance schedules for the greatest reasonable reduction of combined sewer overflows. The plan shall address various options, including construction of storage tanks for sewage and separation of sewage and stormwater transport systems. The compliance schedule shall be designed to achieve the greatest reasonable reduction of combined sewer overflows at the earliest possible date. The plans and compliance schedules shall be completed by January 1, 1988. A compliance schedule will be a condition of any waste discharge permit issued or renewed after January 1, 1988. [1998 c 245 § 174; 1985 c 249 § 2.]

**90.48.490 Sewage treatment facilities—Plans to upgrade or construct.** Plans for upgrading sewage treatment facilities and plans for new sewage treatment facilities shall address the greatest reasonable reduction of combined sewer overflows and implementation of pretreatment standards. [1985 c 249 § 3.]

**90.48.495 Water conservation measures to be considered in sewer plans.** The department of ecology shall require sewer plans to include a discussion of water conservation measures considered or underway that would reduce flows to the sewerage system and an analysis of their anticipated impact on public sewer service and treatment capacity. [2003 1st sp.s. c 5 § 11; 1989 c 348 § 10.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**Severability—1989 c 348:** See note following RCW 90.54.020.

**Rights not impaired—1989 c 348:** See RCW 90.54.920.

**90.48.500 Pollution Disclosure Act of 1971.** See chapter 90.52 RCW.

**90.48.520 Review of operations before issuance or renewal of wastewater discharge permits—Incorporation of permit conditions.** In order to improve water quality by controlling toxicants in wastewater, the department of ecology shall in issuing and renewing state and federal wastewater discharge permits review the applicant's operations and incorporate permit conditions which require all known, available, and reasonable methods to control toxicants in the applicant's wastewater. Such conditions may include, but are not limited to: (1) Limits on the discharge of specific chemicals, and (2) limits on the overall toxicity of the effluent. The toxicity of the effluent shall be determined by techniques such as chronic or acute bioassays. Such conditions shall be required regardless of the quality of receiving water and regardless of the minimum water quality standards. In no event shall the discharge of toxicants be allowed that would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria. [1987 c 500 § 1.]

**90.48.530 Construction projects involving fill material—Leaching test.** (1) In order to ensure that construction projects involving the use of fill material do not pose a threat to water quality, the department may require that the suitability of potential fill material be evaluated using a leaching test included in the soil clean-up rules adopted by the department under chapter 70.105D RCW in any water quality certification issued under section 401 of the federal clean water act and in any administrative order issued under this chapter, where such certification or administrative order authorizes the placement of fill material, some or all of which will be placed in waters of the state. Any such requirement imposed by the department in a water quality certification or administrative order issued prior to May 9, 2003, is ratified and approved by the legislature as a valid and reliable method for determining concentrations of chemical constituents that can be present in fill material without posing an unacceptable risk of violating water quality standards, and shall be in effect as imposed by the department for all work not completed by June 1, 2003.

(2) Nothing in this section limits, in any way, the department's authority under this chapter. [2003 c 210 § 1.]

**Effective date—2003 c 210:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2003]." [2003 c 210 § 3.]

**90.48.531 Leaching tests—Identification—Report to the legislature.** The department shall identify the leaching tests utilized for evaluating the potential impacts to water quality in situations where fill material is imported. The tests may include those identified in the soil clean-up rules adopted by the department under chapter 70.105D RCW. Within existing resources, the department shall assess whether this list of leaching tests provides appropriate meth-

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ods for analyzing water quality impacts for all types of projects and in all circumstances where fill material is imported. The department shall also identify any gaps in leaching test methodology. The department shall report both the leaching test list and the list of test methodology gaps to the appropriate committees of the legislature by December 31, 2003. [2003 c 210 § 2.]

**Effective date—2003 c 210:** See note following RCW 90.48.530.

**90.48.540 Use attainability analysis of water within federal reclamation project boundaries—Rules.** (1) The department, as resources allow, shall at the request of the United States bureau of reclamation or federal reclamation project irrigation districts cooperatively conduct a use attainability analysis of water bodies located within the boundaries of the federal reclamation project.

(2) If necessary because of the use attainability analysis conducted under subsection (1) of this section, the department, consistent with applicable federal water quality laws and regulations, shall adopt rules designating uses for water bodies within the federal reclamation project that support beneficial uses consistent with the primary authorized project purposes of constructed storage and conveyance facilities and other water transport systems and that recognize the unique site-specific characteristics of the arid and semiarid regions of the state of Washington where federal reclamation projects are located. The rules shall also recognize the need to deliver project irrigation water and to construct, operate, and maintain project facilities. [2004 c 214 § 1.]

**90.48.555 Construction and industrial storm water general permits—Effluent limitations—Report.** (*Expires January 1, 2015.*) The provisions of this section apply to the construction and industrial storm water general permits issued by the department pursuant to the federal clean water act, 33 U.S.C. Sec. 1251 et seq., and this chapter.

(1) Effluent limitations shall be included in construction and industrial storm water general permits as required under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., and its implementing regulations. In accordance with federal clean water act requirements, pollutant specific, water quality-based effluent limitations shall be included in construction and industrial storm water general permits if there is a reasonable potential to cause or contribute to an excursion of a state water quality standard.

(2) Subject to the provisions of this section, both technology and water quality-based effluent limitations may be expressed as:

- (a) Numeric effluent limitations;
- (b) Narrative effluent limitations; or
- (c) A combination of numeric and narrative effluent discharge limitations.

(3) The department must condition storm water general permits for industrial and construction activities issued under the national pollutant discharge elimination system of the federal clean water act to require compliance with numeric effluent discharge limits when such discharges are subject to:

- (a) Numeric effluent limitations established in federally adopted, industry-specific effluent guidelines;

(b) State developed, industry-specific performance-based numeric effluent limitations;

(c) Numeric effluent limitations based on a completed total maximum daily load analysis or other pollution control measures; or

(d) A determination by the department that:

(i) The discharges covered under either the construction or industrial storm water general permits have a reasonable potential to cause or contribute to violation of state water quality standards; and

(ii) Effluent limitations based on nonnumeric best management practices are not effective in achieving compliance with state water quality standards.

(4) In making a determination under subsection (3)(d) of this section, the department shall use procedures that account for:

(a) Existing controls on point and nonpoint sources of pollution;

(b) The variability of the pollutant or pollutant parameter in the storm water discharge; and

(c) As appropriate, the dilution of the storm water in the receiving waters.

(5) Narrative effluent limitations requiring both the implementation of best management practices, when designed to satisfy the technology and water quality-based requirements of the federal clean water act, 33 U.S.C. Sec. 1251 et seq., and compliance with water quality standards, shall be used for construction and industrial storm water general permits, unless the provisions of subsection (3) of this section apply.

(6) Compliance with water quality standards shall be presumed, unless discharge monitoring data or other site specific information demonstrates that a discharge causes or contributes to violation of water quality standards, when the permittee is:

(a) In full compliance with all permit conditions, including planning, sampling, monitoring, reporting, and record-keeping conditions; and

(b)(i) Fully implementing storm water best management practices contained in storm water technical manuals approved by the department, or practices that are demonstrably equivalent to practices contained in storm water technical manuals approved by the department, including the proper selection, implementation, and maintenance of all applicable and appropriate best management practices for on-site pollution control.

(ii) For the purposes of this section, "demonstrably equivalent" means that the technical basis for the selection of all storm water best management practices are documented within a storm water pollution prevention plan. The storm water pollution prevention plan must document:

(A) The method and reasons for choosing the storm water best management practices selected;

(B) The pollutant removal performance expected from the practices selected;

(C) The technical basis supporting the performance claims for the practices selected, including any available existing data concerning field performance of the practices selected;

(D) An assessment of how the selected practices will comply with state water quality standards; and

(E) An assessment of how the selected practices will satisfy both applicable federal technology-based treatment requirements and state requirements to use all known, available, and reasonable methods of prevention, control, and treatment.

(7)(a) The department shall modify the industrial storm water general permit to require compliance by May 1, 2009, with appropriately derived numeric water quality-based effluent limitations for existing discharges to water bodies listed as impaired according to 33 U.S.C. Sec. 1313(d) (Sec. 303(d) of the federal clean water act, 33 U.S.C. Sec. 1251 et seq.).

(b) No later than September 1, 2008, the department shall report to the appropriate committees of the legislature specifying how the numeric effluent limitation in (a) of this subsection would be implemented. The report shall identify the number of dischargers to impaired water bodies and provide an assessment of anticipated compliance with the numeric effluent limitation established by (a) of this subsection.

(8)(a) Construction and industrial storm water general permits issued by the department shall include an enforceable adaptive management mechanism that includes appropriate monitoring, evaluation, and reporting. The adaptive management mechanism shall include elements designed to result in permit compliance and shall include, at a minimum, the following elements:

(i) An adaptive management indicator, such as monitoring benchmarks;

(ii) Monitoring;

(iii) Review and revisions to the storm water pollution prevention plan;

(iv) Documentation of remedial actions taken; and

(v) Reporting to the department.

(b) Construction and industrial storm water general permits issued by the department also shall include the timing and mechanisms for implementation of treatment best management practices.

(9) Construction and industrial storm water discharges authorized under general permits must not cause or have the reasonable potential to cause or contribute to a violation of an applicable water quality standard. Where a discharge has already been authorized under a national pollutant discharge elimination system storm water permit and it is later determined to cause or have the reasonable potential to cause or contribute to the violation of an applicable water quality standard, the department may notify the permittee of such a violation.

(10) Once notified by the department of a determination of reasonable potential to cause or contribute to the violation of an applicable water quality standard, the permittee must take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard and document those actions in the storm water pollution prevention plan and a report timely submitted to the department. If violations remain or recur, coverage under the construction or industrial storm water general permits may be terminated by the department, and an alternative general permit or individual permit may be issued. Compliance with the requirements of this subsection does not preclude any enforcement

activity provided by the federal clean water act, 33 U.S.C. Sec. 1251 et seq., for the underlying violation.

(11) Receiving water sampling shall not be a requirement of an industrial or construction storm water general permit except to the extent that it can be conducted without endangering the health and safety of persons conducting the sampling.

(12) The department may authorize mixing zones only in compliance with and after making determinations mandated by the procedural and substantive requirements of applicable laws and regulations. [2004 c 225 § 2.]

**Expiration date—2004 c 225:** "This act expires January 1, 2015." [2004 c 225 § 7.]

**Conflict with federal clean water act—2004 c 225 §§ 2 and 3:** "If any portion of sections 2 and 3 of this act are found to be in conflict with the federal clean water act, that portion alone is void." [2004 c 225 § 6.]

**Findings—2004 c 225:** "(1) The legislature finds that the federal permit program under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., and the state water pollution control laws provide numerous environmental and public health benefits to the citizens of Washington and to the state. The legislature also finds that failure to prevent and control pollution discharges, including those associated with storm water runoff, can degrade water quality and damage the environment, public health, and industries dependent on clean water such as shellfish production.

(2) The legislature finds the nature of storm water presents unique challenges and difficulties in meeting the permitting requirements under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., including compliance with technology and water quality-based standards.

(3) The legislature finds that the federal clean water act, 33 U.S.C. Sec. 1251 et seq., requires certain larger construction sites and industrial facilities to obtain storm water permits under the national pollutant discharge elimination system permit program. The legislature also finds that under phase two of this program, smaller construction sites are also required to obtain storm water permits for their discharges.

(4) The legislature finds the department of ecology has been using general permits to permit categories of similar dischargers, including storm water associated with industrial and construction activities. The legislature also finds general permits must comply with all applicable requirements of the federal clean water act, 33 U.S.C. Sec. 1251 et seq., and the state water pollution control act including technology and water quality-based permitting requirements. The legislature further finds general permits may not always be the best solution for an individual discharger, especially when establishing water quality-based permitting requirements.

(5) The legislature finds that where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., the sources in that specific category or subcategory must be subject to the same water quality-based limits.

(6) For this reason, the legislature encourages, to the extent allowed under existing state and federal law, an adaptive management approach to permitting storm water discharges.

(7) The legislature finds that storm water management must satisfy state and federal water quality requirements while also providing for flexibility in meeting such requirement to help ensure cost-effective storm water management.

(8) The legislature finds that the permitting of new and existing dischargers into waters listed under 33 U.S.C. Sec. 1313(d) (section 303(d) of the federal clean water act) presents specific challenges and is subject to additional permitting restrictions under the federal clean water act, 33 U.S.C. Sec. 1251 et seq.

(9) The legislature declares that general permits can be an effective and efficient permitting mechanism for permitting large numbers of similar dischargers.

(10) The legislature declares that an inspection and technical assistance program for industrial and construction storm water general permits is needed to ensure an effective permitting program. The legislature also declares that such a program should be fully funded to ensure its success." [2004 c 225 § 1.]

**Report to legislature—2004 c 225:** "No later than December 31, 2006, the department of ecology shall submit a report to the appropriate committees of the legislature regarding methods to improve the effectiveness of permit monitoring requirements in construction and industrial storm water gen-

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eral permits. The department of ecology shall study and evaluate how monitoring requirements could be improved to determine the effectiveness of storm water best management practices and compliance with state water quality standards. In this study the department also shall evaluate monitoring requirements that are necessary for determining compliance or noncompliance with state water quality standards and shall evaluate the feasibility of including such monitoring in future permits. When conducting this study, the department shall consult with experts in the fields of monitoring, storm water management, and water quality, and when necessary the department shall conduct field work to evaluate the practicality and usefulness of alternative monitoring proposals." [2004 c 225 § 4.]

**90.48.560 Construction and industrial storm water general permits—Inspection and compliance. (Expires January 1, 2015.)** The provisions of this section apply to the construction and industrial storm water general permits issued by the department pursuant to the federal clean water act, 33 U.S.C. Sec. 1251 et seq., and this chapter.

(1) By January 1, 2005, the department shall initiate an inspection and compliance program for all permittees covered under the construction and industrial storm water general permits. The program shall include, but may not be limited to, the:

(a) Provision of compliance assistance and survey for evidence of permit violations and violations of water quality standards;

(b) Identification of corrective actions for actual or imminent discharges that violate or could violate the state's water quality standards;

(c) Monitoring of the development and implementation of storm water pollution prevention plans and storm water monitoring plans;

(d) Identification of dischargers who would benefit from follow-up inspection or compliance assistance programs; and

(e) Collection and analysis of discharge and receiving water samples whenever practicable and when deemed appropriate by the department, and other evaluation of discharges to determine the potential for causing or contributing to violations of water quality standards.

(2) The department's inspections under this section shall be conducted without prior notice to permittees whenever practicable.

(3) Follow-up inspections shall be conducted by the department to ensure that corrective and other actions as identified in the course of initial inspections are being carried out. The department shall also take such additional actions as are necessary to ensure compliance with state and federal water quality requirements, provided that all permittees must be inspected once within two years of the start of this program and each permittee must be inspected at least once each permit cycle thereafter.

(4) Permittees must be prioritized for inspection based on the development of criteria that include, but are not limited to, the following factors:

(a) Compliance history, including submittal or nonsubmittal of discharge monitoring reports;

(b) Monitoring results in relationship to permit benchmarks; and

(c) Discharge to impaired waters of the state.

(5) Nothing in this section shall be construed to limit the department's enforcement discretion. [2004 c 225 § 3.]

**Expiration date—Findings—Report to legislature—2004 c 225:** See notes following RCW 90.48.555.

**Conflict with federal clean water act—2004 c 225 §§ 2 and 3:** See note following RCW 90.48.555.

**90.48.565 Construction and industrial storm water general permits—Fees. (Expires January 1, 2015.)** (1) The department shall establish permit fees for construction and industrial storm water general permits as necessary to fund the provisions of RCW 90.48.555 and 90.48.560. When calculating appropriate fee amounts, the department shall take into consideration differences between large and small businesses and the economic impacts caused by permit fees on those businesses. Fees established under this section shall be adopted in accordance with chapter 34.05 RCW.

(2) In its biennial discharge fees progress report required by RCW 90.48.465, the department shall include a detailed accounting regarding the method used to establish permit fees, the amount of permit fees collected, and the expenditure of permit fees. The detailed accounting shall include data on inspections conducted and the staff hired to implement the provisions of RCW 90.48.555 and 90.48.560. [2004 c 225 § 5.]

**Expiration date—Findings—Report to legislature—2004 c 225:** See notes following RCW 90.48.555.

**90.48.570 Water quality data—Findings—Intent.**

(1) The legislature finds that:

(a) The proper collection and review of credible water quality data is necessary to ensure compliance with the requirements of the federal clean water act (33 U.S.C. Sec. 1251 et seq.);

(b) The state needs to assemble and evaluate all existing and readily available water quality-related data and information from sources other than the state water quality agency, such as federal agencies, tribes, universities, and volunteer monitoring groups, if the data meets the state's requirements for data quality; and

(c) Developing and implementing water quality protection measures based on credible water quality data ensures that the financial resources of state and local governments and regulated entities are prioritized to address our state's most important water quality issues.

(2) The legislature intends to ensure that credible water quality data is used as the basis for the assessment of the status of a water body relative to the surface water quality standards.

(3) It is the intent of the legislature that a water body in which pollutant loadings from naturally occurring conditions are the sole cause of a violation of applicable surface water quality standards not be listed as impaired. [2004 c 228 § 1.]

**90.48.575 Water quality data—Definitions.** The definitions in this section apply to RCW 90.48.580 and 90.48.585 unless the context clearly requires otherwise.

(1) "Credible data" means data meeting the requirements of RCW 90.48.585.

(2) "Department" means the Washington state department of ecology.

(3) "Impaired water" means a water body or segment for which credible data exists that: (a) Satisfies the requirements of RCW 90.48.580 and 90.48.585; and (b) demonstrates the

water body should be identified pursuant to 33 U.S.C. Sec. 1313(d).

(4) "Naturally occurring condition" means any condition affecting water quality that is not caused by human influence.

(5) "Section 303(d)" has the same meaning as in the federal clean water act (33 U.S.C. Sec. 1313(d)).

(6) "Total maximum daily load" has the same meaning as in the federal clean water act (33 U.S.C. Sec. 1313(d)). [2004 c 228 § 2.]

**90.48.580 Water quality data—Credible data, information, literature.**

(1) The department shall use credible information and literature for developing and reviewing a surface water quality standard or technical model used to establish a total maximum daily load for any surface water of the state.

(2) The department shall use credible data for the following actions after June 10, 2004:

(a) Determining whether any water of the state is to be placed on or removed from any section 303(d) list;

(b) Establishing a total maximum daily load for any surface water of the state; or

(c) Determining whether any surface water of the state is supporting its designated use or other classification.

(3) The department shall respond to questions regarding the data, literature, and other information it uses under this section. The department shall reply to requests within five business days acknowledging that the department has received the request and provide a reasonable estimate of the time the department will require to respond to the request.

(4) The department, the United States environmental protection agency, and the Indian tribes in Washington state have developed a voluntary agreement relating to the cooperative management of the clean water act section 303(d) program. The department shall consider water quality data that has been collected by Indian tribes under a quality assurance project plan that has been approved by the United States environmental protection agency if that data meets the objectives of the plan. [2004 c 228 § 3.]

**90.48.585 Water quality data—When credible.** (1) In collecting and analyzing water quality data for any purpose identified in RCW 90.48.580(2), data is considered credible data if:

(a) Appropriate quality assurance and quality control procedures were followed and documented in collecting and analyzing water quality samples;

(b) The samples or measurements are representative of water quality conditions at the time the data was collected;

(c) The data consists of an adequate number of samples based on the objectives of the sampling, the nature of the water in question, and the parameters being analyzed; and

(d) Sampling and laboratory analysis conform to methods and protocols generally acceptable in the scientific community as appropriate for use in assessing the condition of the water.

(2) Data interpretation, statistical, and modeling methods shall be those methods generally acceptable in the scientific community as appropriate for use in assessing the condition of the water.

(3) The department shall develop policy:

(a) Explaining how it uses scientific research and literature for developing and reviewing any water quality standard or technical model used to establish a total maximum daily load for any water of the state;

(b) Describing the specific criteria that determine data credibility; and

(c) Recommending the appropriate training and experience for collection of credible data. [2004 c 228 § 4.]

**90.48.590 Water quality data—Falsified data—Penalty.** Any person who knowingly falsifies data is guilty of a gross misdemeanor. [2004 c 228 § 5.]

**90.48.595 On-site sewage disposal system repair and replacement—Loan and grant programs.** The department shall offer financial and technical assistance to local governments and tribal entities in Puget Sound counties to establish or expand on-site sewage disposal system repair and replacement through local loan and grant programs. The programs must give priority to low-income and financially distressed homeowners. [2006 c 18 § 10.]

**90.48.900 Severability—1945 c 216.** Should any section or provision of this act be held invalid by any court of competent jurisdiction, the same shall not affect the validity of the act as a whole or any part thereof other than that portion so held to be invalid. [1945 c 216 § 23.]

**90.48.901 Severability—1967 c 13.** If any provision of this 1967 amendatory act or its application to any person or circumstance is held invalid the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1967 c 13 § 30.]

**90.48.902 Severability—1970 ex.s. c 88.** If any provision of this 1970 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1970 ex.s. c 88 § 15.]

**90.48.903 Severability—1971 ex.s. c 180.** If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 180 § 12.]

**90.48.904 Severability—1989 c 262.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 262 § 6.]

**90.48.906 Short title—1971 ex.s. c 180.** This 1971 amendatory act may be cited as the "Coastal Waters Protection Act of 1971". [1971 ex.s. c 180 § 13.]

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## Chapter 90.50 RCW WATER POLLUTION CONTROL FACILITIES—BONDS

### Sections

90.50.010	Bond issue—Authorized.
90.50.020	Grants to public bodies authorized.
90.50.030	Bond proceeds—Administration.
90.50.040	Water pollution control facilities bond redemption fund— Bonds payable from sales tax revenues—Remedies of bondholders.
90.50.050	Legislature may provide additional means for bond payment.
90.50.060	Bonds legal investment for state and municipal corporation funds.
90.50.080	Definitions.
90.50.900	Referral of act to electorate.

*Tax exemptions and credits: Chapter 82.34 RCW.*

**90.50.010 Bond issue—Authorized.** For the purpose of providing state matching funds to assist public bodies in the construction and improvement of water pollution control facilities the state finance committee is hereby authorized to issue general obligation bonds of the state of Washington in the sum of twenty-five million dollars to be paid and discharged within twenty years of the date of issuance.

The state finance committee is authorized to prescribe the form of such bonds, the maximum rate of interest the same shall bear, and the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof: PROVIDED, That none of the bonds herein authorized shall be sold for less than the par value thereof.

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the interest and principal when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds. [1970 ex.s. c 67 § 1; 1969 ex.s. c 232 § 63; 1967 c 106 § 1.]

**Referral of act to electorate, when—1970 ex.s. c 67:** "In the event all of the bonds authorized by RCW 90.50.010 through 90.50.080 and 90.50.900, have not been issued on or before September 2, 1970, then this 1970 amendatory act shall be submitted to the people for their adoption and ratification, or rejection, at the general election to be held in this state on the Tuesday next succeeding the first Monday in November, 1970, in accordance with the provisions of section 3, Article VIII of the state Constitution; and in accordance with the provisions of section 1, Article II of the state Constitution as amended, and the laws adopted to facilitate the operation thereof." [1970 ex.s. c 67 § 2.]

**Effective, when—1970 ex.s. c 67:** "Section 1 of this 1970 amendatory act shall not become effective unless this act is adopted and ratified at the referendum election provided for in section 2 of this 1970 amendatory act." [1970 ex.s. c 67 § 3.]

**Adoption—Ratification—1970 ex.s. c 67:** The amendment to RCW 90.50.010 by 1970 ex.s. c 67 was adopted and ratified by the people at the November 3, 1970 general election (Referendum Bill No. 23).

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**90.50.020 Grants to public bodies authorized.** The department of ecology is authorized to make and administer grants to any public bodies for the purpose of aiding in the construction and improvement of water pollution control facilities in conjunction with federal grants authorized pursuant to the Federal Water Pollution Control Act. [1987 c 109 § 154; 1967 c 106 § 2.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.50.030 Bond proceeds—Administration.** The proceeds from the sale of the bonds authorized herein, together with all grants, donations, transferred funds and all other moneys which the state finance committee may direct shall be administered by the department of ecology under the authority granted by RCW 90.50.020. [1987 c 109 § 155; 1980 c 32 § 14; 1967 c 106 § 3.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**Effective date—Transfer of moneys—1980 c 32 § 14:** "Section 14 of this act shall take effect on September 1, 1981. Any moneys held on that date in the account disestablished by section 14 of this act shall be transferred to the water pollution control facilities bond redemption fund." [1980 c 32 § 15.]

**90.50.040 Water pollution control facilities bond redemption fund—Bonds payable from sales tax revenues—Remedies of bondholders.** The water pollution control facilities bond redemption fund is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by this chapter. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements and on July 1st of each year the state treasurer shall deposit such amount in said water pollution control facilities redemption fund from moneys transmitted to the state treasurer by the department of revenue and certified by the department of revenue to be sales tax collections and such amount certified by the state finance committee to the state treasurer shall be a prior charge against all retail sales tax revenues of the state of Washington, except that portion thereof heretofore pledged for the payment of bond principal and interest.

The owner and holder of each of said bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1975 1st ex.s. c 278 § 214; 1967 c 106 § 4.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**90.50.050 Legislature may provide additional means for bond payment.** The legislature may provide additional means for raising moneys for the payment of the interest and principal of the bonds authorized herein and this shall not be deemed to provide an exclusive method for such payment. [1967 c 106 § 5.]

**90.50.060 Bonds legal investment for state and municipal corporation funds.** The bonds herein authorized shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1967 c 106 § 6.]

**90.50.080 Definitions.** For the purposes of this chapter the terms:

(1) "Water pollution control facilities" means the various devices used in the treatment of sewage or industrial wastes

of a liquid nature, including the necessary intercepting sewers, outfall sewers, pumping, power, and other equipment, and their appurtenances, and includes any extensions, improvements, remodeling, additions, and alterations thereof;

(2) "Public bodies" means municipal or public corporations, counties, or departments or agencies of state government. [1967 c 106 § 8.]

**90.50.900 Referral of act to electorate.** This act shall be submitted to the people for their adoption and ratification, or rejection, at the next general election to be held in this state in accordance with the provisions of section 3, Article VIII of the state Constitution; and in accordance with the provisions of section 1, Article II of the state Constitution as amended, and the laws adopted to facilitate the operation thereof. [1967 c 106 § 9.]

**Reviser's note:** Chapter 90.50 RCW was adopted and ratified by the people at the November 5, 1968, general election (Referendum Bill No. 17). Governor's proclamation declaring approval of measure is dated December 5, 1968. State Constitution Art. 2 § 1(d) provides: "... Such measure [initiatives and referendums] shall be in operation on and after the thirtieth day after the election at which it is approved. . ."

## Chapter 90.50A RCW

### WATER POLLUTION CONTROL FACILITIES— FEDERAL CAPITALIZATION GRANTS

#### Sections

90.50A.005	Purpose.
90.50A.010	Definitions.
90.50A.020	Water pollution control revolving fund.
90.50A.030	Use of moneys in fund.
90.50A.040	Administration of fund.
90.50A.050	Loans from fund—Requirements for recipients.
90.50A.060	Defaults.
90.50A.070	Establishment of policies for loan terms and interest rates.
90.50A.900	Severability—1988 c 284.

**90.50A.005 Purpose.** The long-range health and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, enjoyment, and economic benefit of its people. It is the purpose of this chapter to provide an account to receive federal capitalization grants to provide financial assistance to the state and to local governments for the planning, design, acquisition, construction, and improvement of water pollution control facilities and related activities in the achievement of state and federal water pollution control requirements for the protection of the state's waters. [1988 c 284 § 1.]

**90.50A.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Eligible cost" means the cost of that portion of a water pollution control facility or activity that can be financed under this chapter.

(3) "Fund" means the water pollution control revolving fund in the custody of the state treasurer.

(4) "Water pollution control facility" or "water pollution control facilities" means any facilities or systems owned or

operated by a public body for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, combined sewer overflows, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers.

(5) "Water pollution control activities" means actions taken by a public body for the following purposes: (a) To control nonpoint sources of water pollution; (b) to develop and implement a comprehensive management plan for estuaries; and (c) to maintain or improve water quality through the use of water pollution control facilities or other means.

(6) "Public body" means the state of Washington or any agency, county, city or town, other political subdivision, municipal corporation or quasi-municipal corporation, and those Indian tribes now or hereafter recognized as such by the federal government.

(7) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(8) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to, atmospheric deposition, surface water runoff from agricultural lands, urban areas, and forest lands, subsurface or underground sources, and discharges from boats or other marine vessels.

(9) "Federal capitalization grants" means grants from the federal government provided by the water quality act of 1987 (P.L. 100-4). [1988 c 284 § 2.]

#### **90.50A.020 Water pollution control revolving fund.**

(1) The water pollution control revolving fund is hereby established in the state treasury. Moneys in this fund may be spent only after legislative appropriation. Moneys in the fund may be spent only in a manner consistent with this chapter.

(2) The water pollution control revolving fund shall consist of:

(a) All capitalization grants provided by the federal government under the federal water quality act of 1987;

(b) All state matching funds appropriated or authorized by the legislature;

(c) Any other revenues derived from gifts or bequests pledged to the state for the purpose of providing financial assistance for water pollution control projects;

(d) All repayments of moneys borrowed from the fund;

(e) All interest payments made by borrowers from the fund;

(f) Any other fee or charge levied in conjunction with administration of the fund; and

(g) Any new funds as a result of leveraging.

(3) The state treasurer may invest and reinvest moneys in the water pollution control revolving fund in the manner provided by law. All earnings from such investment and reinvestment shall be credited to the water pollution control revolving fund. [1993 c 329 § 1; 1992 c 235 § 9; 1991 sp.s. c 13 § 102; 1988 c 284 § 3.]

**Effective date—1993 c 329:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 329 § 3.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**90.50A.030 Use of moneys in fund.** The department of ecology shall use the moneys in the water pollution control revolving fund to provide financial assistance as provided in the water quality act of 1987:

(1) To make loans, on the condition that:

(a) Such loans are made at or below market interest rates, including interest free loans, at terms not to exceed twenty years;

(b) Annual principal and interest payments will commence not later than one year after completion of any project and all loans will be fully amortized not later than twenty years after project completion;

(c) The recipient of a loan will establish a dedicated source of revenue for repayment of loans; and

(d) The fund will be credited with all payments of principal and interest on all loans.

(2) Loans may be made for the following purposes:

(a) To public bodies for the construction or replacement of water pollution control facilities as defined in section 212 of the federal water quality act of 1987;

(b) For the implementation of a management program established under section 319 of the federal water quality act of 1987 relating to the management of nonpoint sources of pollution, subject to the requirements of that act; and

(c) For development and implementation of a conservation and management plan under section 320 of the federal water quality act of 1987 relating to the national estuary program, subject to the requirements of that act.

(3) The department may also use the moneys in the fund for the following purposes:

(a) To buy or refinance the water pollution control facilities' debt obligations of public bodies at or below market rates, if such debt was incurred after March 7, 1985;

(b) To guarantee, or purchase insurance for, public body obligations for water pollution control facility construction or replacement or activities if the guarantee or insurance would improve credit market access or reduce interest rates, or to provide loans to a public body for this purpose;

(c) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of the sale of such bonds will be deposited in the fund;

(d) To earn interest on fund accounts; and

(e) To pay the expenses of the department in administering the water pollution control revolving fund according to administrative reserves authorized by federal and state law.

(4) Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the chairs of the senate committee on ways and means and the house of representatives committee on appropriations. The first report is due June 30, 1996, and the report for each succeeding biennium is due December 31 of the odd-numbered year. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both.

(5) The department may not use the moneys in the water pollution control revolving fund for grants. [1996 c 37 § 4; 1988 c 284 § 4.]

**90.50A.040 Administration of fund.** Moneys deposited in the water pollution control revolving fund shall be administered by the department of ecology. In administering the fund, the department shall:

(1) Allocate funds for loans in accordance with the annual project priority list in accordance with section 212 of the federal water pollution control act as amended in 1987, and allocate funds under sections 319 and 320 according to the provisions of that act;

(2) Use accounting, audit, and fiscal procedures that conform to generally accepted government accounting standards;

(3) Prepare any reports required by the federal government as a condition to awarding federal capitalization grants;

(4) Adopt by rule any procedures or standards necessary to carry out the provisions of this chapter;

(5) Enter into agreements with the federal environmental protection agency;

(6) Cooperate with local, substate regional, and interstate entities regarding state assessment reports and state management programs related to the nonpoint source management programs as noted in section 319(c) of the federal water pollution control act amendments of 1987 and estuary programs developed under section 320 of that act; and

(7) Comply with provisions of the water quality act of 1987. [1988 c 284 § 5.]

**90.50A.050 Loans from fund—Requirements for recipients.** Any public body receiving a loan from the fund shall:

(1) Appear on the annual project priority list to be identified for funding under section 212 of the federal water pollution control act amendments of 1987 or be eligible under sections 319 and 320 of that act;

(2) Submit an application to the department;

(3) Establish and maintain a dedicated source of revenue or other acceptable source of revenue for the repayment of the loan; and

(4) Demonstrate to the satisfaction of the department that it has sufficient legal authority to incur the debt for which it is applying. [1988 c 284 § 6.]

**90.50A.060 Defaults.** If a public body defaults on payments due to the fund, the state may withhold any amounts

otherwise due to the public body and direct that such funds be applied to the indebtedness and deposited into the account. [1988 c 284 § 7.]

**90.50A.070 Establishment of policies for loan terms and interest rates.** The department shall establish by rule policies for establishing loan terms and interest rates for loans made from the fund that assure that the objectives of this chapter are met and that adequate funds are maintained in the fund to meet future needs. [1988 c 284 § 8.]

**90.50A.900 Severability—1988 c 284.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 284 § 14.]

## Chapter 90.52 RCW

### POLLUTION DISCLOSURE ACT OF 1971

#### Sections

90.52.005	Environmental excellence program agreements—Effect on chapter.
90.52.010	Annual reports required—Contents—Critical materials designated.
90.52.020	Confidentiality as to manufacturing processes.
90.52.030	Operation subject to injunction, when—Civil penalties.
90.52.040	Wastes to be provided with available methods of treatment prior to discharge into waters of the state.
90.52.900	Short title.

**90.52.005 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 27.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**90.52.010 Annual reports required—Contents—Critical materials designated.** Every person conducting a commercial or industrial operation within this state who discharges wastes, other than sanitary sewage, into waters of the state or into any sewer system which discharges into waters of the state, and every person conducting a commercial or industrial operation within the state who discharges wastes into the air of the state, shall file, annually, during the month of January, reports, on forms provided by the department of ecology, setting forth:

(1) The nature of the enterprise;

(2) A list of materials used in, and incidental to, its manufacturing processes, including by-products and waste products;

(3) The estimated annual total gallons or pounds (or other appropriate measurement) of wastes, including, but not limited to, process and cooling water to be discharged into the water or air, or into any sewer system.

The list of materials provided for in subsection (2) hereof shall relate to all materials designated by the director of the department of ecology, after consultation with a committee on [of] environmental specialists of not less than five

appointed by the director, as critical materials which have substantial potential to adversely affect the quality of waters or environment of the state, or the uses made thereof, if allowed to enter the same. Formal designation shall be adopted by the director as a rule and filed in a "critical materials" registry of the department of ecology. "Person" as used herein means an individual partnership, firm, corporation, association or other entity. [1971 ex.s. c 160 § 1.]

**90.52.020 Confidentiality as to manufacturing processes.** The department of ecology shall provide proper and adequate procedures to safeguard the confidentiality of manufacturing processes: PROVIDED, That the confidentiality shall not extend to waste products discharged into the waters or air of the state. [1971 ex.s. c 160 § 2.]

**90.52.030 Operation subject to injunction, when—Civil penalties.** Operation of an industrial or commercial operation in violation of RCW 90.52.010 may be enjoined on petition of the attorney general to the superior court of Thurston county or of the county in which the operation is located.

Operation of an industrial or commercial operation in violation of this chapter shall provide the basis of a civil penalty under RCW 90.48.144 or 70.94.431 as now or are hereafter amended. No person may discharge wastes into the waters or air of the state who fails to satisfy the requirements of RCW 90.52.010 and 90.52.040. [1971 ex.s. c 160 § 3.]

**90.52.040 Wastes to be provided with available methods of treatment prior to discharge into waters of the state.** Except as provided in RCW 90.54.020(3)(b), in the administration of the provisions of chapter 90.48 RCW, the director of the department of ecology shall, regardless of the quality of the water of the state to which wastes are discharged or proposed for discharge, and regardless of the minimum water quality standards established by the director for said waters, require wastes to be provided with all known, available, and reasonable methods of treatment prior to their discharge or entry into waters of the state. [1987 c 399 § 1; 1971 ex.s. c 160 § 4.]

**90.52.900 Short title.** This act shall be known and may be cited as the Pollution Disclosure Act of 1971. [1971 ex.s. c 160 § 5.]

**Chapter 90.54 RCW**

**WATER RESOURCES ACT OF 1971**

Sections

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**90.54.005 Findings—Objectives—2002 c 329.** The legislature recognizes the critical importance of providing and securing sufficient water to meet the needs of people, farms, and fish. The legislature finds that an effective way to meet the water needs of people, farms, and fish is through strategies developed and implemented at the local watershed level. The objectives of these strategies are to supply water in sufficient quantities to satisfy the following three water resource objectives:

- (1) Providing sufficient water for residential, commercial, and industrial needs;
- (2) Providing sufficient water for productive fish populations; and
- (3) Providing sufficient water for productive agriculture.

The legislature affirms its intent to provide continued support for watershed strategies and provides the tools in chapter 329, Laws of 2002 to assist local watersheds in meeting these objectives. [2002 c 329 § 1.]

**90.54.010 Purpose.** (1) The legislature finds that:

(a) Proper utilization of the water resources of this state is necessary to the promotion of public health and the economic well-being of the state and the preservation of its natural resources and aesthetic values. Although water is a renewable resource, its supply and availability are becoming increasingly limited, particularly during summer and fall months and dry years when demand is greatest. Growth and prosperity have significantly increased the competition for this limited resource. Adequate water supplies are essential to meet the needs of the state's growing population and economy. At the same time instream resources and values must be preserved and protected so that future generations can continue to enjoy them.

(b) All citizens of Washington share an interest in the proper stewardship of our invaluable water resources. To ensure that available water supplies are managed to best meet both instream and offstream needs, a comprehensive planning process is essential. The people of the state have the unique opportunity to work together to plan and manage our water. Through a comprehensive planning process that

includes the state, Indian tribes, local governments, and interested parties, it is possible to make better use of available water supplies and achieve better management of water resources. Through comprehensive planning, conflicts among water users and interests can be reduced or resolved. It is in the best interests of the state that comprehensive water resource planning be given a high priority so that water resources and associated values can be utilized and enjoyed today and protected for tomorrow.

(c) Diverse hydrologic, climatic, cultural, and socioeconomic conditions exist throughout the regions of the state. Water resource issues vary significantly across regions. Comprehensive water resource planning is best accomplished through a regional planning process sensitive to the unique characteristics and issues of each region.

(d) Comprehensive water resource planning must provide interested parties adequate opportunity to participate. Water resource issues are best addressed through cooperation and coordination among the state, Indian tribes, local governments, and interested parties.

(e) The long-term needs of the state require ongoing assessment of water availability, use, and demand. A thorough inventory of available resources is essential to water resource management. Current state water resource data and data management is inadequate to meet changing needs and respond to competing water demands. Therefore, a state water resource data program is needed to support an effective water resource management program. Efforts should be made to coordinate and consolidate into one resource data system all relevant information developed by the department of ecology and other agencies relating to the use, protection, and management of the state's water resources.

(2) It is the purpose of this chapter to set forth fundamentals of water resource policy for the state to insure that waters of the state are protected and fully utilized for the greatest benefit to the people of the state of Washington and, in relation thereto, to provide direction to the department of ecology, other state agencies and officials, and local government in carrying out water and related resources programs. It is the intent of the legislature to work closely with the executive branch, Indian tribes, local government, and interested parties to ensure that water resources of the state are wisely managed. [1990 c 295 § 1; 1971 ex.s. c 225 § 1.]

**90.54.020 General declaration of fundamentals for utilization and management of waters of the state.** Utilization and management of the waters of the state shall be guided by the following general declaration of fundamentals:

(1) Uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state, are declared to be beneficial.

(2) Allocation of waters among potential uses and users shall be based generally on the securing of the maximum net benefits for the people of the state. Maximum net benefits shall constitute total benefits less costs including opportunities lost.

(3) The quality of the natural environment shall be protected and, where possible, enhanced as follows:

(a) Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(b) Waters of the state shall be of high quality. Regardless of the quality of the waters of the state, all wastes and other materials and substances proposed for entry into said waters shall be provided with all known, available, and reasonable methods of treatment prior to entry. Notwithstanding that standards of quality established for the waters of the state would not be violated, wastes and other materials and substances shall not be allowed to enter such waters which will reduce the existing quality thereof, except in those situations where it is clear that overriding considerations of the public interest will be served. Technology-based effluent limitations or standards for discharges for municipal water treatment plants located on the Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted to reflect credit for substances removed from the plant intake water if:

(i) The municipality demonstrates that the intake water is drawn from the same body of water into which the discharge is made; and

(ii) The municipality demonstrates that no violation of receiving water quality standards or appreciable environmental degradation will result.

(4) The development of multipurpose water storage facilities shall be a high priority for programs of water allocation, planning, management, and efficiency. The department, other state agencies, local governments, and planning units formed under \*section 107 or 108 of this act shall evaluate the potential for the development of new storage projects and the benefits and effects of storage in reducing damage to stream banks and property, increasing the use of land, providing water for municipal, industrial, agricultural, power generation, and other beneficial uses, and improving stream flow regimes for fisheries and other instream uses.

(5) Adequate and safe supplies of water shall be preserved and protected in potable condition to satisfy human domestic needs.

(6) Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given to means and methods for protection of fishery resources in the planning for and construction of water impoundment structures and other artificial obstructions.

(7) Federal, state, and local governments, individuals, corporations, groups and other entities shall be encouraged to carry out practices of conservation as they relate to the use of the waters of the state. In addition to traditional development approaches, improved water use efficiency and conservation shall be emphasized in the management of the state's water resources and in some cases will be a potential new source of water with which to meet future needs throughout the state.

(8) Development of water supply systems, whether publicly or privately owned, which provide water to the public generally in regional areas within the state shall be encour-

aged. Development of water supply systems for multiple domestic use which will not serve the public generally shall be discouraged where water supplies are available from water systems serving the public.

(9) Full recognition shall be given in the administration of water allocation and use programs to the natural interrelationships of surface and ground waters.

(10) Expressions of the public interest will be sought at all stages of water planning and allocation discussions.

(11) Water management programs, including but not limited to, water quality, flood control, drainage, erosion control and storm runoff are deemed to be in the public interest. [1997 c 442 § 201; 1989 c 348 § 1; 1987 c 399 § 2; 1971 ex.s. c 225 § 2.]

**\*Reviser's note:** Sections 107 and 108 of this act were vetoed by the governor.

**Part headings not law—Severability—1997 c 442:** See RCW 90.82.900 and 90.82.901.

**Severability—1989 c 348:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 348 § 13.]

**Rights not impaired—1989 c 348:** See RCW 90.54.920.

**90.54.030 Water and related resources—Department to be advised—Water resources data program.** For the purpose of ensuring that the department is fully advised in relation to the performance of the water resources program provided in RCW 90.54.040, the department is directed to become informed with regard to all phases of water and related resources of the state. To accomplish this objective the department shall:

(1) Develop a comprehensive water resource data program that provides the information necessary for effective planning and management on a regional and statewide basis. The data program shall include an information management plan describing the data requirements for effective water resource planning, and a system for collecting and providing access to water resource data on a regional and statewide basis;

(2) Collect, organize and catalog existing information and studies available to it from all sources, both public and private, pertaining to water and related resources of the state;

(3) Develop such additional data and studies pertaining to water and related resources as are necessary to accomplish the objectives of this chapter; and

(4) Develop alternate courses of action to solve existing and foreseeable problems of water and related resources and include therein, to the extent feasible, the economic and social consequences of each such course, and the impact on the natural environment.

All the foregoing shall be included in a "water resources information system" established and maintained by the department. The department shall develop a system of cataloging, storing and retrieving the information and studies of the information system so that they may be made readily available to and effectively used not only by the department but by the public generally. [1997 c 32 § 1; 1990 c 295 § 2; 1988 c 47 § 4; 1971 ex.s. c 225 § 3.]

**Application—Severability—1988 c 47:** See notes following RCW 43.83B.300.

(2006 Ed.)

**90.54.035 State funding of water resource programs—Priorities.** (1) State funding of water resource, supply, and quality related capital programs, both current and future, shall, to the maximum extent possible within state or federal legal requirements, be directed to assist in the resolution of current conflicts and implementation of regional water resource plans with priority given to current needs over new requirements.

(2) Consistent with RCW 90.54.180, priority shall be given, to the maximum extent possible within state or federal legal requirements, to those water conservation projects funded by the state that will result in the greatest net water savings. [1991 c 347 § 3.]

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**Severability—1991 c 347:** See RCW 90.42.900.

**90.54.040 Comprehensive state water resources program—Modifying existing and adopting new regulations and statutes.** (1) The department, through the adoption of appropriate rules, is directed, as a matter of high priority to insure that the waters of the state are utilized for the best interests of the people, to develop and implement in accordance with the policies of this chapter a comprehensive state water resources program which will provide a process for making decisions on future water resource allocation and use. The department may develop the program in segments so that immediate attention may be given to waters of a given physioeconomic region of the state or to specific critical problems of water allocation and use.

(2) In relation to the management and regulatory programs relating to water resources vested in it, the department is further directed to modify existing regulations and adopt new regulations, when needed and possible, to insure that existing regulatory programs are in accord with the water resource policy of this chapter and the program established in subsection (1) of this section.

(3) The department is directed to review all statutes relating to water resources which it is responsible for implementing. When any of the same appear to the department to be ambiguous, unclear, unworkable, unnecessary, or otherwise deficient, it shall make recommendations to the legislature including appropriate proposals for statutory modifications or additions. Whenever it appears that the policies of any such statutes are in conflict with the policies of this chapter, and the department is unable to fully perform as provided in subsection (2) of this section, the department is directed to submit statutory modifications to the legislature which, if enacted, would allow the department to carry out such statutes in harmony with this chapter. [1997 c 32 § 2; 1988 c 47 § 5; 1971 ex.s. c 225 § 4.]

**Application—Severability—1988 c 47:** See notes following RCW 43.83B.300.

**90.54.045 Water resource planning—Pilot process—Report to the legislature.** (1) In the development and implementation of the comprehensive state water resources program required in RCW 90.54.040(1), the process described therein shall involve participation of appropriate state agencies, Indian tribes, local governments, and interested parties, and shall be applied on a regional basis pursuant to subsection (2) of this section.

(2) Prior to July 1, 1991, the department, with advice from appropriate state agencies, Indian tribes, local government, and interested parties, shall identify regions and establish regional boundaries for water resource planning and shall designate two regions in which the process shall be initiated on a pilot basis. One region shall encompass an area within the Puget Sound basin in which critical water resource issues exist. A concurrent pilot process may encompass a region east of the Cascade mountains.

(3) The department shall report to the chairs of the appropriate legislative committees prior to July 1st each year summarizing the progress of the pilot process in the two regions. The pilot process in each region shall be completed and shall produce a regional water plan by December 31, 1993.

(4) Appropriate state agencies, Indian tribes, local governments, and interested parties in regions not selected for the pilot program are strongly encouraged to commence water resource planning within their regions. [1991 c 347 § 4; 1990 c 295 § 3.]

**Effective date—1991 c 347 § 4:** "Section 4 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 347 § 28.]

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**Severability—1991 c 347:** See RCW 90.42.900.

**90.54.050 Setting aside or withdrawing waters—Rules—Consultation with legislative committees—Public hearing, notice—Review.** In conjunction with the programs provided for in RCW 90.54.040(1), whenever it appears necessary to the director in carrying out the policy of this chapter, the department may by rule adopted pursuant to chapter 34.05 RCW:

(1) Reserve and set aside waters for beneficial utilization in the future, and

(2) When sufficient information and data are lacking to allow for the making of sound decisions, withdraw various waters of the state from additional appropriations until such data and information are available. Before proposing the adoption of rules to withdraw waters of the state from additional appropriation, the department shall consult with the standing committees of the house of representatives and the senate having jurisdiction over water resource management issues.

Prior to the adoption of a rule under this section, the department shall conduct a public hearing in each county in which waters relating to the rule are located. The public hearing shall be preceded by a notice placed in a newspaper of general circulation published within each of said counties. Rules adopted hereunder shall be subject to review in accordance with the provisions of RCW 34.05.240. [1997 c 439 § 2; 1997 c 32 § 3; 1988 c 47 § 7; 1971 ex.s. c 225 § 5.]

**Reviser's note:** This section was amended by 1997 c 32 § 3 and by 1997 c 439 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**WAC 173-563-015—Validity—1997 c 439:** "WAC 173-563-015 as it existed prior to July 27, 1997, is void." [1997 c 439 § 1.]

**Application—Severability—1988 c 47:** See notes following RCW 43.83B.300.

**90.54.060 Department to seek involvement of other persons and entities, means—Assistance grants.** To insure that all of the various persons and entities having an interest in the water resources of the state and the programs of the chapter are provided with a full opportunity for involvement not only with the development of the program but the implementation by the department under this chapter, the following directions are given:

(1) The department shall make reasonable efforts to inform the people of the state about the state's water and related resources and their management. The department in the performance of the responsibilities provided in this chapter shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in water resources programs of this chapter.

(2) The department shall similarly invite and encourage participation by all agencies of federal, state and local government, including counties, municipal and public corporations, having interests or responsibilities relating to water resources. Said state and local agencies are directed to fully participate to insure that their interests are considered by the department. The department shall, when funds are made available to it for such purposes, provide assistance grants to said state and local agencies for the purposes of financing activities directed to be performed by them under this subsection. [1971 ex.s. c 225 § 6.]

**90.54.080 State to vigorously represent its interests before federal agencies, interstate agencies.** The state shall vigorously represent its interest before water resource regulation, management, development, and use agencies of the United States, including among others the federal power commission, environmental protection agency, army corps of engineers, department of the interior, department of agriculture and the atomic energy commission, and of interstate agencies with regard to planning, licensing, relicensing, permit proposals, and proposed construction, development and utilization plans. Where federal or interstate agency plans, activities, or procedures conflict with state water policies, all reasonable steps available shall be taken by the state to preserve the integrity of this state's policies. [1971 ex.s. c 225 § 8.]

**90.54.090 State, local governments, municipal corporations to comply with chapter.** All agencies of state and local government, including counties and municipal and public corporations, shall, whenever possible, carry out powers vested in them in manners which are consistent with the provisions of this chapter. [1987 c 505 § 82; 1977 c 75 § 95; 1971 ex.s. c 225 § 10.]

**90.54.100 Department to evaluate needs for projects and alternative methods of financing.** The department of ecology shall as a matter of high priority evaluate the needs for water resource development projects and the alternative methods of financing of the same by public and private agencies, including financing by federal, state and local governments and combinations thereof. Such evaluations shall be broadly based and be included as a part of the comprehensive state water resources program relating to uses and manage-

ment as defined in RCW 90.54.030. [1997 c 32 § 5; 1971 ex.s. c 225 § 11.]

**90.54.110 Authority to secure and obtain benefits, including grants.** The department of ecology is authorized to obtain the benefits including acceptance of grants, of any program of the federal government or any other source to carry out the provisions of this chapter and is empowered to take such actions as are necessary and appropriate to secure such benefits. [1971 ex.s. c 225 § 12.]

**90.54.120 "Department," "utilize," and "utilization" defined.** For the purposes of this chapter, unless the context is clearly to the contrary, the following definitions shall be used:

(1) "Department" means department of ecology.

(2) "Utilize" or "utilization" shall not only mean use of water for such long recognized consumptive or nonconsumptive beneficial purposes as domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, thermal power production, mining, recreational, maintenance of wildlife and fishlife purposes, but includes the retention of water in lakes and streams for the protection of environmental, scenic, aesthetic and related purposes, upon which economic values have not been placed historically and are difficult to quantify. [1971 ex.s. c 225 § 13.]

**90.54.130 Land use management policy modifications—Advisory recommendations.** The department of ecology may recommend land use management policy modifications it finds appropriate for the further protection of ground and surface water resources in this state. Such advisory recommendations may be made to other state regulatory agencies, local governments, water systems, and other appropriate bodies. [1984 c 253 § 4.]

**90.54.140 Protection of ground water aquifers if sole drinking water source.** The legislature hereby declares that the protection of ground water aquifers which are the sole drinking water source for a given jurisdiction shall be of the uppermost priority of the state department of ecology, department of social and health services, and all local government agencies with jurisdiction over such areas. In administration of programs related to the disposal of wastes and other practices which may impact such water quality, the department of ecology, department of social and health services, and such affected local agencies shall explore all possible measures for the protection of the aquifer, including any appropriate incentives, penalties, or other measures designed to bring about practices which provide for the least impact on the quality of the ground water. [1984 c 253 § 5.]

**90.54.150 Water supply projects—Cooperation with other agencies—Scope of participation.** When feasible, the department of ecology shall cooperate with the United States and other public entities, including Indian tribes, in the planning, development, and operation of comprehensive water supply projects designed primarily to resolve controversies and conflicts over water use by increasing water quantity and

improving water quality within a stream or river system, or other bodies of water, as well as to enhance opportunities for both instream and diversionary water uses within the system, and, in relation thereto, the department may:

(1) Participate with the federal government and other public entities in the planning, development, operation, and management of various phases of water projects hereafter authorized by congress;

(2) Provide rights to the use of public waters under the state's surface and ground water codes for these projects when the waters are available for allocation; and

(3) Provide financial assistance through grants and loans for projects when moneys are made available to the department for this assistance by other provisions of this code. [1979 ex.s. c 216 § 9.]

**Effective date—Severability—1979 ex.s. c 216:** See notes following RCW 90.03.245.

**90.54.160 Department to report on dam safety.** The department of ecology shall report to the legislature on the last working day of December of 1984, 1985, and 1986, and thereafter as deemed appropriate by the department, on dam facilities that exhibit safety deficiencies sufficient to pose a significant threat to the safety of life and property. The report shall identify the owner or owners of such facilities, detail the owner's ability and attitude towards correcting such deficiencies, and provide an estimate of the cost of correcting the deficiencies if a study has been completed. [1984 c 83 § 1.]

**90.54.170 Electric generation facility—Evaluation of application to appropriate water.** In addition to other requirements of this chapter, when the proposed water resource development project involves a new water supply combined with an electric generation facility where such electricity generated may be sold to an entity authorized by law to distribute electricity, the department shall evaluate and utilize, in connection with any application to appropriate water pursuant to the water code, chapter 90.03 RCW, sufficient information furnished by the project applicant regarding the need for the project, alternative means of serving the purposes of the project, the cumulative effects of the project and similar projects that are built, under construction or permitted in the relevant river basin or basins, the impact, if any, on flood control plans and an estimate of the impact, if any, of the sale of the project's electricity on the rates of utility customers of the Bonneville power administration. Such information shall be furnished at the project applicant's own cost and expense. [1985 c 444 § 6.]

**Intent—Construction—Severability—1985 c 444:** See notes following RCW 35.92.010.

**90.54.180 Water use efficiency and conservation programs and practices.** Consistent with the fundamentals of water resource policy set forth in this chapter, state and local governments, individuals, corporations, groups and other entities shall be encouraged to carry out water use efficiency and conservation programs and practices consistent with the following:

(1) Water efficiency and conservation programs should utilize an appropriate mix of economic incentives, cost share programs, regulatory programs, and technical and public

information efforts. Programs which encourage voluntary participation are preferred.

(2) Increased water use efficiency should receive consideration as a potential source of water in state and local water resource planning processes. In determining the cost-effectiveness of alternative water sources, consideration should be given to the benefits of conservation, waste water recycling, and impoundment of waters.

(3) In determining the cost-effectiveness of alternative water sources, full consideration should be given to the benefits of storage which can reduce the damage to stream banks and property, increase the utilization of land, provide water for municipal, industrial, agricultural, and other beneficial uses, provide for the generation of electric power from renewable resources, and improve stream flow regimes for fishery and other instream uses.

(4) Entities receiving state financial assistance for construction of water source expansion or acquisition of new sources shall develop, and implement if cost-effective, a water use efficiency and conservation element of a water supply plan pursuant to RCW 43.20.230(1).

(5) State programs to improve water use efficiency should focus on those areas of the state in which water is overappropriated; areas that experience diminished stream-flows or aquifer levels; and areas where projected water needs, including those for instream flows, exceed available supplies.

(6) Existing and future generations of citizens of the state of Washington should be made aware of the importance of the state's water resources and the need for wise and efficient use and development of this vital resource. In order to increase this awareness, state agencies should integrate public education on increasing water use efficiency into existing public information efforts. This effort shall be coordinated with other levels of government, including local governments and Indian tribes. [1989 c 348 § 5.]

**Severability—1989 c 348:** See note following RCW 90.54.020.

**90.54.191 Stream flow restoration a priority.** The department shall prioritize the expenditure of funds and other resources for programs related to stream flow restoration in watersheds where the exercise of inchoate water rights may have a larger effect on stream flows and other water uses. [2003 1st sp.s. c 5 § 10.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**90.54.800 Policy guidelines.** Future development of hydropower and protection of river-related resources shall be guided by policies and programs which:

(1) Create opportunities for balanced development of cost-effective and environmentally sound hydropower projects by a range of development interests;

(2) Protect significant values associated with the state's rivers, including fish and wildlife populations and habitats, water quality and quantity, unique physical and botanical features, archeological sites, and scenic and recreational resources;

(3) Protect the interests of the citizens of the state regarding river-related economic development, municipal water

supply, supply of electric energy, flood control, recreational opportunity, and environmental integrity;

(4) Fully utilize the state's authority in the federal hydropower licensing process. [1989 c 159 § 3.]

**Legislative findings—1989 c 159:** "The legislature finds that the task force on hydroelectric development and resource protection has recommended that:

(1) The state adopt goals to direct future development of hydropower and protection of river-related resources;

(2) The state take steps to enhance the existing hydropower permit review process; and

(3) The state develop, in concert with appropriate interests, a comprehensive state hydropower plan." [1989 c 159 § 1.]

**Hydro task force—1989 c 159:** "(1) The Washington state energy office shall contract with an independent facilitator to reconvene and coordinate the task force assembled to implement section 301, chapter 7, Laws of 1987 1st ex. sess. The task force shall prepare by March 31, 1991, a state comprehensive hydropower plan to serve the broad public interest regarding development of cost-effective electricity and conservation of river-related environmental values. Task force meetings shall be open to the public. The facilitator shall assist the task force in appropriate efforts to inform the general public regarding project concepts and progress. Task force members shall make appropriate efforts to inform the interest groups they represent.

(2) By December 15, 1989, the task force shall engage in a midpoint review whereby participants can jointly appraise the progress of the project. If, in the opinion of the participants, a consensus to continue as a task force cannot be achieved, the executive agencies shall use their existing statutory authority to develop a plan, with the assistance of all affected parties and participating agencies, building upon the work that has been done by the task force.

(3) If the task force continues beyond December 15, 1989, it shall by July 1, 1990, recommend to the legislature a lead agency for implementation and management of the state comprehensive hydropower plan." [1989 c 159 § 2.]

**Plan content—1989 c 159:** "(1) At a minimum, the plan shall designate two categories of resource agreement areas: (a) Sensitive areas where hydropower development is likely to conflict with significant environmental values, and (b) less sensitive areas where development will not conflict with or may enhance environmental values. Some areas may remain unclassified due to lack of information or if they fall between the two categories. The plan shall integrate resource agreement area findings with existing state laws and programs including instream flow basin plans prepared by the department of ecology, watershed planning coordinated by the department of fisheries, watershed planning coordinated through the Puget Sound water quality authority, watershed planning for municipal water supply, the scenic rivers program administered by the parks and recreation commission, and the planning process developed through the joint select committee on water resources policy and any actions resulting from that process.

(2) At a minimum, the final plan report shall:

(a) List applicable laws, rules, and policies;

(b) Describe the waterways or basins covered by the plan;

(c) Designate the categories of resource agreement area for each waterway or basin;

(d) Describe, for each waterway where hydropower is to be affected, the significant resources that cause the waterway or basin to be so designated;

(e) Identify goals, objectives, and recommendations for improving, developing, or conserving affected waterways;

(f) Describe how the plan is to be integrated with other planning activities and policy initiatives and how the plan will be implemented and amended;

(g) Assess the anticipated effect of the plan on hydropower development and resource protection; and

(h) Describe the plan development process." [1989 c 159 § 4.]

**90.54.900 Certain rights, authority, not to be affected by chapter.** Nothing in this chapter shall affect any existing water rights, riparian, appropriative, or otherwise; nor shall it affect existing rights relating to the operation of any hydroelectric or water storage reservoir or related facility; nor shall it affect any exploratory work, construction or operation of a thermal power plant by an electric utility in accordance with

the provisions of chapter 80.50 RCW. Nothing in this chapter shall enlarge or reduce the department of ecology's authority to regulate the surface use of waters of this state or structures on the underlying beds, tidelands or shorelands. [1971 ex.s. c 225 § 9.]

**90.54.910 Short title.** This chapter shall be known and may be cited as the "Water Resources Act of 1971". [1971 ex.s. c 225 § 14.]

**90.54.920 Rights not impaired.** (1) Nothing in this act shall affect or operate to impair any existing water rights.

(2) Nothing in this act shall be used to prevent future storage options, recognizing that storage may be necessary as a method of conserving water to meet both instream and out-of-stream needs.

(3) Nothing in this act shall infringe upon the rate-making prerogatives of any public water purveyor.

(4) Nothing in this act shall preclude the joint select committee on water resource policy from reviewing any subject matter contained herein for any future modifications. [1989 c 348 § 3.]

**Severability—1989 c 348:** See note following RCW 90.54.020.

### Chapter 90.56 RCW

#### OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION AND RESPONSE

##### Sections

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*Environmental certification programs—Fees—Rules—Liability:* RCW 43.21A.175.

**90.56.005 Findings—Purpose.** (1) The legislature declares that water borne transportation as a source of supply for oil and hazardous substances poses special concern for the state of Washington. Each year billions of gallons of crude oil and refined petroleum products are transported as cargo and fuel by vessels on the navigable waters of the state. These shipments are expected to increase in the coming years. Vessels transporting oil into Washington travel on some of the most unique and special marine environments in the United States. These marine environments are a source of natural beauty, recreation, and economic livelihood for many residents of this state. As a result, the state has an obligation to ensure the citizens of the state that the waters of the state will be protected from oil spills.

(2) The legislature finds that prevention is the best method to protect the unique and special marine environments in this state. The technology for containing and cleaning up a spill of oil or hazardous substances is at best only partially effective. Preventing spills is more protective of the environment and more cost-effective when all the response and damage costs associated with responding to a spill are considered. Therefore, the legislature finds that the primary objective of the state is to achieve a zero spills strategy to prevent any oil or hazardous substances from entering waters of the state.

(3) The legislature also finds that:

(a) Recent accidents in Washington, Alaska, southern California, Texas, Pennsylvania, and other parts of the nation have shown that the transportation, transfer, and storage of oil have caused significant damage to the marine environment;

(b) Even with the best efforts, it is nearly impossible to remove all oil that is spilled into the water, and average removal rates are only fourteen percent;

(c) Washington's navigable waters are treasured environmental and economic resources that the state cannot afford to place at undue risk from an oil spill;

(d) The state has a fundamental responsibility, as the trustee of the state's natural resources and the protector of public health and the environment to prevent the spill of oil; and

(e) In section 5002 of the federal oil pollution act of 1990, the United States congress found that many people believed that complacency on the part of industry and government was one of the contributing factors to the Exxon Val-

dez spill and, further, that one method to combat this complacency is to involve local citizens in the monitoring and oversight of oil spill plans. Congress also found that a mechanism should be established that fosters the long-term partnership of industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals. Moreover, congress concluded that, in addition to Alaska, a program of citizen monitoring and oversight should be established in other major crude oil terminals in the United States because recent oil spills indicate that the safe transportation of oil is a national problem.

(4) In order to establish a comprehensive prevention and response program to protect Washington's waters and natural resources from spills of oil, it is the purpose of this chapter:

(a) To establish state agency expertise in marine safety and to centralize state activities in spill prevention and response activities;

(b) To prevent spills of oil and to promote programs that reduce the risk of both catastrophic and small chronic spills;

(c) To ensure that responsible parties are liable, and have the resources and ability, to respond to spills and provide compensation for all costs and damages;

(d) To provide for state spill response and wildlife rescue planning and implementation;

(e) To support and complement the federal oil pollution act of 1990 and other federal law, especially those provisions relating to the national contingency plan for cleanup of oil spills and discharges, including provisions relating to the responsibilities of state agencies designated as natural resource trustees. The legislature intends this chapter to be interpreted and implemented in a manner consistent with federal law;

(f) To provide broad powers of regulation to the department of ecology relating to spill prevention and response;

(g) To provide for an independent oil spill advisory council to review on an ongoing basis the adequacy of oil spill prevention, preparedness, and response activities in this state; and

(h) To provide an adequate funding source for state response and prevention programs. [2005 c 304 § 1; 2004 c 226 § 2; 1991 c 200 § 101; 1990 c 116 § 1.]

**90.56.010 Definitions.** For purposes of this chapter, the following definitions shall apply unless the context indicates otherwise:

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technol-

ogy, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Board" means the pollution control hearings board.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(6) "Committee" means the preassessment screening committee established under RCW 90.48.368.

(7) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(8) "Department" means the department of ecology.

(9) "Director" means the director of the department of ecology.

(10) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(11)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(12) "Fund" means the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

(13) "Having control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

(14) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(15) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(16) "Necessary expenses" means the expenses incurred by the department and assisting state agencies for (a) investigating the source of the discharge; (b) investigating the extent of the environmental damage caused by the discharge; (c) conducting actions necessary to clean up the discharge; (d) conducting predamage and damage assessment studies; and (e) enforcing the provisions of this chapter and collecting for damages caused by a discharge.

(17) "Oil" or "oils" means naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline,

and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(18) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(19) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(20)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(21) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(22) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(23) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(24) "Spill" means an unauthorized discharge of oil or hazardous substances into the waters of the state.

(25) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(26) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(27) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions. [2000 c 69 § 15; 1992 c 73 § 31; 1991 c 200 § 102; 1990 c 116 § 2; 1989 c 388 § 6; 1985 c 316 § 5; 1971 ex.s. c 180 § 1; 1970 ex.s. c 88 § 1; 1969 ex.s. c 133 § 10. Formerly RCW 90.48.315.]

**Effective dates—1992 c 73:** See RCW 82.23B.902.

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

(2006 Ed.)

**Intent—1989 c 388:** "The legislature finds that oil spills can cause significant damage to the environment and natural resources held in trust by and for the people of this state. Some of these damages are unquantifiable, and others cannot be quantified at a reasonable cost. Both quantifiable and unquantifiable damages often occur despite prompt containment and cleanup measures. Due to the inability to measure the exact nature and extent of certain types of damages, current damage assessment methodologies used by the state inadequately assess the damage caused by oil spills.

In light of the magnitude of environmental and natural resource damage which may be caused by oil spills, and the importance of fishing, tourism, recreation, and Washington's natural abundance and beauty to the quality of life and economic future of the people of this state, the legislature declares that compensation should be sought for those damages that cannot be quantified at a reasonable cost and for those unquantifiable damages that result from oil spills. This compensation is intended to ensure that the public does not bear substantial losses caused by oil pollution for which compensation may not otherwise be received." [1989 c 388 § 1.]

**Application—1989 c 388:** "This act applies prospectively only, and not retroactively. It applies only to causes of action which arise after May 13, 1989." [1989 c 388 § 12.]

**Captions not law—1989 c 388:** "Section headings as used in this act do not constitute any part of the law." [1989 c 388 § 13.]

**Severability—1989 c 388:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 388 § 14.]

**Severability—1969 ex.s. c 133:** "If any provision of this 1969 act or the application thereof to any person or circumstance is held invalid, this 1969 act can be given effect without the invalid provision or application; and to this end the provisions of this 1969 act are declared to be severable. This 1969 act shall be liberally construed to effectuate its purpose." [1969 ex.s. c 133 § 12.]

*Marine oil pollution—Baseline study program: RCW 43.21A.405 through 43.21A.420.*

### 90.56.020 Director responsible for spill response.

Except as otherwise specifically provided in this chapter or other law, the director has the primary authority, in conformance with the statewide master oil and hazardous substance spill prevention and contingency plan adopted pursuant to RCW 90.56.060 and any applicable contingency plans prepared pursuant to this chapter and chapter 88.46 RCW, to oversee prevention, abatement, response, containment, and cleanup efforts with regard to any oil or hazardous substance spill in the navigable waters of the state. The director is the head of the state incident command system in response to a spill of oil or hazardous substances and shall coordinate the response efforts of all state agencies and local emergency response personnel. If a discharge of oil or hazardous substances is subject to the national contingency plan, in responding to the discharge, the director shall to the greatest extent practicable act in accordance with the national contingency plan and cooperate with the federal on-scene coordinator or other federal agency or official exercising authority under the national contingency plan. [1991 c 200 § 103.]

**90.56.030 Powers and duties.** The powers, duties, and functions conferred by this chapter shall be exercised by the department of ecology and shall be deemed an essential government function in the exercise of the police power of the state. Such powers, duties, and functions of the department shall extend to all waters under the jurisdiction of the state. [1991 c 200 § 104; 1971 ex.s. c 180 § 2. Formerly RCW 90.48.370.]

**90.56.040 Authority supplemental.** This chapter grants authority to the department which is supplemental to and in no way reduces or otherwise modifies the powers granted to the department by other statutes. [1991 c 200 § 105; 1987 c 109 § 153; 1969 ex.s. c 133 § 11. Formerly RCW 90.48.365.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.56.050 Rules.** The department may adopt rules including but not limited to the following matters:

- (1) Procedures and methods of reporting discharges and other occurrences prohibited by this chapter;
- (2) Procedures, methods, means, and equipment to be used by persons subject to regulation by this chapter and such rules may prescribe the times, places, and methods of transfer of oil;
- (3) Coordination of procedures, methods, means, and equipment to be used in the removal of oil;
- (4) Development and implementation of criteria and plans to meet oil spills of various kinds and degrees;
- (5) When and under what circumstances, if any, chemical agents, such as coagulants, dispersants, and bioremediation, may be used in response to an oil spill;
- (6) The disposal of oil recovered from a spill; and
- (7) Such other rules and regulations as the exigencies of any condition may require or such as may be reasonably necessary to carry out the intent of this chapter. [1991 c 200 § 106; 1971 ex.s. c 180 § 3. Formerly RCW 90.48.380.]

**90.56.060 Statewide master oil and hazardous substance spill prevention and contingency plan—Evaluation and revision or elimination of advisory committees.** (1) The department shall prepare and annually update a statewide master oil and hazardous substance spill prevention and contingency plan. In preparing the plan, the department shall consult with an advisory committee representing diverse interests concerned with oil and hazardous substance spills, including the United States coast guard, the federal environmental protection agency, state agencies, local governments, port districts, private facilities, environmental organizations, oil companies, shipping companies, containment and cleanup contractors, tow companies, hazardous substance manufacturers, and with the oil spill advisory council.

(2) The state master plan prepared under this section shall at a minimum:

(a) Take into consideration the elements of oil spill prevention and contingency plans approved or submitted for approval pursuant to this chapter and chapter 88.46 RCW and oil and hazardous substance spill contingency plans prepared pursuant to other state or federal law or prepared by federal agencies and regional entities;

(b) State the respective responsibilities as established by relevant statutes and rules of each of the following in the prevention of and the assessment, containment, and cleanup of a worst case spill of oil or hazardous substances into the environment of the state: (i) State agencies; (ii) local governments; (iii) appropriate federal agencies; (iv) facility operators; (v) property owners whose land or other property may be affected by the oil or hazardous substance spill; and (vi) other parties identified by the department as having an inter-

est in or the resources to assist in the containment and cleanup of an oil or hazardous substance spill;

(c) State the respective responsibilities of the parties identified in (b) of this subsection in an emergency response;

(d) Identify actions necessary to reduce the likelihood of spills of oil and hazardous substances;

(e) Identify and obtain mapping of environmentally sensitive areas at particular risk to oil and hazardous substance spills;

(f) Establish an incident command system for responding to oil and hazardous substances spills; and

(g) Establish a process for immediately notifying affected tribes of any oil spill.

(3) In preparing and updating the state master plan, the department shall:

(a) Consult with federal, provincial, municipal, and community officials, other state agencies, the state of Oregon, and with representatives of affected regional organizations;

(b) Submit the draft plan to the public for review and comment;

(c) Submit to the appropriate standing committees of the legislature for review, not later than November 1st of each year, the plan and any annual revision of the plan; and

(d) Require or schedule unannounced oil spill drills as required by RCW 90.56.260 to test the sufficiency of oil spill contingency plans approved under RCW 90.56.210.

(4) The department shall evaluate the functions of advisory committees created by the department regarding oil spill prevention, preparedness, and response programs, and shall revise or eliminate those functions which are no longer necessary. [2005 c 304 § 4; 2004 c 226 § 4; 2000 c 69 § 16; 1991 c 200 § 107; 1990 c 116 § 10. Formerly RCW 90.48.378.]

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**90.56.070 Coordination with federal law.** In carrying out the purposes of this chapter, including the adoption of rules for contingency plans, the department shall to the greatest extent practicable implement this chapter in a manner consistent with federal law. [1991 c 200 § 108.]

**90.56.080 Hazardous substances incident response training and education program.** The division of fire protection services shall establish and manage the Washington oil and hazardous substances incident response training and education program to provide approved classes in hazardous substance response, taught by trained instructors. To carry out this program, the division of fire protection services shall:

(1) Adopt rules necessary to implement the program;

(2) Establish a training and education program by developing the curriculum to be used in the program in colleges, academies, and other educational institutions;

(3) Provide training to local oil and hazardous materials emergency response personnel; and

(4) Establish and collect admission fees and other fees that may be necessary to the program. [2000 c 69 § 17; 1991 c 200 § 109.]

**90.56.100 Washington wildlife rescue coalition.** (1) The Washington wildlife rescue coalition is established for

the purpose of coordinating the rescue and rehabilitation of wildlife injured or endangered by oil spills or the release of other hazardous substances into the environment.

(2) The Washington wildlife rescue coalition shall be composed of:

(a) A representative of the department of fish and wildlife designated by the director of fish and wildlife. The department of fish and wildlife shall be designated as lead agency in the operations of the coalition. The coalition shall be chaired by the representative from the department of fish and wildlife;

(b) A representative of the department of ecology designated by the director;

(c) A representative of the Washington military department emergency management division, designated by the director of the Washington military department;

(d) A licensed veterinarian, with experience and training in wildlife rehabilitation, appointed by the veterinary board of governors;

(e) A lay person, with training and experience in the rescue and rehabilitation of wildlife appointed by the department; and

(f) A person designated by the legislative authority of the county where oil spills or spills of other hazardous substances may occur. This member of the coalition shall serve on the coalition until wildlife rescue and rehabilitation is completed in that county. The completion of any rescue or rehabilitation project shall be determined by the director of fish and wildlife.

(3) The duties of the Washington wildlife rescue coalition are to:

(a) Develop an emergency mobilization plan to rescue and rehabilitate waterfowl and other wildlife that are injured or endangered by an oil spill or the release of other hazardous substances into the environment;

(b) Develop and maintain a resource directory of persons, governmental agencies, and private organizations that may provide assistance in an emergency rescue effort;

(c) Provide advance training and instruction to volunteers in rescuing and rehabilitating waterfowl and wildlife injured or endangered by oil spills or the release of other hazardous substances into the environment. The training may be provided through grants to community colleges or to groups that conduct programs for training volunteers. The coalition representatives from the agencies described in subsection (2) of this section shall coordinate their training efforts and work to provide training opportunities for young citizens;

(d) Obtain and maintain equipment and supplies used in emergency rescue efforts.

(4)(a) Expenses for the coalition may be provided by the coastal protection fund administered according to RCW 90.48.400.

(b) The coalition is encouraged to seek grants, gifts, or donations from private sources in order to carry out the provisions of this section and RCW 90.56.110. Any private funds donated to the commission shall be deposited into the wildlife rescue account hereby created within the \*wildlife fund as authorized under Title 77 RCW. [2000 c 69 § 18; 1998 c 245 § 175; 1994 c 264 § 94; 1992 c 73 § 32; 1990 c 116 § 12. Formerly RCW 90.48.387.]

(2006 Ed.)

\*Reviser's note: The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

Effective dates—1992 c 73: See RCW 82.23B.902.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

**90.56.110 Rehabilitation of wildlife—Rules.** The department of fish and wildlife may adopt rules including, but not limited to, the following:

(1) Procedures and methods of handling and caring for waterfowl or other wildlife affected by spills of oil and other hazardous materials;

(2) The certification of persons trained in the removal of pollutants from waterfowl or other wildlife;

(3) Development of procedures with respect to removal of oil and other hazardous substances from waterfowl or other wildlife;

(4) The establishment of training exercises, courses, and other training procedures as necessary;

(5) Such other rules as may be reasonably necessary to carry out the intent of RCW 90.56.100. [1994 c 264 § 95; 1990 c 116 § 13. Formerly RCW 90.48.388.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

**90.56.120 Oil spill advisory council—Meetings—Travel expenses and compensation.** (1)(a) There is established in the office of the governor the oil spill advisory council.

(b) The primary purpose of the council is to maintain the state's vigilance in, by ensuring an emphasis on, the prevention of oil spills to marine waters, while recognizing the importance of also improving preparedness and response.

(c) The council shall be an advisory body only.

(2)(a) In addition to members appointed under (b) of this subsection, the council is composed of the chair-facilitator and sixteen members representing various interests as follows:

(i) Three representatives of environmental organizations;

(ii) One representative of commercial shellfish interests;

(iii) One representative of commercial fisheries that primarily fishes in Washington waters;

(iv) One representative of marine recreation;

(v) One representative of tourism interests;

(vi) Three representatives of county government from counties bordering Puget Sound, the Columbia river/Pacific Ocean, and the Strait of Juan de Fuca/San Juan Islands;

(vii) One representative of marine labor;

(viii) Two representatives of marine trade interests;

(ix) One representative of major oil facilities;

(x) One representative of public ports; and

(xi) An individual who resides on a shoreline who has an interest, experience, and familiarity in the protection of water quality.

(b) In addition to the members identified in this subsection, the governor shall invite the participation of tribal governments through the appointment of two representatives to the council.

(3) Appointments to the council shall reflect a geographical balance and the diversity of populations within the areas potentially affected by oil spills to state waters.

(4) Members shall be appointed by the governor and shall serve four-year terms, except the initial members appointed to the council. Initial members to the council shall be appointed as follows: Six shall serve two-year terms, six shall serve three-year terms, and seven shall serve four-year terms. Vacancies shall be filled by appointment in the same manner as the original appointment for the remainder of the unexpired term of the position vacated. Members serve at the pleasure of the governor.

(5) The governor shall appoint a chair-facilitator who shall serve as a nonvoting member of the council. The chair shall not be an employee of a state agency, nor shall the chair have a financial interest in matters relating to oil spill prevention, preparedness, and response. The chair shall convene the council at least four times per year. At least one meeting per year shall be held in a Columbia river community, an ocean coastal community, and a Puget Sound community. The chair shall consult with councilmembers in setting agendas and determining meeting times and locations.

(6) All members shall be reimbursed for travel expenses while attending meetings of the council or technical advisory committees, or when on official business authorized by the chair-facilitator, as provided in RCW 43.03.050 and 43.03.060. Members of the council identified in subsection (2)(a)(i), (ii), (iii), (iv), (v), (vi), (vii), and (xi) of this section and the chair-facilitator shall each be compensated on a per diem basis as a class two group according to RCW 43.03.230.

(7) The first meeting of the council shall be convened by the governor or the governor's designee. Other meetings may be convened by a vote of at least a majority of the voting members of the council, or by call of the chair. All meetings are subject to the open public meetings act. The council shall maintain minutes of all meetings.

(8) To the extent possible, all decisions of the council shall be by the consensus of the members. If consensus is not possible, nine voting members of the council may call for a vote on a matter. When a vote is called, all decisions shall be determined by a majority vote of the voting members present. Two-thirds of the voting members are required to be present for a quorum for all votes. The subject matter of all votes and the vote tallies shall be recorded in the minutes of the council.

(9) The council may form subcommittees and technical advisory committees. [2006 c 372 § 907; 2005 c 304 § 2.]

**Severability—Effective date—2006 c 372:** See notes following RCW 73.04.135.

### **90.56.130 Council—Duties—Work plan—Reports.**

(1) The duties of the council include:

(a) Selection and hiring of professional staff and expert consultants to support the work of the council;

(b) Early consultation with government decision makers in relation to the state's oil spill prevention, preparedness, and response programs, analyses, rule making, and related oil spill activities;

(c) Providing independent advice, expertise, research, monitoring, and assessment for review of and necessary improvements to the state's oil spill prevention, preparedness, and response programs, analyses, rule making, and

other decisions, including those of the Northwest area committee, as well as the adequacy of funding for these programs;

(d) Monitoring and providing information to the public as well as state and federal agencies regarding state of the art oil spill prevention, preparedness, and response programs;

(e) Actively seeking public comments on and proposals for specific measures to improve the state's oil spill prevention, preparedness, and response program, including measures to improve the effectiveness of the Northwest area committee;

(f) Evaluating incident response reports and making recommendations to the department regarding improvements;

(g) Consulting with the department on lessons learned and agency progress on necessary actions in response to lessons learned;

(h) Promoting opportunities for the public to become involved in oil spill response activities and provide assistance to community groups with an interest in oil spill prevention and response, and coordinating with the department on the development and implementation of a citizens' involvement plan;

(i) Serving as an advisory body to the department on matters relating to international, national, and regional issues concerning oil spill prevention, preparedness, and response, and providing a mechanism for stakeholder and public consideration of federal actions relating to oil spill preparedness, prevention, and response in or near the waters of the state with recommended changes or improvements in federal policies on these matters;

(j) Accepting moneys from appropriations, gifts, grants, or donations for the purposes of this section; and

(k) Any other activities necessary to maintain the state's vigilance in preventing oil spills.

(2) The council shall establish a work plan for accomplishing the duties identified in subsection (1) of this section.

(3) The council is not intended to address issues related to spills involving hazardous substances.

(4) By September 15, 2006, the council shall recommend to the governor and appropriate committees of the legislature, proposals for the long-term funding of the council's activities and for the long-term sustainable funding for oil spill preparedness, prevention, and response activities.

(5) By September 1st of each year, the council shall make recommendations for the continuing improvement of the state's oil spill prevention, preparedness, and response activities through a report to the governor, the director, and the appropriate committees of the senate and house of representatives. [2005 c 304 § 3.]

**90.56.200 Prevention plans.** (1) The owner or operator for each onshore and offshore facility shall prepare and submit to the department an oil spill prevention plan in conformance with the requirements of this chapter. The plans shall be submitted to the department in the time and manner directed by the department. The spill prevention plan may be consolidated with a spill contingency plan submitted pursuant to RCW 90.56.210. The department may accept plans prepared to comply with other state or federal law as spill prevention plans to the extent those plans comply with the requirements

of this chapter. The department, by rule, shall establish standards for spill prevention plans.

(2) The spill prevention plan for an onshore or offshore facility shall:

(a) Establish compliance with the federal oil pollution act of 1990, if applicable, and financial responsibility requirements under federal and state law;

(b) Certify that supervisory and other key personnel in charge of transfer, storage, and handling of oil have received certification pursuant to RCW 90.56.220;

(c) Certify that the facility has an operations manual required by RCW 90.56.230;

(d) Certify the implementation of alcohol and drug use awareness programs;

(e) Describe the facility's maintenance and inspection program and contain a current maintenance and inspection record of the storage and transfer facilities and related equipment;

(f) Describe the facility's alcohol and drug treatment programs;

(g) Describe spill prevention technology that has been installed, including overflow alarms, automatic overflow cut-off switches, secondary containment facilities, and storm water retention, treatment, and discharge systems;

(h) Describe any discharges of oil to the land or the water of more than twenty-five barrels in the prior five years and the measures taken to prevent a reoccurrence;

(i) Describe the procedures followed by the facility to contain and recover any oil that spills during the transfer of oil to or from the facility;

(j) Provide for the incorporation into the facility during the period covered by the plan of those measures that will provide the best achievable protection for the public health and the environment; and

(k) Include any other information reasonably necessary to carry out the purposes of this chapter required by rules adopted by the department.

(3) The department shall only approve a prevention plan if it provides the best achievable protection from damages caused by the discharge of oil into the waters of the state and if it determines that the plan meets the requirements of this section and rules adopted by the department.

(4) Upon approval of a prevention plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the facilities covered by the plan, and other information the department determines should be included.

(5) The approval of a prevention plan shall be valid for five years. An owner or operator of a facility shall notify the department in writing immediately of any significant change of which it is aware affecting its prevention plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a prevention plan as a result of these changes.

(6) The department by rule shall require prevention plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(7) Approval of a prevention plan by the department does not constitute an express assurance regarding the ade-

quacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

(8) This section does not authorize the department to modify the terms of a collective bargaining agreement. [2000 c 69 § 19; 1991 c 200 § 201.]

**Reviser's note:** Chapter 226, Laws of 2004 (Substitute Senate Bill No. 6641) directed that: "If specific funding for the purposes of sections 5 and 6 of this act, referencing sections 5 and 6 of this act by bill or chapter or section number, is not provided by June 30, 2004, in the omnibus transportation appropriations act, sections 5 and 6 of this act are null and void." Substitute Senate Bill No. 6641 was referenced by bill number in chapter 276, Laws of 2004, the omnibus operating appropriations act, in section 301(9), however neither the bill nor the chapter number were mentioned in chapter 229, Laws of 2004, the omnibus transportation appropriations act. Therefore, the chapter 226, Laws of 2004 amendments to RCW 90.56.200 and 90.56.210, did not take effect.

**90.56.210 Contingency plans.** (1) Each onshore and offshore facility shall have a contingency plan for the containment and cleanup of oil spills from the facility into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any facility which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of oil spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, fish and wildlife, and natural resources, and the \*office of archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

(h) State the means of protecting and mitigating effects on the environment, including fish, shellfish, marine mammals, and other wildlife, and ensure that implementation of

the plan does not pose unacceptable risks to the public or the environment;

(i) Provide arrangements for the repositioning of oil spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(j) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(k) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(l) Until a spill prevention plan has been submitted pursuant to RCW 90.56.200, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a facility, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(m) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; and

(n) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.

(2)(a) The following shall submit contingency plans to the department within six months after the department adopts rules establishing standards for contingency plans under subsection (1) of this section:

(i) Onshore facilities capable of storing one million gallons or more of oil; and

(ii) Offshore facilities.

(b) Contingency plans for all other onshore and offshore facilities shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period.

(3)(a) The owner or operator of a facility shall submit the contingency plan for the facility.

(b) A person who has contracted with a facility to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any facility for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one facility.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of

response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries, shellfish beds, and wildlife and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the department; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the facilities or vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a facility shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law. [2005 c 78 § 1; 2000 c 69 § 20; 1992 c 73 § 33; 1991 c 200 § 202; 1990 c 116 § 3. Formerly RCW 90.48.371.]

**Reviser's note:** \*(1) Powers, duties, and functions of the office of archaeology and historic preservation were transferred to the department of archaeology and historic preservation pursuant to 2005 c 333 § 12.

(2) Chapter 226, Laws of 2004 (Substitute Senate Bill No. 6641) directed that: "If specific funding for the purposes of sections 5 and 6 of this act, referencing sections 5 and 6 of this act by bill or chapter or section number, is not provided by June 30, 2004, in the omnibus transportation appropriations act, sections 5 and 6 of this act are null and void." Substitute Senate Bill No. 6641 was referenced by bill number in chapter 276, Laws of 2004, the omnibus operating appropriations act, in section 301(9), however neither the bill nor the chapter number were mentioned in chapter 229, Laws of 2004, the omnibus transportation appropriations act. Therefore, the chapter 226, Laws of 2004 amendments to RCW 90.56.200 and 90.56.210, did not take effect.

**Effective dates—1992 c 73:** See RCW 82.23B.902.

**Severability—1990 c 116:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected." [1990 c 116 § 35.]

**90.56.220 Facility operation standards.** (1) The department by rule shall adopt standards for onshore and offshore facilities regarding the equipment and operation of the facilities with respect to the transfer, storage, and handling of oil to ensure that the best achievable protection of the public health and the environment is employed at all times. The department shall implement a program to provide for the inspection of all onshore and offshore facilities on a regular schedule to ensure that each facility is in compliance with the standards.

(2) The department shall adopt rules for certification of supervisory and other key personnel in charge of the transfer, storage, and handling of oil at onshore and offshore facilities. The rules shall include, but are not limited to:

(a) Minimum training requirements for all facility workers involved in the transfer, storage, and handling of oil at a facility;

(b) Provisions for periodic renewal of certificates for supervisory and other key personnel involved in the transfer, storage, and handling of oil at the facility; and

(c) Continuing education requirements.

(3) The rules adopted by the department shall not conflict with or modify standards imposed pursuant to federal or state laws regulating worker safety. [1991 c 200 § 203.]

**90.56.230 Operations manuals.** (1) Each owner or operator of an onshore or offshore facility shall prepare an operations manual describing equipment and procedures involving the transfer, storage, and handling of oil that the operator employs or will employ for best achievable protection for the public health and the environment and to prevent oil spills in the navigable waters. The operations manual shall also describe equipment and procedures required for all vessels to or from which oil is transferred through use of the facility. The operations manual shall be submitted to the department for approval.

(2) Every existing onshore and offshore facility shall prepare and submit to the department its operations manual within eighteen months after the department has adopted rules governing the content of the manual.

(3) The department shall approve an operations manual for an onshore or offshore facility if the manual complies with the rules adopted by the department. If the department determines a manual does not comply with the rules, it shall provide written reasons for the decision. The owner or operator shall resubmit the manual within ninety days of notification of the reasons for noncompliance, responding to the reasons and incorporating any suggested modifications.

(4) The approval of an operations manual shall be valid for five years. The owner or operator of the facility shall notify the department in writing immediately of any significant change in its operations affecting its operations manual. The department may require the owner or operator to modify its operations manual as a result of these changes.

(5) All equipment and operations of an operator's onshore or offshore facility shall be maintained and carried out in accordance with the facility's operations manual. The owner or operator of the facility shall ensure that all covered

vessels docked at an onshore or offshore facility comply with the terms of the operations manual for the facility. [1991 c 200 § 204.]

**90.56.240 Standards for cleanup and containment services contractors.** The department shall by rule establish standards for persons who contract to provide cleanup and containment services under contingency plans approved under RCW 90.56.210. [1990 c 116 § 4. Formerly RCW 90.48.372.]

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**90.56.250 Index of prevention plans and contingency plans—Equipment inventory.** The department shall annually publish an index of available, up-to-date descriptions of prevention plans and contingency plans for oil spills submitted and approved pursuant to RCW 90.56.200, 90.56.210, 88.46.040, and 88.46.060 and an inventory of equipment available for responding to such spills. [1991 c 200 § 205; 1990 c 116 § 5. Formerly RCW 90.48.373.]

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**90.56.260 Adequacy of contingency plans—Practice drills—Report.** The department shall by rule adopt procedures to determine the adequacy of contingency plans approved under RCW 90.56.210. The rules shall require random practice drills without prior notice that will test the adequacy of the responding entities. The rules may provide for unannounced practice drills of individual contingency plans. The department shall review and publish a report on the drills, including an assessment of response time and available equipment and personnel compared to those listed in the contingency plans relying on the responding entities, and requirements, if any, for changes in the plans or their implementation. The department may require additional drills and changes in arrangements for implementing approved plans which are necessary to ensure their effective implementation. [1990 c 116 § 6. Formerly RCW 90.48.374.]

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**90.56.270 Enforcement of contingency plans.** (1) The provisions of contingency plans approved by the department under RCW 90.56.210 and prevention plans approved by the department pursuant to RCW 90.56.200 shall be legally binding on those persons submitting them to the department and on their successors, assigns, agents, and employees. The superior court shall have jurisdiction to restrain a violation of, compel specific performance of, or otherwise to enforce such plans upon application by the department. The department may issue an order pursuant to chapter 34.05 RCW requiring compliance with a contingency plan or a prevention plan and may impose administrative penalties under RCW 43.21B.300 for failure to comply with a plan. An order under this section is not subject to review by the pollution control hearings board as provided in RCW 43.21B.110.

(2)(a) Any person responsible or potentially responsible for a discharge, all of the agents and employees of that person, the operators of all vessels docked at an onshore or off-

shore facility that is a source of a discharge, and all state and local agencies shall carry out response and cleanup operations in accordance with applicable contingency plans, unless directed otherwise by the director or the coast guard. Except as provided in (b) of this subsection, the responsible party, potentially responsible parties, their agents and employees, the operators of all vessels docked at an onshore or offshore facility that is the source of the discharge, and all state and local agencies shall carry out whatever direction is given by the director in connection with the response, containment, and cleanup of the spill, if the directions are not in direct conflict with the directions of the coast guard.

(b) If a responsible party or potentially responsible party reasonably, and in good faith, believes that the directions or orders given by the director pursuant to (a) of this subsection will substantially endanger the public safety or the environment, the party may refuse to act in compliance with the orders or directions of the director. The responsible party or potentially responsible party shall state, at the time of the refusal, the reasons why the party refuses to follow the orders or directions of the director. The responsible party or potentially responsible party shall give the director written notice of the reasons for the refusal within forty-eight hours of refusing to follow the orders or directions of the director. In any civil or criminal proceeding commenced pursuant to this section, the burden of proof shall be on the responsible party or potentially responsible party to demonstrate, by clear and convincing evidence, why the refusal to follow the orders or directions of the director was justified under the circumstances. [1991 c 200 § 206; 1990 c 116 § 7. Formerly RCW 90.48.375.]

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**90.56.280 Duty to notify coast guard and division of emergency management of discharge.** It shall be the duty of any person discharging oil or hazardous substances or otherwise causing, permitting, or allowing the same to enter the waters of the state, unless the discharge or entry was expressly authorized by the department prior thereto or authorized by operation of law under RCW 90.48.200, to immediately notify the coast guard and the division of emergency management. The notice to the division of emergency management within the \*department of community, trade, and economic development shall be made to the division's twenty-four hour statewide toll-free number established for reporting emergencies. [1995 c 399 § 218; 1990 c 116 § 24; 1987 c 109 § 152; 1969 ex.s. c 133 § 9. Formerly RCW 90.48.360.]

**\*Reviser's note:** The powers, duties, and functions of the department of community, trade, and economic development relating to emergency management were transferred to the state military department pursuant to 1995 c 391 § 10.

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.56.300 Unlawful operation of facility—Criminal penalties.** (1) Except as provided in subsection (3) of this section, it shall be unlawful for the owner or operator to

knowingly and intentionally operate in this state or on the waters of this state an onshore or offshore facility without an approved contingency plan or an approved prevention plan as required by this chapter, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

(2)(a) The first conviction under this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) A second or subsequent conviction is a class C felony under chapter 9A.20 RCW.

(3) It shall not be unlawful for the owner or operator to operate an onshore or offshore facility if:

(a) The facility is not required to have a contingency plan, spill prevention plan, or financial responsibility; or

(b) All required plans have been submitted to the department as required by RCW 90.56.210 and rules adopted by the department and the department is reviewing the plan and has not denied approval.

(4) A person may rely on a copy of the statement issued by the department pursuant to RCW 90.56.210(7) as evidence that a facility has an approved contingency plan and the statement issued pursuant to RCW 90.56.200(4) that a facility has an approved prevention plan. [2003 c 53 § 420; 1992 c 73 § 34; 1991 c 200 § 301; 1990 c 116 § 8. Formerly RCW 90.48.376.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Effective dates—1992 c 73:** See RCW 82.23B.902.

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**90.56.310 Operation of a facility or vessel without contingency or prevention plan or financial responsibility—Civil penalty.** (1) Except as provided in subsection (3) of this section, it shall be unlawful:

(a) For the owner or operator to operate an onshore or offshore facility without an approved contingency plan as required under RCW 90.56.210, a spill prevention plan required by RCW 90.56.200, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990; or

(b) For the owner or operator of an onshore or offshore facility to transfer cargo or passengers to or from a covered vessel that does not have an approved contingency plan or an approved prevention plan required under chapter 88.46 RCW or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

(2) The department may assess a civil penalty under RCW 43.21B.300 of up to one hundred thousand dollars against any person who is in violation of this section. Each day that a facility or person is in violation of this section shall be considered a separate violation.

(3) It shall not be unlawful for a facility or other person to operate or accept cargo or passengers from a covered vessel if:

(a) A contingency plan, a prevention plan, or financial responsibility is not required for the facility; or

(b) A contingency and prevention plan has been submitted to the department as required by this chapter and rules adopted by the department and the department is reviewing the plan and has not denied approval.

(4) Any person may rely on a copy of the statement issued by the department pursuant to RCW 90.56.210(7) as evidence that the facility has an approved contingency plan and the statement issued pursuant to RCW 90.56.200(4) as evidence that the facility has an approved spill prevention plan. Any person may rely on a copy of the statement issued by the \*office of marine safety, or its successor agency, the department, pursuant to RCW 88.46.060 as evidence that the vessel has an approved contingency plan and the statement issued pursuant to RCW 88.46.040 as evidence that the vessel has an approved prevention plan. [2000 c 69 § 34; 1992 c 73 § 35; 1991 c 200 § 302; 1990 c 116 § 9. Formerly RCW 90.48.377.]

**\*Reviser's note:** The office of marine safety was abolished and its powers, duties, and functions transferred to the department of ecology by 1991 c 200 § 430, effective July 1, 1997.

**Effective dates—1992 c 73:** See RCW 82.23B.902.

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**90.56.320 Unlawful for oil to enter waters—Exceptions.** It shall be unlawful, except under the circumstances hereafter described in this section, for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore whether publicly or privately operated, regardless of the cause of the entry or fault of the person having control over the oil, or regardless of whether it be the result of intentional or negligent conduct, accident or other cause. This section shall not apply to discharges of oil in the following circumstances:

(1) The person discharging was expressly authorized to do so by the department prior to the entry of the oil into state waters; or

(2) The person discharging was authorized to do so by operation of law as provided in RCW 90.48.200. [1990 c 116 § 17; 1987 c 109 § 146; 1970 ex.s. c 88 § 2; 1969 ex.s. c 133 § 1. Formerly RCW 90.48.320.]

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.56.330 Additional penalties.** Except as otherwise provided in RCW 90.56.390, any person who negligently discharges oil, or causes or permits the entry of the same, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to twenty thousand dollars for every such violation, and for each day the spill poses risks to the environment as determined by the director. Any person who intentionally or recklessly discharges or causes or permits the entry of oil into the waters of the state shall incur, in addition to any other penalty authorized by law, a penalty of up to one hundred thousand dollars for every such violation and for each day the spill poses risks to the environment as determined by the director. The amount of the penalty shall be determined by the director after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, the speed and thoroughness of the collection and removal of the oil, and such other considerations as the director deems appropriate. Every act of commission

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or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty herein provided for shall be imposed pursuant to RCW 43.21B.300. [1992 c 73 § 36; 1990 c 116 § 20; 1989 c 388 § 9; 1987 c 109 § 20; 1985 c 316 § 7; 1970 ex.s. c 88 § 9; 1969 ex.s. c 133 § 7. Formerly RCW 90.48.350.]

**Effective dates—1992 c 73:** See RCW 82.23B.902.

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**Intent—Application—Captions—Severability—1989 c 388:** See notes following RCW 90.56.010.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.56.335 Vessel response account—Dedicated rescue tug. (Expires July 1, 2020.)** The vessel response account is created in the state treasury. Grants, gifts, and federal funds may be deposited into the account. Oil spill penalties assessed against ships under RCW 90.56.330 and 90.48.144 shall also be deposited into the account as well as the money distributed under RCW 46.68.020(2). Moneys in the account may be spent only after appropriation. The department of ecology is authorized to utilize the vessel response account to preposition a dedicated rescue tug at the entrance to the Strait of Juan de Fuca to reduce the risk of major maritime accidents and oil spills on the outer coast and western strait. Prior to authorizing the rescue tug to respond to a distressed vessel, the department shall work with the United States coast guard and industry to determine if another capable, unencumbered commercial tug is available in the area that can respond. If such a tug can respond without increasing the risk of a casualty, it should be deployed as the tug of choice and the state-contracted rescue tug should not be taken off standby duty. The department is also authorized to spot charter tugs as needed during major storms and other high risk periods to protect maritime commerce and the environment anywhere in state waters.

The department shall not proceed with rule making related to emergency towing pursuant to chapter 88.46 RCW, so long as the deposit of the fee into the vessel response account under RCW 46.68.020(2) is continued and is appropriated for the purpose of the dedicated rescue tug. [2003 c 264 § 3.]

**Expiration date—2003 c 264 § 3:** "Section 3 of this act expires July 1, 2020." [2005 c 295 § 10; 2003 c 264 § 9.]

**90.56.340 Duty to remove oil.** It shall be the obligation of any person owning or having control over oil entering waters of the state in violation of RCW 90.56.320 to immediately collect and remove the same. If it is not feasible to collect and remove, said person shall take all practicable actions to contain, treat and disperse the same. The director shall prohibit or restrict the use of any chemicals or other dispersant or treatment materials proposed for use under this section whenever it appears to the director that use thereof would be detrimental to the public interest. [1991 c 200 § 303; 1970 ex.s. c 88 § 3; 1969 ex.s. c 133 § 2. Formerly RCW 90.48.325.]

**90.56.350 Investigation, removal, containment, treatment, or dispersal of oil and hazardous substances—**

**Record of expenses.** The department shall take all actions necessary to respond to a substantial threat of a discharge of oil or hazardous substances into the waters of this state or to collect, investigate, perform surveillance over, remove, contain, treat, or disperse oil or hazardous substances discharged into waters of the state. The department shall keep a record of all necessary expenses incurred in carrying out any project or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized. The authority granted hereunder shall be limited to projects and activities which are designed to protect the public interest or public property. The department may use staff, equipment, and material under its control, or contract with others, to carry out its responsibilities under this section. [1990 c 116 § 21; 1987 c 109 § 147; 1970 ex.s. c 88 § 4; 1969 ex.s. c 133 § 3. Formerly RCW 90.48.330.]

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**Purpose—Short title—Construction—Rules—Severability—Capitions—1987 c 109:** See notes following RCW 43.21B.001.

**90.56.360 Liability for expenses.** Any person who unlawfully discharges oil or hazardous substances into the waters of the state or who poses a substantial threat of discharging oil or hazardous substances into the waters of the state shall be responsible for the necessary expenses incurred by the state in carrying out a project or activity authorized under RCW 90.56.350. [1990 c 116 § 22; 1970 ex.s. c 88 § 5; 1969 ex.s. c 133 § 4. Formerly RCW 90.48.335.]

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**90.56.370 Strict liability of owner or controller of oil—Exceptions.** (1) Any person owning oil or having control over oil that enters the waters of the state in violation of RCW 90.56.320 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry.

(2) In any action to recover damages resulting from the discharge of oil in violation of RCW 90.56.320, the owner or person having control over the oil shall be relieved from strict liability, without regard to fault, if that person can prove that the discharge was caused solely by:

- (a) An act of war or sabotage;
- (b) An act of God;
- (c) Negligence on the part of the United States government; or
- (d) Negligence on the part of the state of Washington.

(3) The liability established in this section shall in no way affect the rights which: (a) The owner or other person having control over the oil may have against any person whose acts may in any way have caused or contributed to the discharge of oil, or (b) the state of Washington may have against any person whose actions may have caused or contributed to the discharge of oil. [2000 c 69 § 21; 1990 c 116 § 18; 1970 ex.s. c 88 § 6. Formerly RCW 90.48.336.]

**Prospective application—1990 c 116 § 18(2):** "The section 18(2), chapter 116, Laws of 1990 changes requiring the defenses in that subsection to be the sole causes of the discharge, and the text of section 18(2)(b), chapter 116, Laws of 1990 shall apply prospectively and not retroactively after June 7, 1990." [2000 c 69 § 26.]

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**90.56.380 Liability of others for cleanup expenses.** In addition to any cause of action the state may have to recover necessary expenses for the cleanup of oil pursuant to RCW 90.56.340 and 90.56.330, and except as otherwise provided in RCW 90.56.390, any other person causing the entry of oil shall be directly liable to the state for the necessary expenses of oil cleanup arising from such entry and the state shall have a cause of action to recover from any or all of said persons. Except as otherwise provided in RCW 90.56.390, any person liable for cost of oil cleanup as provided in RCW 90.56.340 and 90.56.330 shall have a cause of action to recover for costs of cleanup from any other person causing the entry of oil into the waters of the state including any amount recoverable by the state as necessary expenses under RCW 90.56.330. [1992 c 73 § 37; 1990 c 116 § 19; 1970 ex.s. c 88 § 7. Formerly RCW 90.48.338.]

**Effective dates—1992 c 73:** See RCW 82.23B.902.

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**90.56.390 Liability for removal costs.** (1)(a) A person is not liable for removal costs or damages that result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or by the official within the department with responsibility for oil spill response. This subsection (1)(a) does not apply:

- (i) To a responsible party;
  - (ii) With respect to personal injury or wrongful death; or
  - (iii) If the person is grossly negligent or engages in willful misconduct.
- (b) A responsible party is liable for any removal costs and damages that another person is relieved of under (a) of this subsection.

(c) Nothing in this section affects the liability of a responsible party for oil spill response under state law.

(2) For the purposes of this section:

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of oil.

(b) "Federal on-scene coordinator" means the federal official predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal under subpart E, of the national contingency plan.

(c) "National contingency plan" means the national contingency plan prepared and published under section 311(d) of the federal water pollution control act (33 U.S.C. Sec. 1321(d)), as amended by the oil pollution act of 1990 (P.L. 101-380, 104 Stat. 484 (1990)).

(d) "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

(e) "Responsible party" means a person liable under RCW 90.56.370. [1992 c 73 § 38; 1991 c 200 § 304.]

**Effective dates—1992 c 73:** See RCW 82.23B.902.

**90.56.400 Department investigation of circumstances of entry of oil—Order for reimbursement of expenses—Modification—Action to recover necessary expenses.** The department shall investigate each activity or project conducted under RCW 90.56.350 to determine, if possible, the circumstances surrounding the entry of oil into waters of the state and the person or persons allowing said entry or responsible for the act or acts which result in said entry. Whenever it appears to the department, after investigation, that a specific person or persons are responsible for the necessary expenses incurred by the state pertaining to a project or activity as specified in RCW 90.56.360, the department shall notify said person or persons by appropriate order. The department may not issue an order pertaining to a project or activity which was completed more than five years prior to the date of the proposed issuance of the order. The order shall state the findings of the department, the amount of necessary expenses incurred in conducting the project or activity, and a notice that said amount is due and payable immediately upon receipt of said order. The department may, upon application from the recipient of an order received within thirty days from the receipt of the order, reduce or set aside in its entirety the amount due and payable, when it appears from the application, and from any further investigation the department may desire to undertake, that a reduction or setting aside is just and fair under all the circumstances. If the amount specified in the order issued by the department notifying said person or persons is not paid within thirty days after receipt of notice imposing the same, or if an application has been made within thirty days as herein provided and the amount provided in the order issued by the department subsequent to such application is not paid within fifteen days after receipt thereof, the attorney general, upon request of the department, shall bring an action on behalf of the state in the superior court of Thurston county or any county in which the person to which the order is directed does business, or in any other court of competent jurisdiction, to recover the amount specified in the final order of the department. No order issued under this section shall be construed as an order within the meaning of RCW 43.21B.310 and shall not be appealable to the hearings board. In any action to recover necessary expenses as herein provided said person shall be relieved from liability for necessary expenses if the person can prove that the oil to which the necessary expenses relate entered the waters of the state by causes set forth in RCW 90.56.370(2). [1992 c 73 § 39; 1991 c 200 § 305; 1987 c 109 § 148; 1985 c 316 § 4; 1970 ex.s. c 88 § 10; 1969 ex.s. c 133 § 5. Formerly RCW 90.48.340.]

**Effective dates—1992 c 73:** See RCW 82.23B.902.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.56.410 Right of entry and access to records pertinent to investigations.** The department, through its duly authorized representatives, shall have the power to enter upon any private or public property, including the boarding of any

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ship, at any reasonable time, and the owner, managing agent, master or occupant of such property shall permit such entry for the purpose of investigating conditions relating to violations or possible violations of this chapter, and to have access to any pertinent records relating to such property, including but not limited to operation and maintenance records and logs. The authority granted herein shall not be construed to require any person to divulge trade secrets or secret processes. The director may issue subpoenas for the production of any books, records, documents, or witnesses in any hearing conducted pursuant to this chapter. [1990 c 116 § 23; 1987 c 109 § 151; 1969 ex.s. c 133 § 8. Formerly RCW 90.48.355.]

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.56.420 Authorized discharges of oil—Permits.** Any person who proposes to discharge oil or cause or permit the entry of same into waters of the state shall prior to such discharge obtain permission from the director. The director is authorized to permit the discharge of oil into waters of the state consistent with the pertinent effluent and receiving water standards and treatment requirements established by the department. Permission for industrial or commercial discharges shall be given through the terms of a waste discharge permit issued pursuant to RCW 90.48.180. Permission shall be given in all other cases on a form prescribed by the director. [1987 c 109 § 149; 1970 ex.s. c 88 § 8. Formerly RCW 90.48.343.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.56.500 Oil spill response account.** The state oil spill response account is created in the state treasury. All receipts from RCW 82.23B.020(1) shall be deposited in the account. All costs reimbursed to the state by a responsible party or any other person for responding to a spill of oil shall also be deposited in the account. Moneys in the account shall be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW. The account shall be used exclusively to pay for the costs associated with the response to spills of crude oil or petroleum products into the navigable waters of the state. Payment of response costs under this section shall be limited to spills which the director has determined are likely to exceed fifty thousand dollars. Before expending moneys from the account, the director shall make reasonable efforts to obtain funding for response costs from the person responsible for the spill and from other sources, including the federal government. Reimbursement for response costs shall be allowed only for costs which are not covered by funds appropriated to the agencies responsible for response activities. Costs associated with the response to spills of crude oil or petroleum products shall include:

- (1) Natural resource damage assessment and related activities;
- (2) Spill related response, containment, wildlife rescue, cleanup, disposal, and associated costs;
- (3) Interagency coordination and public information related to a response; and

(4) Appropriate travel, goods and services, contracts, and equipment. [1991 c 200 § 805.]

**90.56.510 Oil spill prevention account.** (1) The oil spill prevention account is created in the state treasury. All receipts from RCW 82.23B.020(2) shall be deposited in the account. Moneys from the account may be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW. If, on the first day of any calendar month, the balance of the oil spill response account is greater than nine million dollars and the balance of the oil spill prevention account exceeds the unexpended appropriation for the current biennium, then the tax under RCW 82.23B.020(2) shall be suspended on the first day of the next calendar month until the beginning of the following biennium, provided that the tax shall not be suspended during the last six months of the biennium. If the tax imposed under RCW 82.23B.020(2) is suspended during two consecutive biennia, the department shall by November 1st after the end of the second biennium, recommend to the appropriate standing committees an adjustment in the tax rate. For the biennium ending June 30, 1999, and the biennium ending June 30, 2001, the state treasurer may transfer a total of up to one million dollars from the oil spill response account to the oil spill prevention account to support appropriations made from the oil spill prevention account in the omnibus appropriations act adopted not later than June 30, 1999.

(2) Expenditures from the oil spill prevention account shall be used exclusively for the administrative costs related to the purposes of this chapter, and chapters 90.48, 88.40, and 88.46 RCW. Starting with the 1995-1997 biennium, the legislature shall give activities of state agencies related to prevention of oil spills priority in funding from the oil spill prevention account. Costs of prevention include the costs of:

- (a) Routine responses not covered under RCW 90.56.500;
- (b) Management and staff development activities;
- (c) Development of rules and policies and the statewide plan provided for in RCW 90.56.060;
- (d) Facility and vessel plan review and approval, drills, inspections, investigations, enforcement, and litigation;
- (e) Interagency coordination and public outreach and education;
- (f) Collection and administration of the tax provided for in chapter 82.23B RCW; and
- (g) Appropriate travel, goods and services, contracts, and equipment. [2000 c 69 § 22; 1999 sp.s. c 7 § 2; 1997 c 449 § 3; 1995 2nd sp.s. c 14 § 525; 1994 sp.s. c 6 § 903; 1993 c 162 § 2; 1992 c 73 § 41; 1991 c 200 § 806.]

**Effective date—1999 sp.s. c 7:** See note following RCW 82.23B.020.

**Effective date—1997 c 449:** See note following RCW 82.23B.020.

**Severability—1995 2nd sp.s. c 14:** See note following RCW 43.105.017.

**Effective dates—1995 2nd sp.s. c 14:** See note following RCW 43.105.017.

**Severability—Effective date—1994 sp.s. c 6:** See notes following RCW 28A.310.020.

**Severability—Effective date—1993 c 162:** See notes following RCW 88.46.170.

**Effective dates—1992 c 73:** See RCW 82.23B.902.

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**90.56.530 Reckless operation of a tank vessel—Penalty.** (1) A person commits the crime of reckless operation of a tank vessel if, while (a) navigating a tank vessel, (b) piloting a tank vessel, or (c) on the vessel control bridge and in control of the motion, direction, or speed of a tank vessel, the person, with recklessness as defined in RCW 9A.08.010, causes a release of oil.

(2) Reckless operation of a tank vessel is a class C felony under chapter 9A.20 RCW. [1991 c 200 § 604. Formerly RCW 88.16.210.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**90.56.540 Operation of a vessel while under influence of liquor or drugs—Penalty.** (1) A person is guilty of operating a vessel while under the influence of intoxicating liquor or drugs if the person operates a covered vessel within this state while:

- (a) The person has 0.06 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of the person's breath made under RCW 90.56.550; or
- (b) The person has 0.06 percent or more by weight of alcohol in the person's blood as shown by analysis of the person's blood made under RCW 90.56.550; or
- (c) The person is under the influence of or affected by intoxicating liquor or drugs; or
- (d) The person is under the combined influence of or affected by intoxicating liquor or drugs.

(2) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

(3) Operating a vessel while intoxicated is a class C felony under chapter 9A.20 RCW. [2000 c 69 § 23; 1991 c 200 § 605. Formerly RCW 88.16.220.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**90.56.550 Breath or blood analysis.** (1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating a vessel while under the influence of intoxicating liquor or drugs, if the amount of alcohol in the person's blood or breath at the time alleged as shown by analysis of his blood or breath is less than 0.06 percent by weight of alcohol in his blood or 0.06 grams of alcohol per two hundred ten liters of the person's breath, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or drugs.

(2) The breath analysis shall be based upon grams of alcohol per two hundred ten liters of breath. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under this section shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist shall

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approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits that are subject to termination or revocation at the discretion of the state toxicologist.

(4) If a blood test is administered under this section, the withdrawal of blood for the purpose of determining its alcoholic content may be performed only by a physician, a registered nurse, or a qualified technician. This limitation shall not apply to the taking of breath specimens.

(5) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(6) Upon the request of the person who submits to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to the person or his or her attorney. [1991 c 200 § 606. Formerly RCW 88.16.230.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

#### **90.56.560 Limited immunity for blood withdrawal.**

No physician, registered nurse, qualified technician, or hospital, or duly licensed clinical laboratory employing or using services of the physician, registered nurse, or qualified technician, may incur any civil or criminal liability as a result of the act of withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under RCW 90.56.550. This section shall not relieve any physician, registered nurse, qualified technician, or hospital or duly licensed clinical laboratory from civil liability arising from the use of improper procedures or failing to exercise the required standard of care. [2000 c 69 § 24; 1991 c 200 § 607. Formerly RCW 88.16.240.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**90.56.900 Construction—Appeal not to stay order, rule, or regulation.** This chapter, being necessary for the general welfare, the public health, and the public safety of the state and its inhabitants, shall be liberally construed to effect their purposes. No rule, regulation, or order of the department shall be stayed pending appeal under this chapter. [1991 c 200 § 1107; 1971 ex.s. c 180 § 10. Formerly RCW 90.48.907.]

**90.56.901 Effective dates—1991 c 200.** (1) Sections 101 through 429, 501 through 706, 805 through 807, 810 through 817, and 901 through 1118 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1991].

(2) Sections 801 through 804, 808, and 809 of this act shall take effect October 1, 1991. [1991 c 200 § 1119.]

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**90.56.902 Captions not law.** Section headings and part headings as used in this chapter shall constitute no part of the law. [1991 c 200 § 1113.]

**90.56.904 Severability—1991 c 200.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 200 § 1118.]

**90.56.905 Severability—1992 c 73.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 73 § 43.]

### **Chapter 90.58 RCW**

#### **SHORELINE MANAGEMENT ACT OF 1971**

##### Sections

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- 90.58.910 Severability—1971 ex.s. c 286.
- 90.58.911 Severability—1983 c 138.
- 90.58.920 Effective date—1971 ex.s. c 286.

*Marine oil pollution—Baseline study program: RCW 43.21A.405 through 43.21A.420.*

**90.58.010 Short title.** This chapter shall be known and may be cited as the "Shoreline Management Act of 1971". [1971 ex.s. c 286 § 1.]

**90.58.020 Legislative findings—State policy enunciated—Use preference.** The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in

an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as

practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. [1995 c 347 § 301; 1992 c 105 § 1; 1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**90.58.030 Definitions and concepts.** As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) Administration:

(a) "Department" means the department of ecology;

(b) "Director" means the director of the department of ecology;

(c) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;

(d) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated;

(e) "Hearing board" means the shoreline hearings board established by this chapter.

(2) Geographical:

(a) "Extreme low tide" means the lowest line on the land reached by a receding tide;

(b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(c) "Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state;

(d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(e) "Shorelines of statewide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,

(B) Birch Bay—from Point Whitehorn to Birch Point,

(C) Hood Canal—from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area—from Brown Point to Yokeko Point, and

(E) Padilla Bay—from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those shorelands associated with (i), (ii), (iv), and (v) of this subsection (2)(e);

(f) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

(i) Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.

(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provisions of this subsection (2)(f)(ii) are not subject to additional regulations under this chapter;

(g) "Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;

(h) "Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circum-

stances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(3) Procedural terms:

(a) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(b) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020;

(c) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(d) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private non-commercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(A) The activity does not interfere with the normal public use of the surface waters;

(B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(E) The activity is not subject to the permit requirements of RCW 90.58.550;

(xii) The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW. [2003 c 321 § 2; 2002 c 230 § 2; 1996 c 265 § 1. Prior: 1995 c 382 § 10; 1995 c 255 § 5; 1995 c 237 § 1; 1987 c 474 § 1; 1986 c 292 § 1; 1982 1st ex.s. c 13 § 2; 1980 c 2 § 3; 1979 ex.s. c 84 § 3; 1975 1st ex.s. c 182 § 1; 1973 1st ex.s. c 203 § 1; 1971 ex.s. c 286 § 3.]

**Finding—Intent—2003 c 321:** "(1) The legislature finds that the final decision and order in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*, Case No. 02-3-0009c, issued on January 9, 2003, by the central Puget Sound growth management hearings board was a case of first impression interpreting the addition of the shoreline management act into the growth management act, and that the board considered the appeal and issued its final order and decision without the benefit of shorelines guidelines to provide guidance on the implementation of the shoreline management act and the adoption of shoreline master programs.

(2) This act is intended to affirm the legislature's intent that:

(a) The shoreline management act be read, interpreted, applied, and implemented as a whole consistent with decisions of the shoreline hearings board and Washington courts prior to the decision of the central Puget Sound growth management hearings board in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*;

(b) The goals of the growth management act, including the goals and policies of the shoreline management act, set forth in RCW 36.70A.020 and included in RCW 36.70A.020 by RCW 36.70A.480, continue to be listed without an order of priority; and

(c) Shorelines of statewide significance may include critical areas as defined by RCW 36.70A.030(5), but that shorelines of statewide significance are not critical areas simply because they are shorelines of statewide significance.

(3) The legislature intends that critical areas within the jurisdiction of the shoreline management act shall be governed by the shoreline management act and that critical areas outside the jurisdiction of the shoreline management act shall be governed by the growth management act. The legislature further intends that the quality of information currently required by the shoreline management act to be applied to the protection of critical areas within shorelines of the state shall not be limited or changed by the provisions of the growth management act." [2003 c 321 § 1.]

**Finding—Intent—2002 c 230:** "The legislature finds that the dollar threshold for what constitutes substantial development under the shoreline management act has not been changed since 1986. The legislature recognizes that the effects of inflation have brought in many activities under the jurisdiction of chapter 90.58 RCW that would have been exempted under its original provisions. It is the intent of the legislature to modify the current dollar threshold for what constitutes substantial development under the shoreline management act, and to have this threshold readjusted on a five-year basis." [2002 c 230 § 1.]

**Severability—Effective date—1995 c 255:** See RCW 17.26.900 and 17.26.901.

**Severability—1986 c 292:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 292 § 5.]

(2006 Ed.)

**Intent—1980 c 2; 1979 ex.s. c 84:** "The legislature finds that high tides and hurricane force winds on February 13, 1979, caused conditions resulting in the catastrophic destruction of the Hood Canal bridge on state route 104, a state highway on the federal-aid system; and, as a consequence, the state of Washington has sustained a sudden and complete failure of a major segment of highway system with a disastrous impact on transportation services between the counties of Washington's Olympic peninsula and the remainder of the state. The governor has by proclamation found that these conditions constitute an emergency. To minimize the economic loss and hardship to residents of the Puget Sound and Olympic peninsula regions, it is the intent of 1979 ex.s. c 84 to authorize the department of transportation to undertake immediately all necessary actions to restore interim transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas and to design and reconstruct a permanent bridge at the site of the original Hood Canal bridge. The department of transportation is directed to proceed with such actions in an environmentally responsible manner that would meet the substantive objectives of the state environmental policy act and the shorelines management act, and shall consult with the department of ecology in the planning process. The exemptions from the state environmental policy act and the shorelines management act contained in RCW 43.21C.032 and 90.58.030 are intended to approve and ratify the timely actions of the department of transportation taken and to be taken to restore interim transportation services and to reconstruct a permanent Hood Canal bridge without procedural delays." [1980 c 2 § 1; 1979 ex.s. c 84 § 1.]

**90.58.040 Program applicable to shorelines of the state.** The shoreline management program of this chapter shall apply to the shorelines of the state as defined in this chapter. [1971 ex.s. c 286 § 4.]

**90.58.045 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 28.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**90.58.050 Program as cooperative between local government and state—Responsibilities differentiated.** This chapter establishes a cooperative program of shoreline management between local government and the state. Local government shall have the primary responsibility for initiating the planning required by this chapter and administering the regulatory program consistent with the policy and provisions of this chapter. The department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and on insuring compliance with the policy and provisions of this chapter. [1995 c 347 § 303; 1971 ex.s. c 286 § 5.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**90.58.060 Review and adoption of guidelines—Public hearings, notice of—Amendments.** (1) The department shall periodically review and adopt guidelines consistent with RCW 90.58.020, containing the elements specified in RCW 90.58.100 for:

(a) Development of master programs for regulation of the uses of shorelines; and

(b) Development of master programs for regulation of the uses of shorelines of statewide significance.

[Title 90 RCW—page 111]

(2) Before adopting or amending guidelines under this section, the department shall provide an opportunity for public review and comment as follows:

(a) The department shall mail copies of the proposal to all cities, counties, and federally recognized Indian tribes, and to any other person who has requested a copy, and shall publish the proposed guidelines in the Washington state register. Comments shall be submitted in writing to the department within sixty days from the date the proposal has been published in the register.

(b) The department shall hold at least four public hearings on the proposal in different locations throughout the state to provide a reasonable opportunity for residents in all parts of the state to present statements and views on the proposed guidelines. Notice of the hearings shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in each county of the state. If an amendment to the guidelines addresses an issue limited to one geographic area, the number and location of hearings may be adjusted consistent with the intent of this subsection to assure all parties a reasonable opportunity to comment on the proposed amendment. The department shall accept written comments on the proposal during the sixty-day public comment period and for seven days after the final public hearing.

(c) At the conclusion of the public comment period, the department shall review the comments received and modify the proposal consistent with the provisions of this chapter. The proposal shall then be published for adoption pursuant to the provisions of chapter 34.05 RCW.

(3) The department may adopt amendments to the guidelines not more than once each year. Such amendments shall be limited to: (a) Addressing technical or procedural issues that result from the review and adoption of master programs under the guidelines; or (b) issues of guideline compliance with statutory provisions. [2003 c 262 § 1; 1995 c 347 § 304; 1971 ex.s. c 286 § 6.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**90.58.065 Application of guidelines and master programs to agricultural activities.** (1) The guidelines adopted by the department and master programs developed or amended by local governments according to RCW 90.58.080 shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs developed or amended after June 13, 2002, shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and development not meeting the definition of agricultural activities. Nothing in this section limits or changes the terms of the \*current exception to the definition of substantial development in RCW 90.58.030(3)(e)(iv). This section applies only to this chapter, and shall not affect any other authority of local governments.

(2) For the purposes of this section:

(a) "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activi-

ties to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

(b) "Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products;

(c) "Agricultural equipment" and "agricultural facilities" includes, but is not limited to: (i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains; (ii) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; (iii) farm residences and associated equipment, lands, and facilities; and (iv) roadside stands and on-farm markets for marketing fruit or vegetables; and

(d) "Agricultural land" means those specific land areas on which agriculture activities are conducted.

(3) The department and local governments shall assure that local shoreline master programs use definitions consistent with the definitions in this section. [2002 c 298 § 1.]

**\*Reviser's note:** "Current" first appears in chapter 298, Laws of 2002.

**Implementation—2002 c 298:** "The provisions of this act do not become effective until the earlier of either January 1, 2004, or the date the department of ecology amends or updates chapter 173-16 or 173-26 WAC." [2002 c 298 § 2.]

**90.58.070 Local governments to submit letters of intent—Department to act upon failure of local government.** (1) Local governments are directed with regard to shorelines of the state in their various jurisdictions to submit to the director of the department, within six months from June 1, 1971, letters stating that they propose to complete an inventory and develop master programs for these shorelines as provided for in RCW 90.58.080.

(2) If any local government fails to submit a letter as provided in subsection (1) of this section, or fails to adopt a master program for the shorelines of the state within its jurisdiction in accordance with the time schedule provided in this chapter, the department shall carry out the requirements of RCW 90.58.080 and adopt a master program for the shorelines of the state within the jurisdiction of the local government. [1971 ex.s. c 286 § 7.]

**90.58.080 Timetable for local governments to develop or amend master programs—Review of master programs—Grants.** (1) Local governments shall develop or amend a master program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines adopted by the department in accordance with the schedule established by this section.

(2)(a) Subject to the provisions of subsections (5) and (6) of this section, each local government subject to this chapter shall develop or amend its master program for the regulation of uses of shorelines within its jurisdiction according to the following schedule:

(i) On or before December 1, 2005, for the city of Port Townsend, the city of Bellingham, the city of Everett, Snohomish county, and Whatcom county;

(ii) On or before December 1, 2009, for King county and the cities within King county greater in population than ten thousand;

(iii) Except as provided by (a)(i) and (ii) of this subsection, on or before December 1, 2011, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(iv) On or before December 1, 2012, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(v) On or before December 1, 2013, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(vi) On or before December 1, 2014, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(b) Nothing in this subsection (2) shall preclude a local government from developing or amending its master program prior to the dates established by this subsection (2).

(3)(a) Following approval by the department of a new or amended master program, local governments required to develop or amend master programs on or before December 1, 2009, as provided by subsection (2)(a)(i) and (ii) of this section, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) of this section and shall not be required to complete master program amendments until seven years after the applicable dates established by subsection (2)(a)(iii) of this section. Any jurisdiction listed in subsection (2)(a)(i) of this section that has a new or amended master program approved by the department on or after March 1, 2002, but before July 27, 2003, shall not be required to complete master program amendments until seven years after the applicable date provided by subsection (2)(a)(iii) of this section.

(b) Following approval by the department of a new or amended master program, local governments choosing to develop or amend master programs on or before December 1, 2009, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) through (vi) of this section and shall not be required to complete master program amendments until seven years after the applicable dates established by subsection (2)(a)(iii) through (vi) of this section.

(2006 Ed.)

(4) Local governments shall conduct a review of their master programs at least once every seven years after the applicable dates established by subsection (2)(a)(iii) through (vi) of this section. Following the review required by this subsection (4), local governments shall, if necessary, revise their master programs. The purpose of the review is:

(a) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and

(b) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(5) Local governments are encouraged to begin the process of developing or amending their master programs early and are eligible for grants from the department as provided by RCW 90.58.250, subject to available funding. Except for those local governments listed in subsection (2)(a)(i) and (ii) of this section, the deadline for completion of the new or amended master programs shall be two years after the date the grant is approved by the department. Subsequent master program review dates shall not be altered by the provisions of this subsection.

(6)(a) Grants to local governments for developing and amending master programs pursuant to the schedule established by this section shall be provided at least two years before the adoption dates specified in subsection (2) of this section. To the extent possible, the department shall allocate grants within the amount appropriated for such purposes to provide reasonable and adequate funding to local governments that have indicated their intent to develop or amend master programs during the biennium according to the schedule established by subsection (2) of this section. Any local government that applies for but does not receive funding to comply with the provisions of subsection (2) of this section may delay the development or amendment of its master program until the following biennium.

(b) Local governments with delayed compliance dates as provided in (a) of this subsection shall be the first priority for funding in subsequent biennia, and the development or amendment compliance deadline for those local governments shall be two years after the date of grant approval.

(c) Failure of the local government to apply in a timely manner for a master program development or amendment grant in accordance with the requirements of the department shall not be considered a delay resulting from the provisions of (a) of this subsection.

(7) Notwithstanding the provisions of this section, all local governments subject to the requirements of this chapter that have not developed or amended master programs on or after March 1, 2002, shall, no later than December 1, 2014, develop or amend their master programs to comply with guidelines adopted by the department after January 1, 2003. [2003 c 262 § 2; 1995 c 347 § 305; 1974 ex.s. c 61 § 1; 1971 ex.s. c 286 § 8.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**90.58.090 Approval of master program or segments or amendments—Procedure—Departmental alternatives when shorelines of statewide significance—Later adop-**

**tion of master program supersedes departmental program.** (1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department. Within the time period provided in RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

(2) Upon receipt of a proposed master program or amendment, the department shall:

(a) Provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of proposed master programs or amendments generally or for a specific area, subject matter, or issue. The comment period shall be at least thirty days, unless the department determines that the level of complexity or controversy involved supports a shorter period;

(b) In the department's discretion, conduct a public hearing during the thirty-day comment period in the jurisdiction proposing the master program or amendment;

(c) Within fifteen days after the close of public comment, request the local government to review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues;

(d) Within thirty days after receipt of the local government response pursuant to (c) of this subsection, make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines, provide a response to the issues identified in (c) of this subsection, and either approve the proposal as submitted, recommend specific changes necessary to make the proposal approvable, or deny approval of the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government, all interested persons, parties, groups, and agencies of record on the proposal;

(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the written findings and conclusions to the local government, the local government may:

(i) Agree to the proposed changes. The receipt by the department of the written notice of agreement constitutes final action by the department approving the amendment; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide written notice to all recipients of the written findings and conclusions. If the department determines the proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.

(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the

submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(4) The department shall approve the segment of a master program relating to critical areas as defined by RCW 36.70A.030(5) provided the master program segment is consistent with RCW 90.58.020 and applicable shoreline guidelines, and if the segment provides a level of protection of critical areas at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).

(5) The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the statewide interest. If the department does not approve a segment of a local government master program relating to a shoreline of statewide significance, the department may develop and by rule adopt an alternative to the local government's proposal.

(6) In the event a local government has not complied with the requirements of RCW 90.58.070 it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines.

(7) A master program or amendment to a master program takes effect when and in such form as approved or adopted by the department. Shoreline master programs that were adopted by the department prior to July 22, 1995, in accordance with the provisions of this section then in effect, shall be deemed approved by the department in accordance with the provisions of this section that became effective on that date. The department shall maintain a record of each master program, the action taken on any proposal for adoption or amendment of the master program, and any appeal of the department's action. The department's approved document of record constitutes the official master program. [2003 c 321 § 3; 1997 c 429 § 50; 1995 c 347 § 306; 1971 ex.s. c 286 § 9.]

**Finding—Intent—2003 c 321:** See note following RCW 90.58.030.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**90.58.100 Programs as constituting use regulations—Duties when preparing programs and amendments thereto—Program contents.** (1) The master programs provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, industrial projects of statewide significance, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;

(h) An element that gives consideration to the statewide interest in the prevention and minimization of flood damages; and

(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter.

(3) The master programs shall include such map or maps, descriptive text, diagrams and charts, or other descriptive material as are necessary to provide for ease of understanding.

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.

(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140(3).

(6) Each master program shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment. [1997 c 369 § 7; 1995 c 347 § 307; 1992 c 105 § 2; 1991 c 322 § 32; 1971 ex.s. c 286 § 10.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.  
*Industrial project of statewide significance—Defined:* RCW 43.157.010.

**90.58.110 Development of program within two or more adjacent local government jurisdictions—Development of program in segments, when.** (1) Whenever it shall appear to the director that a master program should be developed for a region of the shorelines of the state which includes lands and waters located in two or more adjacent local government jurisdictions, the director shall designate such region and notify the appropriate units of local government thereof. It shall be the duty of the notified units to develop cooperatively an inventory and master program in accordance with and within the time provided in RCW 90.58.080.

(2) At the discretion of the department, a local government master program may be adopted in segments applicable to particular areas so that immediate attention may be given to those areas of the shorelines of the state in most need of a use regulation. [1971 ex.s. c 286 § 11.]

**90.58.120 Adoption of rules, programs, etc., subject to RCW 34.05.310 through 34.05.395—Public hearings, notice of—Public inspection after approval or adoption.** All rules, regulations, designations, and guidelines, issued by the department, and master programs and amendments adopted by the department pursuant to RCW 90.58.070(2) or \*90.58.090(4) shall be adopted or approved in accordance with the provisions of RCW 34.05.310 through 34.05.395 insofar as such provisions are not inconsistent with the provisions of this chapter. In addition:

(1) Prior to the adoption by the department of a master program, or portion thereof pursuant to RCW 90.58.070(2) or \*90.58.090(4), at least one public hearing shall be held in each county affected by a program or portion thereof for the purpose of obtaining the views and comments of the public. Notice of each such hearing shall be published at least once in one or more newspapers of general circulation in the county in which the hearing is to be held.

(2) All guidelines, regulations, designations, or master programs adopted or approved under this chapter shall be available for public inspection at the office of the department or the appropriate county and city. The terms "adopt" and "approve" for purposes of this section, shall include modifications and rescission of guidelines. [1995 c 347 § 308; 1989 c 175 § 182; 1975 1st ex.s. c 182 § 2; 1971 ex.s. c 286 § 12.]

\*Reviser's note: RCW 90.58.090 was amended by 2003 c 321 § 3, changing subsection (4) to subsection (5).

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**90.58.130 Involvement of all persons and entities having interest, means.** To insure that all persons and entities having an interest in the guidelines and master programs developed under this chapter are provided with a full opportunity for involvement in both their development and implementation, the department and local governments shall:

(1) Make reasonable efforts to inform the people of the state about the shoreline management program of this chapter and in the performance of the responsibilities provided in this chapter, shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of this chapter; and

(2) Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or responsibilities relating to the shorelines of the state. State and local agencies are directed to participate fully to insure that their interests are fully considered by the department and local governments. [1971 ex.s. c 286 § 13.]

**90.58.140 Development permits—Grounds for granting—Administration by local government, conditions—Applications—Notices—Rescission—Approval when permit for variance or conditional use.** (1) A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

(2) A substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

A permit shall be granted:

(a) From June 1, 1971, until such time as an applicable master program has become effective, only when the development proposed is consistent with: (i) The policy of RCW 90.58.020; and (ii) after their adoption, the guidelines and

rules of the department; and (iii) so far as can be ascertained, the master program being developed for the area;

(b) After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and this chapter.

(3) The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established shall be performed exclusively by the local government.

(4) Except as otherwise specifically provided in subsection (1) of this section, the local government shall require notification of the public of all applications for permits governed by any permit system established pursuant to subsection (3) of this section by ensuring that notice of the application is given by at least one of the following methods:

(a) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed;

(b) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed; or

(c) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public.

The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the comments or requests for decisions to the local government within thirty days of the last date the notice is to be published pursuant to this subsection. The local government shall forward, in a timely manner following the issuance of a decision, a copy of the decision to each person who submits a request for the decision.

If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

(5) The system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of filing as defined in subsection (6) of this section except as follows:

(a) In the case of any permit issued to the state of Washington, department of transportation, for the construction and modification of SR 90 (I-90) on or adjacent to Lake Washington, the construction may begin after thirty days from the date of filing, and the permits are valid until December 31, 1995;

(b) Construction may be commenced no sooner than thirty days after the date of the appeal of the board's decision is filed if a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within twenty-one days of the date of filing, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the per-

mit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to chapter 34.05 RCW. The appellant may request, within ten days of the filing of the appeal with the court, a hearing before the court to determine whether construction pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board should not commence. If, at the conclusion of the hearing, the court finds that construction pursuant to such a permit would involve a significant, irreversible damaging of the environment, the court shall prohibit the permittee from commencing the construction pursuant to the approved or revised permit until all review proceedings are final. Construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit, and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated. In such a hearing before the court, the burden of proving whether the construction may involve significant irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate is on the appellant;

(c) If the permit is for a substantial development meeting the requirements of subsection (11) of this section, construction pursuant to that permit may not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section.

If a permittee begins construction pursuant to subsections (a), (b), or (c) of this subsection, the construction is begun at the permittee's own risk. If, as a result of judicial review, the courts order the removal of any portion of the construction or the restoration of any portion of the environment involved or require the alteration of any portion of a substantial development constructed pursuant to a permit, the permittee is barred from recovering damages or costs involved in adhering to such requirements from the local government that granted the permit, the hearings board, or any appellant or intervener.

(6) Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general. With regard to a permit other than a permit governed by subsection (10) of this section, "date of filing" as used herein means the date of actual receipt by the department. With regard to a permit for a variance or a conditional use, "date of filing" means the date a decision of the department rendered on the permit pursuant to subsection (10) of this section is transmitted by the department to the local government. The department shall notify in writing the local government and the applicant of the date of filing.

(7) Applicants for permits under this section have the burden of proving that a proposed substantial development is consistent with the criteria that must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.180 (1) and (2), the person requesting the review has the burden of proof.

(8) Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied

with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.

(9) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under this section.

(10) Any permit for a variance or a conditional use by local government under approved master programs must be submitted to the department for its approval or disapproval.

(11)(a) An application for a substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single family residence and its appurtenant structures from shoreline erosion shall be subject to the following procedures:

(i) The public comment period under subsection (4) of this section shall be twenty days. The notice provided under subsection (4) of this section shall state the manner in which the public may obtain a copy of the local government decision on the application no later than two days following its issuance;

(ii) The local government shall issue its decision to grant or deny the permit within twenty-one days of the last day of the comment period specified in (i) of this subsection; and

(iii) If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within thirty days.

(b) For purposes of this section, a limited utility extension means the extension of a utility service that:

(i) Is categorically exempt under chapter 43.21C RCW for one or more of the following: Natural gas, electricity, telephone, water, or sewer;

(ii) Will serve an existing use in compliance with this chapter; and

(iii) Will not extend more than twenty-five hundred linear feet within the shorelines of the state. [1995 c 347 § 309; 1992 c 105 § 3; 1990 c 201 § 2; 1988 c 22 § 1; 1984 c 7 § 386; 1977 ex.s. c 358 § 1; 1975-'76 2nd ex.s. c 51 § 1; 1975 1st ex.s. c 182 § 3; 1973 2nd ex.s. c 19 § 1; 1971 ex.s. c 286 § 14.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Finding—Intent—1990 c 201:** "The legislature finds that delays in substantial development permit review for the extension of vital utility services to existing and lawful uses within the shorelines of the state have caused hardship upon existing residents without serving any of the purposes and policies of the shoreline management act. It is the intent of this act to provide a more expeditious permit review process for that limited category of utility extension activities only, while fully preserving safeguards of public review and appeal rights regarding permit applications and decisions." [1990 c 201 § 1.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**90.58.143 Time requirements—Substantial development permits, variances, conditional use permits.** (1) The time requirements of this section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized under this chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter, local government may adopt different time limits from those set forth in subsections (2) and (3) of this section as a part of action on a substantial development permit.

(2) Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.

(3) Authorization to conduct construction activities shall terminate five years after the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

(4) The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in subsections (2) and (3) of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals. [1997 c 429 § 51; 1996 c 62 § 1.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**90.58.147 Substantial development permit—Exemption for projects to improve fish or wildlife habitat or fish passage.** (1) A public or private project that is designed to improve fish or wildlife habitat or fish passage shall be exempt from the substantial development permit requirements of this chapter when all of the following apply:

(a) The project has been approved by the department of fish and wildlife;

(b) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and

(c) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

(2) Fish habitat enhancement projects that conform to the provisions of \*RCW 77.55.290 are determined to be consis-

tent with local shoreline master programs. [2003 c 39 § 49; 1998 c 249 § 4; 1995 c 333 § 1.]

**\*Reviser's note:** RCW 77.55.290 was recodified as RCW 77.55.181 pursuant to 2005 c 146 § 1001.

**Findings—Purpose—Report—Effective date—1998 c 249:** See notes following RCW 77.55.181.

**90.58.150 Selective commercial timber cutting, when.** With respect to timber situated within two hundred feet abutting landward of the ordinary high water mark within shorelines of statewide significance, the department or local government shall allow only selective commercial timber cutting, so that no more than thirty percent of the merchantable trees may be harvested in any ten year period of time: PROVIDED, That other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions or silviculture practices necessary for regeneration render selective logging ecologically detrimental: PROVIDED FURTHER, That clear cutting of timber which is solely incidental to the preparation of land for other uses authorized by this chapter may be permitted. [1971 ex.s. c 286 § 15.]

**90.58.160 Prohibition against surface drilling for oil or gas, where.** Surface drilling for oil or gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the Strait of Juan de Fuca seaward from the ordinary high water mark and on all lands within one thousand feet landward from said mark. [1971 ex.s. c 286 § 16.]

**90.58.170 Shorelines hearings board—Established—Members—Chairman—Quorum for decision—Expenses of members.** A shorelines hearings board sitting as a quasi judicial body is hereby established within the environmental hearings office under RCW 43.21B.005. The shorelines hearings board shall be made up of six members: Three members shall be members of the pollution control hearings board; two members, one appointed by the association of Washington cities and one appointed by the association of county commissioners, both to serve at the pleasure of the associations; and the commissioner of public lands or his or her designee. The chairman of the pollution control hearings board shall be the chairman of the shorelines hearings board. Except as provided in RCW 90.58.185, a decision must be agreed to by at least four members of the board to be final. The members of the shorelines board shall receive the compensation, travel, and subsistence expenses as provided in RCW 43.03.050 and 43.03.060. [1994 c 253 § 1; 1988 c 128 § 76; 1979 ex.s. c 47 § 6; 1971 ex.s. c 286 § 17.]

**Intent—1979 ex.s. c 47:** See note following RCW 43.21B.005.

**90.58.175 Rules and regulations.** The shorelines hearings board may adopt rules and regulations governing the administrative practice and procedure in and before the board. [1973 1st ex.s. c 203 § 3.]

**90.58.180 Appeals from granting, denying, or rescinding permits—Board to act—Local government appeals to board—Grounds for declaring rule, regulation, or guideline invalid—Appeals to court.** (1) Any per-

son aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may, except as otherwise provided in chapter 43.21L RCW, seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of filing as defined in RCW 90.58.140(6).

Within seven days of the filing of any petition for review with the board as provided in this section pertaining to a final decision of a local government, the petitioner shall serve copies of the petition on the department, the office of the attorney general, and the local government. The department and the attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the petition for review filed pursuant to this section. The shorelines hearings board shall schedule review proceedings on the petition for review without regard as to whether the period for the department or the attorney general to intervene has or has not expired.

(2) The department or the attorney general may obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the shorelines hearings board and the appropriate local government within twenty-one days from the date the final decision was filed as provided in RCW 90.58.140(6).

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. Judicial review of such proceedings of the shorelines hearings board is governed by chapter 34.05 RCW. The board shall issue its decision on the appeal authorized under subsections (1) and (2) of this section within one hundred eighty days after the date the petition is filed with the board or a petition to intervene is filed by the department or the attorney general, whichever is later. The time period may be extended by the board for a period of thirty days upon a showing of good cause or may be waived by the parties.

(4) Any person may appeal any rules, regulations, or guidelines adopted or approved by the department within thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

(5) The board shall find the rule, regulation, or guideline to be valid and enter a final decision to that effect unless it determines that the rule, regulation, or guideline:

- (a) Is clearly erroneous in light of the policy of this chapter; or
- (b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or
- (c) Is arbitrary and capricious; or
- (d) Was developed without fully considering and evaluating all material submitted to the department during public review and comment; or
- (e) Was not adopted in accordance with required procedures.

(6) If the board makes a determination under subsection (5)(a) through (e) of this section, it shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a

statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government and any other interested party, a new rule, regulation, or guideline consistent with the board's decision.

(7) A decision of the board on the validity of a rule, regulation, or guideline shall be subject to review in superior court, if authorized pursuant to chapter 34.05 RCW. A petition for review of the decision of the shorelines hearings board on a rule, regulation, or guideline shall be filed within thirty days after the date of final decision by the shorelines hearings board. [2003 c 393 § 22; 1997 c 199 § 1; 1995 c 347 § 310; 1994 c 253 § 3; 1989 c 175 § 183; 1986 c 292 § 2; 1975-'76 2nd ex.s. c 51 § 2; 1975 1st ex.s. c 182 § 4; 1973 1st ex.s. c 203 § 2; 1971 ex.s. c 286 § 18.]

**Implementation—Effective date—2003 c 393:** See RCW 43.21L.900 and 43.21L.901.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1986 c 292:** See note following RCW 90.58.030.

*Appeal under this chapter also subject of appeal under state environmental policy act: RCW 43.21C.075.*

### **90.58.185 Appeals involving single-family residences or involving penalties of fifteen thousand dollars or less—Composition of board—Rules to expedite appeals.**

(1) In the case of an appeal involving a single-family residence or appurtenance to a single-family residence, including a dock or pier designed to serve a single-family residence, or of appeals involving a penalty of fifteen thousand dollars or less, the request for review may be heard by a panel of three board members, at least one and not more than two of whom shall be members of the pollution control hearings board. Two members of the three must agree to issue a final decision of the board.

(2) The board shall define by rule alternative processes to expedite appeals, including those involving a single-family residence or appurtenance to a single-family residence, including a dock or pier designed to serve a single-family residence, or involving a penalty of fifteen thousand dollars or less. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals. [2005 c 34 § 1; 1994 c 253 § 2.]

### **90.58.190 Appeal of department's decision to adopt or amend a master program.**

(1) The appeal of the department's decision to adopt a master program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is governed by RCW 34.05.510 through 34.05.598.

(2)(a) The department's decision to approve, reject, or modify a proposed master program or amendment adopted by a local government planning under RCW 36.70A.040 shall be appealed to the growth management hearings board with jurisdiction over the local government. The appeal shall be initiated by filing a petition as provided in RCW 36.70A.250 through 36.70A.320.

(b) If the appeal to the growth management hearings board concerns shorelines, the growth management hearings board shall review the proposed master program or amend-

ment solely for compliance with the requirements of this chapter, the policy of RCW 90.58.020 and the applicable guidelines, the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under chapter 90.58 RCW.

(c) If the appeal to the growth management hearings board concerns a shoreline of statewide significance, the board shall uphold the decision by the department unless the board, by clear and convincing evidence, determines that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) The appellant has the burden of proof in all appeals to the growth management hearings board under this subsection.

(e) Any party aggrieved by a final decision of a growth management hearings board under this subsection may appeal the decision to superior court as provided in RCW 36.70A.300.

(3)(a) The department's decision to approve, reject, or modify a proposed master program or master program amendment by a local government not planning under RCW 36.70A.040 shall be appealed to the shorelines hearings board by filing a petition within thirty days of the date of the department's written notice to the local government of the department's decision to approve, reject, or modify a proposed master program or master program amendment as provided in RCW 90.58.090(2).

(b) In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program amendment and, after full consideration of the presentations of the local government and the department, shall determine the validity of the local government's master program or amendment in light of the policy of RCW 90.58.020 and the applicable guidelines.

(c) In an appeal relating to shorelines of statewide significance, the shorelines hearings board shall uphold the decision by the department unless the board determines, by clear and convincing evidence that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) Review by the shorelines hearings board shall be considered an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act. The aggrieved local government shall have the burden of proof in all such reviews.

(e) Whenever possible, the review by the shorelines hearings board shall be heard within the county where the land subject to the proposed master program or master program amendment is primarily located. The department and any local government aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in chapter 34.05 RCW.

(4) A master program amendment shall become effective after the approval of the department or after the decision of the shorelines hearings board to uphold the master program or master program amendment, provided that the board may remand the master program or master program adjustment to the local government or the department for modification prior to the final adoption of the master program or master program

amendment. [2003 c 321 § 4; 1995 c 347 § 311; 1989 c 175 § 184; 1986 c 292 § 3; 1971 ex.s. c 286 § 19.]

**Finding—Intent—2003 c 321:** See note following RCW 90.58.030.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1986 c 292:** See note following RCW 90.58.030.

**90.58.195 Shoreline master plan review—Local governments with coastal waters or coastal shorelines.** (1) The department of ecology, in cooperation with other state agencies and coastal local governments, shall prepare and adopt ocean use guidelines and policies to be used in reviewing, and where appropriate, amending, shoreline master programs of local governments with coastal waters or coastal shorelines within their boundaries. These guidelines shall be finalized by April 1, 1990.

(2) After the department of ecology has adopted the guidelines required in subsection (1) of this section, counties, cities, and towns with coastal waters or coastal shorelines shall review their shoreline master programs to ensure that the programs conform with RCW 43.143.010 and 43.143.030 and with the department of ecology's ocean use guidelines. Amended master programs shall be submitted to the department of ecology for its approval under RCW 90.58.090 by June 30, 1991. [1989 1st ex.s. c 2 § 13.]

**90.58.200 Rules and regulations.** The department and local governments are authorized to adopt such rules as are necessary and appropriate to carry out the provisions of this chapter. [1971 ex.s. c 286 § 20.]

**90.58.210 Court actions to insure against conflicting uses and to enforce—Civil penalty—Review.** (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, the attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state in conflict with the provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter.

(2) Any person who shall fail to conform to the terms of a permit issued under this chapter or who shall undertake development on the shorelines of the state without first obtaining any permit required under this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.

(3) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(4) Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the

department for remission or mitigation of such penalty. Upon receipt of the application, the department or local government may remit or mitigate the penalty upon whatever terms the department or local government in its discretion deems proper. Any penalty imposed pursuant to this section by the department shall be subject to review by the shorelines hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the shorelines hearings board. [1995 c 403 § 637; 1986 c 292 § 4; 1971 ex.s. c 286 § 21.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**Severability—1986 c 292:** See note following RCW 90.58.030.

**90.58.220 General penalty.** In addition to incurring civil liability under RCW 90.58.210, any person found to have wilfully engaged in activities on the shorelines of the state in violation of the provisions of this chapter or any of the master programs, rules, or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five nor more than one thousand dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment: PROVIDED, That the fine for the third and all subsequent violations in any five-year period shall be not less than five hundred nor more than ten thousand dollars: PROVIDED FURTHER, That fines for violations of RCW 90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560. [1983 c 138 § 3; 1971 ex.s. c 286 § 22.]

**90.58.230 Violators liable for damages resulting from violation—Attorney’s fees and costs.** Any person subject to the regulatory program of this chapter who violates any provision of this chapter or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The attorney general or local government attorney shall bring suit for damages under this section on behalf of the state or local governments. Private persons shall have the right to bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney’s fees and costs of the suit to the prevailing party. [1971 ex.s. c 286 § 23.]

**90.58.240 Additional authority granted department and local governments.** In addition to any other powers granted hereunder, the department and local governments may:

(1) Acquire lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with

other governmental entities, when necessary to achieve implementation of master programs adopted hereunder;

(2) Accept grants, contributions, and appropriations from any agency, public or private, or individual for the purposes of this chapter;

(3) Appoint advisory committees to assist in carrying out the purposes of this chapter;

(4) Contract for professional or technical services required by it which cannot be performed by its employees. [1972 ex.s. c 53 § 1; 1971 ex.s. c 286 § 24.]

**90.58.250 Intent—Department to cooperate with local governments—Grants for development of master programs.** (1) The legislature intends to eliminate the limits on state funding of shoreline master program development and amendment costs. The legislature further intends that the state will provide funding to local governments that is reasonable and adequate to accomplish the costs of developing and amending shoreline master programs consistent with the schedule established by RCW 90.58.080. Except as specifically described herein, nothing in chapter 262, Laws of 2003 is intended to alter the existing obligation, duties, and benefits provided by chapter 262, Laws of 2003 to local governments and the department.

(2) The department is directed to cooperate fully with local governments in discharging their responsibilities under this chapter. Funds shall be available for distribution to local governments on the basis of applications for preparation of master programs and the provisions of RCW 90.58.080(7). Such applications shall be submitted in accordance with regulations developed by the department. The department is authorized to make and administer grants within appropriations authorized by the legislature to any local government within the state for the purpose of developing a master shorelines program. [2003 c 262 § 3; 1971 ex.s. c 286 § 25.]

**90.58.260 State to represent its interest before federal agencies, interstate agencies and courts.** The state, through the department of ecology and the attorney general, shall represent its interest before water resource regulation management, development, and use agencies of the United States, including among others, the federal power commission, environmental protection agency, corps of engineers, department of the interior, department of agriculture and the atomic energy commission, before interstate agencies and the courts with regard to activities or uses of shorelines of the state and the program of this chapter. Where federal or interstate agency plans, activities, or procedures conflict with state policies, all reasonable steps available shall be taken by the state to preserve the integrity of its policies. [1971 ex.s. c 286 § 26.]

**90.58.270 Nonapplication to certain structures, docks, developments, etc., placed in navigable waters—Nonapplication to certain rights of action, authority.** (1) Nothing in this statute shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments placed in navigable waters prior to December 4, 1969, and the consent and authorization of the state of Washington to the impairment of public rights of

navigation, and corollary rights incidental thereto, caused by the retention and maintenance of said structures, improvements, docks, fills or developments are hereby granted: PROVIDED, That the consent herein given shall not relate to any structures, improvements, docks, fills, or developments placed on tidelands, shorelands, or beds underlying said waters which are in trespass or in violation of state statutes.

(2) Nothing in this section shall be construed as altering or abridging any private right of action, other than a private right which is based upon the impairment of public rights consented to in subsection (1) hereof.

(3) Nothing in this section shall be construed as altering or abridging the authority of the state or local governments to suppress or abate nuisances or to abate pollution.

(4) Subsection (1) of this section shall apply to any case pending in the courts of this state on June 1, 1971 relating to the removal of structures, improvements, docks, fills, or developments based on the impairment of public navigational rights. [1971 ex.s. c 286 § 27.]

**90.58.280 Application to all state agencies, counties, public and municipal corporations.** The provisions of this chapter shall be applicable to all agencies of state government, counties, and public and municipal corporations and to all shorelines of the state owned or administered by them. [1971 ex.s. c 286 § 28.]

**90.58.290 Restrictions as affecting fair market value of property.** The restrictions imposed by this chapter shall be considered by the county assessor in establishing the fair market value of the property. [1971 ex.s. c 286 § 29.]

**90.58.300 Department as regulating state agency—Special authority.** The department of ecology is designated the state agency responsible for the program of regulation of the shorelines of the state, including coastal shorelines and the shorelines of the inner tidal waters of the state, and is authorized to cooperate with the federal government and sister states and to receive benefits of any statutes of the United States whenever enacted which relate to the programs of this chapter. [1971 ex.s. c 286 § 30.]

**90.58.310 Designation of shorelines of statewide significance by legislature—Recommendation by director, procedure.** Additional shorelines of the state shall be designated shorelines of statewide significance only by affirmative action of the legislature.

The director of the department may, however, from time to time, recommend to the legislature areas of the shorelines of the state which have statewide significance relating to special economic, ecological, educational, developmental, recreational, or aesthetic values to be designated as shorelines of statewide significance.

Prior to making any such recommendation the director shall hold a public hearing in the county or counties where the shoreline under consideration is located. It shall be the duty of the county commissioners of each county where such a hearing is conducted to submit their views with regard to a proposed designation to the director at such date as the director determines but in no event shall the date be later than sixty

days after the public hearing in the county. [1971 ex.s. c 286 § 31.]

**90.58.320 Height limitation respecting permits.** No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served. [1971 ex.s. c 286 § 32.]

**90.58.340 Use policies for land adjacent to shorelines, development of.** All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans, and ordinances relative to lands under their respective jurisdictions adjacent to the shorelines of the state so as the [to] achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state. The department may develop recommendations for land use control for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government. [1971 ex.s. c 286 § 34.]

**90.58.350 Nonapplication to treaty rights.** Nothing in this chapter shall affect any rights established by treaty to which the United States is a party. [1971 ex.s. c 286 § 35.]

**90.58.355 Hazardous substance remedial actions—Procedural requirements not applicable.** The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 20.]

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**90.58.360 Existing requirements for permits, certificates, etc., not obviated.** Nothing in this chapter shall obviate any requirement to obtain any permit, certificate, license, or approval from any state agency or local government. [1971 ex.s. c 286 § 36.]

**90.58.370 Processing of permits or authorizations for emergency water withdrawal and facilities to be expedited.** All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency

nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application. [1989 c 171 § 11; 1987 c 343 § 5.]

**Severability—1989 c 171:** See note following RCW 43.83B.400.

**Severability—1987 c 343:** See note following RCW 43.83B.300.

**90.58.380 Adoption of wetland manual.** The department by rule shall adopt a manual for the delineation of wetlands under this chapter that implements and is consistent with the 1987 manual in use on January 1, 1995, by the United States army corps of engineers and the United States environmental protection agency. If the corps of engineers and the environmental protection agency adopt changes to or a different manual, the department shall consider those changes and may adopt rules implementing those changes. [1995 c 382 § 11.]

**90.58.390 Certain secure community transition facilities not subject to chapter.** (*Expires June 30, 2009.*) An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under chapter 71.09 RCW. To meet this emergency, secure community transition facilities sited pursuant to the preemption provisions of RCW 71.09.342 and secure facilities sited pursuant to the preemption provisions of RCW 71.09.250 are not subject to the provisions of this chapter.

This section expires June 30, 2009. [2002 c 68 § 13.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**90.58.515 Watershed restoration projects—Exemption.** Watershed restoration projects as defined in RCW 89.08.460 are exempt from the requirement to obtain a substantial development permit. Local government shall review the projects for consistency with the locally adopted shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving a complete consolidated application form from the applicant. No fee may be charged for accepting and processing applications for watershed restoration projects as used in this section. [1995 c 378 § 16.]

**90.58.550 Oil or natural gas exploration in marine waters—Definitions—Application for permit—Requirements—Review—Enforcement.** (1) Within this section the following definitions apply:

(a) "Exploration activity" means reconnaissance or survey work related to gathering information about geologic features and formations underlying or adjacent to marine waters;

(b) "Marine waters" include the waters of Puget Sound north to the Canadian border, the waters of the Strait of Juan de Fuca, the waters between the western boundary of the state and the ordinary high water mark, and related bays and estuaries;

(c) "Vessel" includes ships, boats, barges, or any other floating craft.

(2) A person desiring to perform oil or natural gas exploration activities by vessel located on or within marine waters of the state shall first obtain a permit from the department of ecology. The department may approve an application for a

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permit only if it determines that the proposed activity will not:

(a) Interfere materially with the normal public uses of the marine waters of the state;

(b) Interfere with activities authorized by a permit issued under RCW 90.58.140(2);

(c) Injure the marine biota, beds, or tidelands of the waters;

(d) Violate water quality standards established by the department; or

(e) Create a public nuisance.

(3) Decisions on an application under subsection (2) of this section are subject to review only by the pollution control hearings board under chapter 43.21B RCW.

(4) This section does not apply to activities conducted by an agency of the United States or the state of Washington.

(5) This section does not lessen, reduce, or modify RCW 90.58.160.

(6) The department may adopt rules necessary to implement this section.

(7) The attorney general shall enforce this section. [1983 c 138 § 1.]

*Ocean resources management act: Chapter 43.143 RCW.*

*Transport of petroleum products or hazardous substances: Chapter 88.40 RCW.*

**90.58.560 Oil or natural gas exploration—Violations of RCW 90.58.550—Penalty—Appeal.** (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, a person who violates RCW 90.58.550, or any rule adopted thereunder, is subject to a penalty in an amount of up to five thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty provided for in this section.

(2) The penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the director or the director's representative describing such violation with reasonable particularity. The director or the director's representative may, upon written application therefor received within fifteen days after notice imposing any penalty is received by the person incurring the penalty, and when deemed to carry out the purposes of this chapter, remit or mitigate any penalty provided for in this section upon such terms as he or she deems proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he or she may deem proper.

(3) Any person incurring any penalty under this section may appeal the penalty to the hearings board as provided for in chapter 43.21B RCW. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the director or the director's representative setting forth the disposition of the application. Any

(3) Any person incurring any penalty under this section may appeal the penalty to the hearings board as provided for in chapter 43.21B RCW. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the director or the director's representative setting forth the disposition of the application. Any

penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred under this section is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund. [1995 c 403 § 638; 1983 c 138 § 2.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**90.58.570 Consultation before responding to federal coastal zone management certificates.** The department of ecology shall consult with affected state agencies, local governments, Indian tribes, and the public prior to responding to federal coastal zone management consistency certifications for uses and activities occurring on the federal outer continental shelf. [1989 1st ex.s. c 2 § 15.]

**Severability—1989 1st ex.s. c 2:** See RCW 43.143.902.

**90.58.600 Conformance with chapter 43.97 RCW required.** With respect to the National Scenic Area, as defined in the Columbia [River] Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a local government or the department of ecology pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact. [1987 c 499 § 10.]

**90.58.900 Liberal construction—1971 ex.s. c 286.** This chapter is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. [1971 ex.s. c 286 § 37.]

**90.58.910 Severability—1971 ex.s. c 286.** If any provision of this chapter, or its application to any person or legal entity or circumstances, is held invalid, the remainder of the act, or the application of the provision to other persons or legal entities or circumstances, shall not be affected. [1971 ex.s. c 286 § 40.]

**90.58.911 Severability—1983 c 138.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 138 § 4.]

**90.58.920 Effective date—1971 ex.s. c 286.** This chapter is necessary for the immediate preservation of the public peace, health and safety, the support of the state government, and its existing institutions. This 1971 act shall take effect on June 1, 1971. The director of ecology is authorized to immediately take such steps as are necessary to insure that this 1971 act is implemented on its effective date. [1971 ex.s. c 286 § 41.]

## Chapter 90.64 RCW

### DAIRY NUTRIENT MANAGEMENT

(Formerly: Dairy waste management)

#### Sections

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90.64.900	Effective date—1998 c 262.
90.64.901	Transfer of powers, duties, and functions to the department of agriculture.

**90.64.005 Findings.** The legislature finds that there is a need to establish a clear and understandable process that provides for the proper and effective management of dairy nutrients that affect the quality of surface or ground waters in the state of Washington. The legislature finds that there is a need for a program that will provide a stable and predictable business climate upon which dairy farms may base future investment decisions.

The legislature finds that federal regulations require a permit program for dairies with over seven hundred head of

mature cows and, other specified dairy farms that directly discharge into waters or are otherwise significant contributors of pollution. The legislature finds that significant work has been ongoing over a period of time and that the intent of this chapter is to take the consensus that has been developed and place it into statutory form.

It is also the intent of this chapter to establish an inspection and technical assistance program for dairy farms to address the discharge of pollution to surface and ground waters of the state that will lead to water quality compliance by the industry. A further purpose is to create a balanced program involving technical assistance, regulation, and enforcement with coordination and oversight of the program by a \*committee composed of industry, agency, and other representatives. Furthermore, it is the objective of this chapter to maintain the administration of the water quality program as it relates to dairy operations at the state level.

It is also the intent of this chapter to recognize the existing working relationships between conservation districts, the conservation commission, and the department of ecology in protecting water quality of the state. A further purpose of this chapter is to provide statutory recognition of the coordination of the functions of conservation districts, the conservation commission, and the department of ecology pertaining to development of dairy waste management plans for the protection of water quality. [1998 c 262 § 1; 1993 c 221 § 1.]

**\*Reviser's note:** The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

**90.64.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) **"\*Advisory and oversight committee"** means a balanced committee of agency, dairy farm, and interest group representatives convened to provide oversight and direction to the dairy nutrient management program.

(2) **"Bypass"** means the intentional diversion of waste streams from any portion of a treatment facility.

(3) **"Catastrophic"** means a tornado, hurricane, earthquake, flood, or other extreme condition that causes an overflow from a required waste retention structure.

(4) **"Certification"** means:

(a) The acknowledgment by a local conservation district that a dairy producer has constructed or otherwise put in place the elements necessary to implement his or her dairy nutrient management plan; and

(b) The acknowledgment by a dairy producer that he or she is managing dairy nutrients as specified in his or her approved dairy nutrient management plan.

(5) **"Chronic"** means a series of wet weather events that precludes the proper operation of a dairy nutrient management system that is designed for the current herd size.

(6) **"Conservation commission" or "commission"** means the conservation commission under chapter 89.08 RCW.

(7) **"Conservation districts" or "district"** means a subdivision of state government organized under chapter 89.08 RCW.

(8) **"Concentrated dairy animal feeding operation"** means a dairy animal feeding operation subject to regulation

under this chapter which the director designates under RCW 90.64.020 or meets the following criteria:

(a) Has more than seven hundred mature dairy cows, whether milked or dry cows, that are confined; or

(b) Has more than two hundred head of mature dairy cattle, whether milked or dry cows, that are confined and either:

(i) From which pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar manmade device; or

(ii) From which pollutants are discharged directly into surface or ground waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(9) **"Dairy animal feeding operation"** means a lot or facility where the following conditions are met:

(a) Dairy animals that have been, are, or will be stabled or confined and fed for a total of forty-five days or more in any twelve-month period; and

(b) Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more dairy animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single dairy animal feeding operation if they adjoin each other or if they use a common area for land application of wastes.

(10) **"Dairy farm"** means any farm that is licensed to produce milk under chapter 15.36 RCW.

(11) **"Dairy nutrient"** means any organic waste produced by dairy cows or a dairy farm operation.

(12) **"Dairy nutrient management plan"** means a plan meeting the requirements established under RCW 90.64.026.

(13) **"Dairy nutrient management technical assistance team"** means one or more professional engineers and local conservation district employees convened to serve one of four distinct geographic areas in the state.

(14) **"Dairy producer"** means a person who owns or operates a dairy farm.

(15) **"Department"** means the department of ecology under chapter 43.21A RCW.

(16) **"Director"** means the director of the department of ecology, or his or her designee.

(17) **"Upset"** means an exceptional incident in which there is an unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the dairy. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(18) **"Violation"** means the following acts or omissions:

(a) A discharge of pollutants into the waters of the state, except those discharges that are due to a chronic or catastrophic event, or to an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided in 40 C.F.R. Sec. 122.41, and that occur when:

(i) A dairy producer has a current national pollutant discharge elimination system permit with a wastewater system designed, operated, and maintained for the current herd size and that contains all process-generated wastewater plus average annual precipitation minus evaporation plus contami-

nated storm water runoff from a twenty-five year, twenty-four hour rainfall event for that specific location, and the dairy producer has complied with all permit conditions, including dairy nutrient management plan conditions for appropriate land application practices; or

(ii) A dairy producer does not have a national pollutant discharge elimination system permit, but has complied with all of the elements of a dairy nutrient management plan that: Prevents the discharge of pollutants to waters of the state, is commensurate with the dairy producer's current herd size, and is approved and certified under RCW 90.64.026;

(b) Failure to register as required under RCW 90.64.017; or

(c) The lack of an approved dairy nutrient management plan by July 1, 2002; or

(d) The lack of a certified dairy nutrient management plan for a dairy farm after December 31, 2003. [1998 c 262 § 2; 1993 c 221 § 2.]

**\*Reviser's note:** The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

**90.64.015 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 29.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**90.64.017 Registration of dairy producers—Information required—Information to producers regarding chapter.** (1) Every dairy producer licensed under chapter 15.36 RCW shall register with the department by September 1, 1998, and shall reregister with the department by September 1st of every even-numbered year. Every dairy producer licensed after September 1, 1998, shall register with the department within sixty days of licensing. The purpose of registration is to provide and update baseline information for the dairy nutrient management program.

(2) To facilitate registration, the department shall obtain from the food safety and animal health division of the department of agriculture a current list of all licensed dairy producers in the state and mail a registration form to each licensed dairy producer no later than July 15, 1998.

(3) At a minimum, the form shall require the following information as of the date the form is completed:

(a) The name and address of the operator of the dairy farm;

(b) The name and address of the dairy farm;

(c) The telephone number of the dairy farm;

(d) The number of cows in the dairy farm;

(e) The number of young stock in the dairy farm;

(f) The number of acres owned and rented in the dairy farm;

(g) Whether the dairy producer, to the best of his or her knowledge, has a plan for managing dairy nutrient discharges that is commensurate with the size of his or her herd, and whether the plan is being fully implemented; and

(h) If the fields where dairy nutrients are being applied belong to someone other than the dairy producer whose farm operation generated the nutrients, the name, address, and telephone number of the owners of the property accepting the dairy nutrients.

(4) In the mailing to dairy producers containing the registration form, the department shall also provide clear and comprehensive information regarding the requirements of this chapter.

(5) The department shall require the registrant to provide only information that is not already available from other sources accessible to the department, such as dairy licensing information. [1998 c 262 § 3.]

**90.64.020 Concentrated dairy animal feeding operation—Designation—Permit.** (1) The director of the department of ecology may designate any dairy animal feeding operation as a concentrated dairy animal feeding operation upon determining that it is a significant contributor of pollution to the surface or ground waters of the state. In making this designation the director shall consider the following factors:

(a) The size of the animal feeding operation and the amount of wastes reaching waters of the state;

(b) The location of the animal feeding operation relative to waters of the state;

(c) The means of conveyance of animal wastes and process waters into the waters of the state;

(d) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into the waters of the state; and

(e) Other relevant factors as established by the department by rule.

(2) A notice of intent to apply for a permit shall not be required from a concentrated dairy animal feeding operation designated under this section until the director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. [1993 c 221 § 3.]

**90.64.023 Inspection program.** (1) By October 1, 1998, the department shall initiate an inspection program of all dairy farms in the state. The purpose of the inspections is to:

(a) Survey for evidence of violations;

(b) Identify corrective actions for actual or imminent discharges that violate or could violate the state's water quality standards;

(c) Monitor the development and implementation of dairy nutrient management plans; and

(d) Identify dairy producers who would benefit from technical assistance programs.

(2) Local conservation district employees may, at their discretion, accompany department inspectors on any scheduled inspection of dairy farms except random, unannounced inspections.

(3) Follow-up inspections shall be conducted by the department to ensure that corrective and other actions as identified in the course of initial inspections are being carried

out. The department shall also conduct such additional inspections as are necessary to ensure compliance with state and federal water quality requirements, provided that all licensed dairy farms shall be inspected once within two years of the start of this program. The department, in consultation with the \*advisory and oversight committee established in section 8 of this act, shall develop performance-based criteria to determine the frequency of inspections.

(4) Dairy farms shall be prioritized for inspection based on the development of criteria that include, but are not limited to, the following factors:

- (a) Existence or implementation of a dairy nutrient management plan;
- (b) Proximity to impaired waters of the state; and
- (c) Proximity to all other waters of the state. The criteria developed to implement this subsection (4) shall be reviewed by the \*advisory and oversight committee. [1998 c 262 § 5.]

**\*Reviser's note:** The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

**90.64.026 Dairy nutrient management plans—Elements—Approval—Timelines—Certification.** (1) Except for those producers who already have a certified dairy nutrient management plan as required under the terms and conditions of an individual or general national pollutant discharge elimination system permit, all dairy producers licensed under chapter 15.36 RCW, regardless of size, shall prepare a dairy nutrient management plan. If at any time a dairy nutrient management plan fails to prevent the discharge of pollutants to waters of the state, it shall be required to be updated.

(2) By November 1, 1998, the conservation commission, in conjunction with the \*advisory and oversight committee established under section 8 of this act shall develop a document clearly describing the elements that a dairy nutrient management plan must contain to gain local conservation district approval.

(3) In developing the elements that an approved dairy nutrient management plan must contain, the commission may authorize the use of other methods and technologies than those developed by the natural resources conservation service when such alternatives have been evaluated by the \*advisory and oversight committee. Alternative methods and technologies shall meet the standards and specifications of:

(a) The natural resources conservation service as modified by the geographically based standards developed under RCW 90.64.140; or

(b) A professional engineer with expertise in the area of dairy nutrient management.

(4) In evaluating alternative technologies and methods, the principal objectives of the \*committee's evaluation shall be determining:

(a) Whether there is a substantial likelihood that, once implemented, the alternative technologies and methods would not violate water quality requirements;

(b) Whether more cost-effective methods can be successfully implemented in some or all categories of dairy operations; and

(c) Whether the technologies and methods approved or provided by the natural resources conservation service for

use by confined animal feeding operations are necessarily required for other categories of dairy operations.

In addition, the \*committee shall encourage the conservation commission and the conservation districts to apply in dairy nutrient management plans technologies and methods that are appropriate to the needs of the specific type of operation and the specific farm site and to avoid imposing requirements that are not necessary for the specific dairy producer to achieve compliance with water quality requirements.

(5) Such plans shall be submitted for approval to the local conservation district where the dairy farm is located, and shall be approved by conservation districts no later than by July 1, 2002. The conservation commission, in conjunction with conservation districts, shall develop a statewide schedule of plan development and approval to ensure adequate resources are available to have all plans approved by July 1, 2002.

(6) If a dairy producer leases land for dairy production from an owner who has prohibited the development of capital improvements, such as storage lagoons, on the leased property, the dairy producer shall indicate in his or her dairy nutrient management plan that such improvements are prohibited by the landowner and shall describe other methods, such as land application, that will be employed by the dairy producer to manage dairy nutrients.

(7) Notwithstanding the timelines in this section, any dairy farm licensed after September 1, 1998, shall have six months from the date of licensing to develop a dairy nutrient management plan and another eighteen months to fully implement that plan.

(8) If a plan contains the elements identified in subsection (2) of this section, a conservation district shall approve the plan no later than ninety days after receiving the plan. If the plan does not contain the elements identified in subsection (2) of this section, the local conservation district shall notify the dairy producer in writing of modifications needed in the plan no later than ninety days after receiving the plan. The dairy producer shall provide a revised plan that includes the needed modifications within ninety days of the date of the local conservation district notification. If the dairy producer does not agree with, or otherwise takes exception to, the modifications requested by the local conservation district, the dairy producer may initiate the appeals process described in RCW 90.64.028 within thirty days of receiving the letter of notification.

(9) An approved plan shall be certified by a conservation district and a dairy producer when the elements necessary to implement the plan have been constructed or otherwise put in place, and are being used as designed and intended. A certification form shall be developed by the conservation commission for use statewide and shall provide for a signature by both a conservation district representative and a dairy producer. Certification forms shall be signed by December 31, 2003, and a copy provided to the department for recording in the data base established in RCW 90.64.130.

(10) The ability of dairy producers to comply with the planning requirements of this chapter depends, in many cases, on the availability of federal and state funding to support technical assistance provided by local conservation districts. Dairy producers shall not be held responsible for non-compliance with the planning requirements of this chapter if

conservation districts are unable to perform their duties under this chapter because of insufficient funding. [1998 c 262 § 6.]

**\*Reviser's note:** The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

**90.64.028 Appeals from denial of plan approval or certification—Dairy producer-requested hearings—Extension of timelines.** (1) Conservation district decisions pertaining to denial of approval or denial of certification of a dairy nutrient management plan; modification or amendment of a plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and the failure to adhere to plan review and approval timelines identified in RCW 90.64.026 are appealable under this chapter. Department actions pertaining to water quality violations are appealable under chapter 90.48 RCW.

In addition, a dairy producer who is constrained from complying with the planning requirements of this chapter because of financial hardship or local permitting delays may request a hearing before the conservation commission and may request an extension of up to one year beyond the approval and certification dates prescribed in this chapter for plan approval and certification.

(2) Within thirty days of receiving a local conservation district notification regarding any of the decisions identified in subsection (1) of this section, a dairy producer who disagrees with any of these decisions may request an informal hearing before the conservation commission or may appeal directly to the pollution control hearings board. The commission shall issue a written decision no later than thirty days after the informal hearing.

(3) If the conservation commission reverses the decision of the conservation district, the conservation district may appeal this reversal to the pollution control hearings board according to the procedure in chapter 43.21B RCW within thirty days of receipt of the commission's decision.

(4) When an appeals process is initiated under this section, the length of time extending from the start of the appeals process to its conclusion shall be added onto the timelines provided in this chapter for plan development, approval, and certification only if an appeal is heard by the pollution control hearings board. [1998 c 262 § 7.]

**90.64.030 Investigation of dairy farms—Report of findings—Corrective action—Violations of water quality laws—Waivers—Penalties.** (1) Under the inspection program established in RCW 90.64.023, the department may investigate a dairy farm to determine whether the operation is discharging pollutants or has a record of discharging pollutants into surface or ground waters of the state. Upon concluding an investigation, the department shall make a written report of its findings, including the results of any water quality measurements, photographs, or other pertinent information, and provide a copy of the report to the dairy producer within twenty days of the investigation.

(2) The department shall investigate a written complaint filed with the department within three working days and shall make a written report of its findings including the results of

any water quality measurements, photographs, or other pertinent information. Within twenty days of receiving a written complaint, a copy of the findings shall be provided to the dairy producer subject to the complaint, and to the complainant if the person gave his or her name and address to the department at the time the complaint was filed.

(3) The department may consider past complaints against the same dairy farm from the same person and the results of its previous inspections, and has the discretion to decide whether to conduct an inspection if:

(a) The same or a similar complaint or complaints have been filed against the same dairy farm within the immediately preceding six-month period; and

(b) The department made a determination that the activity that was the subject of the prior complaint was not a violation.

(4) If the decision of the department is not to conduct an inspection, it shall document the decision and the reasons for the decision within twenty days. The department shall provide the decision to the complainant if the name and address were provided to the department, and to the dairy producer subject to the complaint, and the department shall place the decision in the department's administrative records.

(5) The report of findings of any inspection conducted as the result of either an oral or a written complaint shall be placed in the department's administrative records. Only findings of violations shall be entered into the data base identified in RCW 90.64.130.

(6) A dairy farm that is determined to be a significant contributor of pollution based on actual water quality tests, photographs, or other pertinent information is subject to the provisions of this chapter and to the enforcement provisions of chapters 43.05 and 90.48 RCW, including civil penalties levied under RCW 90.48.144.

(7) If the department determines that an unresolved water quality problem from a dairy farm requires immediate corrective action, the department shall notify the producer and the district in which the problem is located. When corrective actions are required to address such unresolved water quality problems, the department shall provide copies of all final dairy farm inspection reports and documentation of all formal regulatory and enforcement actions taken by the department against that particular dairy farm to the local conservation district and to the appropriate dairy farm within twenty days.

(8) For a violation of water quality laws that is a first offense for a dairy producer, the penalty may be waived to allow the producer to come into compliance with water quality laws. The department shall record all legitimate violations and subsequent enforcement actions.

(9) A discharge, including a storm water discharge, to surface waters of the state shall not be considered a violation of this chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall therefore not be enforceable by the department of ecology or a third party, if at the time of the discharge, a violation is not occurring under RCW 90.64.010(18). In addition, a dairy producer shall not be held liable for violations of this chapter, chapter 90.48 RCW, chapter 173-201A WAC, or the federal clean water act due to the discharge of dairy nutrients to waters of the state resulting from spreading these materials on lands other than where the

nutrients were generated, when the nutrients are spread by persons other than the dairy producer or the dairy producer's agent.

(10) As provided under RCW 7.48.305, agricultural activities associated with the management of dairy nutrients are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity has a substantial adverse effect on public health and safety.

(11) This section specifically acknowledges that if a holder of a general or individual national pollutant discharge elimination system permit complies with the permit and the dairy nutrient management plan conditions for appropriate land application practices, the permit provides compliance with the federal clean water act and acts as a shield against citizen or agency enforcement for any additions of pollutants to waters of the state or of the United States as authorized by the permit.

(12) A dairy producer who fails to have an approved dairy nutrient management plan by July 1, 2002, or a certified dairy nutrient management plan by December 31, 2003, and for which no appeals have been filed with the pollution control hearings board, is in violation of this chapter. Each month beyond these deadlines that a dairy producer is out of compliance with the requirement for either plan approval or plan certification shall be considered separate violations of chapter 90.64 RCW that may be subject to penalties. Such penalties may not exceed one hundred dollars per month for each violation up to a combined total of five thousand dollars. The department has discretion in imposing penalties for failure to meet deadlines for plan approval or plan certification if the failure to comply is due to lack of state funding for implementation of the program. Failure to register as required in RCW 90.64.017 shall subject a dairy producer to a maximum penalty of one hundred dollars. Penalties shall be levied by the department. [2003 c 325 § 3; 2002 c 327 § 1; 1998 c 262 § 11; 1993 c 221 § 4.]

**Intent—Finding—2003 c 325:** "A livestock nutrient management program is essential to ensuring a healthy and productive livestock industry in Washington state. The goal of the program must be to provide clear guidance to livestock farms as to their responsibilities under state and federal law to protect water quality while maintaining a healthy business climate for these farms. The program should develop reasonable financial assistance resources, educational and technical assistance to meet these responsibilities, and provide for periodic inspection and enforcement actions to ensure compliance with state and federal water quality laws. The legislature intends that by 2006, there will be a fully functioning state program for concentrated animal feeding operations in the state, and that this program will be a single program for all livestock sectors.

The legislature finds that a livestock nutrient management program is necessary to address the federal rule changes with which livestock operations must comply. Furthermore, budgetary conditions demand efficient and effective governance. In addition, many of the existing requirements and goals for dairy farms will be completed by December 2003, and revisions will be needed." [2003 c 325 § 1.]

**90.64.040 Appeal from actions and orders of the department.** Enforcement actions and administrative orders issued by the department of ecology may be appealed to the pollution control hearings board in accordance with the provisions of chapter 43.21B RCW. [1993 c 221 § 5.]

**90.64.050 Duties of department—Annual report to commission.** (1) The department has the following duties:

(a) Identify existing or potential water quality problems resulting from dairy farms through implementation of the inspection program in RCW 90.64.023;

(b) Inspect a dairy farm upon the request of a dairy producer;

(c) Receive, process, and verify complaints concerning discharge of pollutants from all dairy farms;

(d) Determine if a dairy-related water quality problem requires immediate corrective action under the Washington state water pollution control laws, chapter 90.48 RCW, or the Washington state water quality standards adopted under chapter 90.48 RCW. The department shall maintain the lead enforcement responsibility;

(e) Administer and enforce national pollutant discharge elimination system permits for operators of concentrated dairy animal feeding operations, where required by federal regulations and state laws or upon request of a dairy producer;

(f) Participate on the \*advisory and oversight committee;

(g) Encourage communication and cooperation between local department personnel and the appropriate conservation district personnel;

(h) Require the use of dairy nutrient management plans as required under this chapter for entities required to plan under this chapter; and

(i) Provide to the commission and the \*advisory and oversight committee an annual report of dairy farm inspection and enforcement activities.

(2) The department may not delegate its responsibilities in enforcement. [1998 c 262 § 12; 1993 c 221 § 6.]

**\*Reviser's note:** The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

**90.64.070 Duties of conservation district.** (1) The conservation district has the following duties:

(a) Provide technical assistance to the department in identifying and correcting existing water quality problems resulting from dairy farms through implementation of the inspection program in RCW 90.64.023;

(b) Immediately refer complaints received from the public regarding discharge of pollutants to the department;

(c) Encourage communication and cooperation between the conservation district personnel and local department personnel;

(d) Provide technical assistance to dairy producers in developing and implementing a dairy nutrient management plan; and

(e) Review, approve, and certify dairy nutrient management plans that meet the minimum standards developed under this chapter.

(2) The district's capability to carry out its responsibilities under this chapter is contingent upon the availability of funding and resources to implement a dairy nutrient management program. [1998 c 262 § 13; 1993 c 221 § 8.]

**90.64.080 Duties of conservation commission.** (1) The conservation commission has the following duties:

(a) Provide assistance as may be appropriate to the conservation districts in the discharge of their responsibilities as

management agencies in dairy nutrient management program implementation;

(b) Provide coordination for conservation district programs at the state level through special arrangements with appropriate federal and state agencies, including oversight of the review, approval, and certification of dairy nutrient management plans;

(c) Inform conservation districts of activities and experiences of other conservation districts relative to agricultural water quality protection, and facilitate an interchange of advice, experience, and cooperation between the districts;

(d) Provide an informal hearing for disputes between dairy producers and local conservation districts pertaining to: (i) Denial of approval or denial of certification of dairy nutrient management plans; (ii) modification or amendment of plans; (iii) conditions contained in plans; (iv) application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and (v) the failure to adhere to the plan review and approval timelines identified in RCW 90.64.026. An informal hearing may also provide an opportunity for dairy producers who are constrained from timely compliance with the planning requirements of this chapter because of financial hardship or local permitting delays to petition for additional time to comply;

(e) Encourage communication between the conservation district personnel and local department personnel;

(f) Accept nominations and appoint members to serve on the \*advisory and oversight committee with advice of the Washington association of conservation districts and the department;

(g) Provide a cochair to the \*advisory and oversight committee;

(h) Report to the legislature by December 1st of each year until 2003 on the status of dairy nutrient management planning and on the technical assistance provided to dairy producers in carrying out the requirements of this chapter; and

(i) Work with the department to provide communication outreach to representatives of agricultural and environmental organizations to receive feedback on implementation of this chapter.

(2) The commission's capability to carry out its responsibilities under this chapter is contingent upon the availability of funding and resources to implement a dairy nutrient management program. [1998 c 262 § 14; 1993 c 221 § 9.]

**\*Reviser's note:** The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

**90.64.100 Parties' liability.** A party acting under this chapter is not liable for another party's actions under this chapter. [1993 c 221 § 11.]

**90.64.110 Rules.** The department may adopt rules as necessary to implement this chapter. [1993 c 221 § 12.]

**90.64.120 Department's authority under federal law or chapter 90.48 RCW not affected.** (1) Nothing in this chapter shall affect the department of ecology's authority or responsibility to administer or enforce the national pollutant discharge elimination system permits for operators of con-

centrated dairy animal feeding operations, where required by federal regulations or to administer the provisions of chapter 90.48 RCW.

(2) Unless the department of ecology delegates its authority under chapter 90.48 RCW to the department of agriculture pursuant to RCW 90.48.260, and until any such delegation of authority receives federal approval, the transfer of ecology from taking action related to animal feeding operations or concentrated animal feeding operations to protect water quality pursuant to its authority in chapter 90.48 RCW. Before taking such actions, the department of ecology shall notify the department of agriculture. [2003 c 325 § 4; 1993 c 221 § 13.]

**Intent—Finding—2003 c 325:** See note following RCW 90.64.030.

**90.64.130 Data base.** (1) By October 1, 1998, the department, in consultation with the \*advisory and oversight committee, shall develop and maintain a data base to account for the implementation of this chapter.

(2) The data base shall track registrations; inspection dates and results, including findings of violations; regulatory and enforcement actions; and the status of dairy nutrient management plans. In addition, the number of dairy farm inspections by inspector shall be tallied by month. A summary of data base information shall be provided quarterly to the \*advisory and oversight committee.

(3) Any information entered into the data base by the department about any aspect of a particular dairy operation may be reviewed by the affected dairy producer upon request. The department shall correct any information in the data base upon a showing that the information is faulty or inaccurate. Complaints that have been filed with the department and determined to be unfounded, invalid, or without merit shall not be recorded in the data base. Appeals of decisions related to dairy nutrient management plans to the pollution control hearings board or to any court shall be recorded, as well as the decisions of those bodies. [1998 c 262 § 9.]

**\*Reviser's note:** The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

**90.64.140 Technical assistance teams—Standards and specifications for dairy nutrient management plans.**

(1) The conservation commission shall establish four dairy nutrient management technical assistance teams by June 1, 1998. The teams shall be geographically located throughout the state. Each team shall consist of one or more professional engineers, local conservation district employees, and dairy nutrient management experts from Washington State University. The purpose of the teams is to:

(a) Actively develop and promote new cost-effective approaches for managing dairy nutrients; and

(b) Assist dairy farms in developing dairy nutrient management plans.

(2) By January 1, 1999, each team shall develop one or more initial sets of standards and specifications to assist dairy producers in developing and implementing dairy nutrient management plans. Standards and specifications developed by a technical assistance team shall be appropriate to the soils and other conditions within that geographic area and shall be

reviewed by the \*advisory and oversight committee. [1998 c 262 § 10.]

**\*Reviser's note:** The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

#### **90.64.150 Livestock nutrient management account.**

The livestock nutrient management account is created in the custody of the state treasurer. All receipts from monetary penalties levied pursuant to violations of this chapter must be deposited into the account. Expenditures from the account may be used only to provide grants for research or education proposals that assist livestock operations to achieve compliance with state and federal water quality laws. The director of agriculture shall accept and prioritize research proposals and education proposals. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2003 c 325 § 5; 1998 c 262 § 15.]

**Intent—Finding—2003 c 325:** See note following RCW 90.64.030.

**90.64.160 Grants for dairy producers—Statement of environmental benefits—Development of outcome-focused performance measures.** In providing grants to dairy producers, districts shall require grant applicants to incorporate the environmental benefits of the project into their applications, and the districts shall utilize the statement of environmental benefit[s] in their prioritization and selection process. The districts shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the program. The commission shall work with the districts to develop uniform performance measures across participating districts. To the extent possible, the commission should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The commission shall consult with affected interest groups in implementing this section. [2001 c 227 § 4.]

**Findings—Intent—2001 c 227:** See note following RCW 43.41.270.

**90.64.170 Livestock nutrient management program—Review of statutory authority—Recommendations for statutory changes—Prerequisite to administering federal program.** (1) The legislature finds that a livestock nutrient management program is essential to protecting the quality of the waters of the state and ensuring a healthy and productive livestock industry.

(2) The departments of agriculture and ecology shall examine their current statutory authorities and provide the legislature with recommendations for statutory changes to fully implement a livestock nutrient management program within the department of agriculture for concentrated animal feeding operations, animal feeding operations, and dairies, as authorized in RCW 90.48.260, \*90.64.813, and 90.64.901. In developing recommended statutory changes, the departments shall consult with the livestock nutrient management program development and oversight committee created in \*RCW 90.64.813. The recommendations must be submitted to the legislature by the departments of agriculture and ecology prior to applying to the environmental protection agency

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for delegated authority to administer the CAFO portion of the national pollutant discharge elimination system permit program under the federal clean water act.

(3) For purposes of chapter 510, Laws of 2005, animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs) have the same meaning as defined in 40 C.F.R. 122.23.

(4) This section applies to all operations that meet the definition of an AFO. This section does not apply to true pasture and rangeland operations that do not meet the definition of AFO, however, such operations may have confinement areas that may qualify as an AFO. [2005 c 510 § 1.]

**\*Reviser's note:** RCW 90.64.813 expired June 30, 2006.

**90.64.180 Protocol for monitoring waters near dairies and CAFOs.** (1) The department of ecology shall develop and maintain a standard protocol for water quality monitoring of the waters of the state within the vicinity of dairies and CAFOs. The protocol shall include sampling methods and procedures and identify the water quality constituents to be monitored.

(2) The department of ecology shall submit the initial protocol developed according to this section to the appropriate committees of the legislature by December 1, 2005. [2005 c 510 § 3.]

**90.64.190 Information subject to public records disclosure—Rules.** This section applies to dairies, AFOs, and CAFOs, not required to apply for a permit. Information in plans, records, and reports obtained by state and local agencies from livestock producers under chapter 510, Laws of 2005 regarding (1) number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields shall be disclosable in response to a request for public records under chapter 42.56 RCW only in ranges that provide meaningful information to the public while ensuring confidentiality of business information. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies. [2006 c 209 § 14; 2005 c 510 § 4.]

**Effective date—2006 c 209:** See RCW 42.56.903.

**90.64.800 Reports to the legislature.** The department, in conjunction with the conservation commission and \*advisory and oversight committee, shall report to the legislature by December 1st of each year until 2003, on progress made in implementing chapter 262, Laws of 1998. At a minimum, the reports shall include data on inspections, the status of dairy nutrient planning, compliance with water quality standards, and enforcement actions. The report shall also provide recommendations on how implementation of chapter 262, Laws of 1998 could be facilitated for dairy producers and generally improved.

The conservation commission shall include in the report to the legislature filed December 1, 1999, an evaluation of whether the fiscal resources available to the commission, to conservation districts, and to Washington State University dairy nutrient management experts are adequate to fund the

technical assistance teams established under RCW 90.64.140 and to develop and certify plans as required by the schedule established in RCW 90.64.026. If the funding is insufficient, the report shall include an estimate of the amount of funding necessary to accomplish the schedule contained in RCW 90.64.026. [1998 c 262 § 17.]

**\*Reviser's note:** The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

**90.64.900 Effective date—1998 c 262.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 1998]. [1998 c 262 § 22.]

**90.64.901 Transfer of powers, duties, and functions to the department of agriculture.** (1) All powers, duties, and functions of the department of ecology pertaining to chapter 90.64 RCW are transferred to the department of agriculture. All references to the director of ecology or the department of ecology in the Revised Code of Washington shall be construed to mean the director of agriculture or the department of agriculture when referring to the functions transferred in this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of ecology pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the department of agriculture. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of ecology in carrying out the powers, functions, and duties transferred shall be made available to the department of agriculture. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the department of agriculture.

(b) Any appropriations made to the department of ecology for carrying out the powers, functions, and duties transferred shall, on July 1, 2003, be transferred and credited to the department of agriculture.

(c) Whenever any question arises as to the transfer of any funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the department of ecology pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the department of agriculture. All existing contracts and obligations shall remain in full force and shall be performed by the department of agriculture.

(4) The transfer of the powers, duties, and functions of the department of ecology shall not affect the validity of any act performed before July 1, 2003.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer.

Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification. [2003 c 325 § 6.]

**Effective date—2003 c 325 §§ 2 and 6:** "Sections 2 and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003." [2003 c 325 § 9.]

**Intent—Finding—2003 c 325:** See note following RCW 90.64.030.

## Chapter 90.66 RCW FAMILY FARM WATER ACT

### Sections

90.66.010	Short title.
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90.66.080	Rules and regulations—Decisions, review.
90.66.900	Liberal construction—Initiative Measure No. 59.
90.66.910	Severability—Initiative Measure No. 59.

**90.66.010 Short title.** This chapter shall be known and may be cited as the "Family Farm Water Act". [1979 c 3 § 1 (Initiative Measure No. 59, approved November 8, 1977).]

**90.66.020 Prior existing rights to withdraw and use public waters not affected.** Nothing in this chapter shall affect any right to withdraw and use public waters if such rights were in effect prior to \*the effective date of the act, and nothing herein shall modify the priority of any such existing right. [1979 c 3 § 2 (Initiative Measure No. 59, approved November 8, 1977).]

**\*Reviser's note:** "The effective date of the act" [1979 c 3 (Initiative Measure No. 59)], consisting of RCW 90.66.010 through 90.66.080, 90.66.900, and 90.66.910, is "thirty days after the election at which it is approved" as mandated by Article II, section 1(d) of the Washington Constitution. Initiative Measure No. 59 was approved by the voters at the election November 8, 1977, and was so certified by the governor on December 8, 1977.

**90.66.030 Public policy enunciated—Maximum benefit from use of public waters—Irrigation.** The people of the state of Washington recognize that it is in the public interest to conserve and use wisely the public surface and ground waters of the state in a manner that will assure the maximum benefit to the greatest possible number of its citizens. The maximum benefit to the greatest number of citizens through the use of water for the irrigation of agricultural lands will result from providing for the use of such water on family farms. To assure that future permits issued for the use of public waters for irrigation of agricultural lands will be made on the basis of deriving such maximum benefits, in addition to any other requirements in the law, all permits for the withdrawal of public waters for the purpose of irrigating agricultural lands after \*the effective date of this act shall be issued

in accord with the provisions of this chapter. [1979 c 3 § 3 (Initiative Measure No. 59, approved November 8, 1977).]

\*Reviser's note: "the effective date of this act," see note following RCW 90.66.020.

**90.66.040 Definitions.** For the purposes of this chapter, the following definitions shall be applicable:

(1) "Family farm" means a geographic area including not more than six thousand acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having a controlling interest in no more than six thousand acres of irrigated agricultural lands in the state of Washington which are irrigated under rights acquired after December 8, 1977.

(2) "Person" means any individual, corporation, partnership, limited partnership, organization, or other entity whatsoever, whether public or private. The term "person" shall include as one person all corporate or partnership entities with a common ownership of more than one-half of the assets of each of any number of such entities.

(3) "Controlling interest" means a property interest that can be transferred to another person, the percentage interest so transferred being sufficient to effect a change in control of the landlord's rights and benefits. Ownership of property held in trust shall not be deemed a controlling interest where no part of the trust has been established through expenditure or assignment of assets of the beneficiary of the trust and where the rights of the family farm permit which is a part of the trust cannot be transferred to another by the beneficiary of the trust under terms of the trust. Each trust of a separate donor origin shall be treated as a separate entity and the administration of property under trust shall not represent a controlling interest on the part of the trust officer.

(4) "Department" means the department of ecology of the state of Washington.

(5) "Application", "permit" and "public waters" shall have the meanings attributed to these terms in chapters 90.03 and 90.44 RCW.

(6) "Public water entity" means any public or governmental entity with authority to administer and operate a system to supply water for irrigation of agricultural lands.

(7) "Transfer" means a transfer, change, or amendment to part or all of a water right authorized under RCW 90.03.380, 90.03.390, or 90.44.100 or chapter 90.80 RCW.

(8) "Withdraw" means to withdraw ground water or to divert surface water. [2001 c 237 § 24; 1979 c 3 § 4 (Initiative Measure No. 59, approved November 8, 1977).]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.66.050 Classes of permits for withdrawal of public waters for irrigation purposes—Conditions—Requirements.** After \*the effective date of this act, all permits issued for the withdrawal of public waters for the purpose of irrigating agricultural lands shall be classified as follows and issued with the conditions set forth in this chapter:

(1) "Family farm permits". Such permits shall limit the use of water withdrawn for irrigation of agricultural lands to land qualifying as a family farm.

(2) "Family farm development permits". Such permits may be issued to persons without any limit on the number of acres to be irrigated during a specified period of time permitted for the development of such land into family farms and the transfer of the controlling interest of such irrigated lands to persons qualifying for family farm permits. The initial period of time allowed for development and transfer of such lands to family farm status shall not exceed ten years. Such time limit may be extended by the department for not to exceed an additional ten years upon a showing to the department that an additional period of time is needed for orderly development and transfer of controlling interests to persons who can qualify for family farm permits.

(3) "Publicly owned land permits". Such permits shall be issued only to governmental entities permitting the irrigation of publicly owned lands.

(4) "Public water entity permits". Such permits may be issued to public water entities under provisions requiring such public water entity, with respect to delivery of water for use in the irrigation of agricultural lands, to make water deliveries under the same provisions as would apply if separate permits were issued for persons eligible for family farm permits, permits to develop family farms, or for the irrigation of publicly owned land: PROVIDED, HOWEVER, That such provisions shall not apply with respect to water deliveries on federally authorized reclamation projects if such federally authorized projects provide for acreage limitations in water delivery contracts. [1979 c 3 § 5 (Initiative Measure No. 59, approved November 8, 1977).]

\*Reviser's note: "the effective date of this act," see note following RCW 90.66.020.

**90.66.060 Withdrawal of water under family farm permit—Conditioned upon complying with definition of family farm—Suspension of permit, procedures, time.** (1) Except as provided in subsections (2) and (3) of this section, the right to withdraw water for use for the irrigation of agricultural lands under authority of a family farm permit shall have no time limit and shall be conditioned upon the land being irrigated complying with the definition of a family farm as defined at the time the permit is issued.

(2) If the acquisition by any person of land and water rights by gift, devise, bequest, or by way of bona fide satisfaction of a debt, would otherwise cause land being irrigated pursuant to a family farm permit to lose its status as a family farm, such acquisition shall be deemed to have no effect upon the status of family farm water permits pertaining to land held or acquired by the person acquiring such land and water rights if all lands held or acquired are again in compliance with the definition of a family farm within five years from the date of such acquisition.

(3) For family farm permits under this chapter, if the department determines that water is being withdrawn for use on land not in conformity with the definition of a family farm, the department shall notify the holder of such family farm permit by personal service of such fact and the permit shall be suspended two years from the date of receipt of notice unless the person having a controlling interest in said land satisfies the department that such land is again in conformity with the definition of a family farm. The department may, upon a showing of good cause and reasonable effort to attain compli-

ance on the part of the person having the controlling interest in such land, extend the two year period prior to suspension. If conformity is not achieved prior to five years from the date of notice the rights of withdrawal shall be canceled. [2001 c 237 § 25; 1979 c 3 § 6 (Initiative Measure No. 59, approved November 8, 1977).]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.66.065 Transfers or change in purpose of family farm permits.** (1) Transfers of water rights established as family farm permits under this chapter may be approved as authorized under this section and under RCW 90.03.380, 90.03.390, or 90.44.100 or chapter 90.80 RCW as appropriate.

(2) A family farm permit may be transferred:

(a) For use for agricultural irrigation purposes as limited by RCW 90.66.060 (1) and (2);

(b) To any purpose of use that is a beneficial use of water if the transfer is made exclusively under a lease agreement, except that transfers for the use of water for agricultural irrigation purposes shall be limited as provided by RCW 90.66.060 (1) and (2);

(c) To any purpose of use that is a beneficial use of water if the water right is for the use of water at a location that is, at the time the transfer is approved, within the boundaries of an urban growth area designated under chapter 36.70A RCW or, in counties not planning under chapter 36.70A RCW, within a city or town or within areas designated for urban growth in comprehensive plans prepared under chapter 36.70 RCW, except that transfers for the use of water for agricultural irrigation purposes shall be limited as provided by RCW 90.66.060 (1) and (2).

(3) If a portion of the water governed by a water right established under the authority of a family farm permit is made surplus to the beneficial uses exercised under the right through the implementation of practices or technologies, including but not limited to conveyance practices or technologies, that are more water-use efficient than those under which the right was perfected, the right to use the surplus water may be transferred to any purpose of use that is a beneficial use of water. Nothing in this subsection authorizes: A transfer of the portion of a water right that is necessary for the production of crops historically grown under the right; or a transfer of a water right or a portion of a water right that has not been perfected through beneficial use before the transfer. Water right transfers approved under this subsection must be consistent with the provisions of RCW 90.03.380(1).

(4) Before a change in purpose of a family farm water permit to municipal supply purpose or domestic purpose may be authorized, the public water system that is receiving the family farm water permit must be meeting the water conservation requirements of its current water system plan approved by the department of health or its small water system management program.

(5) The place of use for a water right transferred under the authority of this section shall remain within: The water resource inventory area containing the place of use for the water right before the transfer; or the urban growth area or contiguous urban growth areas of the place of use for the

water right before the transfer if the urban growth area or contiguous urban growth areas cross boundaries of water resource inventory areas.

(6) The authority granted by this section to transfer or alter the purpose of use of a water right established under the authority of a family farm permit shall not be construed as limiting in any manner the authority granted by RCW 90.03.380, 90.03.390, or 90.44.100 to alter other elements of such a water right. [2001 c 237 § 23.]

**Intent—2001 c 237:** "It is the intent of the legislature to help preserve the agricultural economy of the state by allowing changes of family farm water permits from agricultural irrigation to other agricultural purposes. Within the urbanizing areas of the state, the legislature recognizes the need to allow water from family farms to be converted to other purposes as the use of the land changes consistent with adopted land use plans. The legislature also intends to allow farmers to benefit from water conservation projects and from temporary leases of their family farm water permits. Water conservation and water leases will also allow farmers to contribute to instream flows and other purposes. However, outside of urbanizing areas, the legislature intends to preserve farmlands by ensuring that the quantity of water needed to grow the crops historically grown remains with the farm. In addition, to help retain family farms within the state, the legislature intends to allow family farms of a large enough size to be economically viable under modern agricultural market conditions." [2001 c 237 § 22.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**90.66.070 Transfer of property entitled to water under permit—Rights—Requirements.** (1) At any time that the holder of a family farm development permit or a publicly owned land permit shall transfer the controlling interest of all or any portion of the land entitled to water under such

permit to a person who can qualify to receive water for irrigation of such land under a family farm permit, the department shall, upon request, issue a family farm permit to such person under the same conditions as would have been applicable if such request had been made at the time of the granting of the original family farm development permit. If the permit under which water is available is held by a public water entity prior to the transfer of the controlling interest to a person who qualifies for a family farm permit, such entity shall continue delivery of water to such land without any restriction on the length of time of delivery not applicable generally to all its water customers.

(2) The issuance of a family farm permit secured through the acquisition of land and water rights from the holder of a family farm development permit, or from the holder of a publicly owned land permit, where water delivery prior to the transfer is from a public water entity, may be conditioned upon the holder of the family farm permit issued continuing to receive water through the facilities of the public water entity. [1979 c 3 § 7 (Initiative Measure No. 59, approved November 8, 1977).]

**90.66.080 Rules and regulations—Decisions, review.**

The department is hereby empowered to promulgate such rules as may be necessary to carry out the provisions of this chapter. Decisions of the department, other than rule making, shall be subject to review in accordance with chapter 43.21B RCW. [1979 c 3 § 8 (Initiative Measure No. 59, approved November 8, 1977).]

*Pollution control hearings board of the state: Chapter 43.21B RCW.*

**90.66.900 Liberal construction—Initiative Measure No. 59.** This chapter is exempted from the rule of strict construction and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. [1979 c 3 § 9 (Initiative Measure No. 59, approved November 8, 1977).]

**90.66.910 Severability—Initiative Measure No. 59.** If any provision of this act, or its application to any person, organization, or circumstance is held invalid or unconstitutional, the remainder of the act, or the application of the provision to other persons, organizations, or circumstances is not affected. [1979 c 3 § 10 (Initiative Measure No. 59, approved November 8, 1977).]

## Chapter 90.71 RCW

### PUGET SOUND WATER QUALITY PROTECTION

#### Sections

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90.71.903	Transfer of powers, duties, and functions—References to executive director or Puget Sound water quality authority.

#### **90.71.005 Findings.** (1) The legislature finds that:

(a) Puget Sound and related inland marine waterways of Washington state represent a unique and unparalleled resource. A rich and varied range of marine organisms, comprising an interdependent, sensitive communal ecosystem reside in these sheltered waters. Residents of this region enjoy a way of life centered around the waters of Puget Sound, featuring accessible recreational opportunities, world-class port facilities and water transportation systems, harvest of marine food resources, shoreline-oriented life styles, water-dependent industries, tourism, irreplaceable aesthetics, and other activities, all of which to some degree depend upon a clean and healthy marine resource;

(b) The Puget Sound water quality authority has done an excellent job in developing a comprehensive plan to identify actions to restore and protect the biological health and diversity of Puget Sound;

(c) The large number of governmental entities that now have regulatory programs affecting the water quality of Puget Sound have diverse interests and limited jurisdictions that cannot adequately address the cumulative, wide-ranging impacts that contribute to the degradation of Puget Sound; and

(d) Coordination of the regulatory programs, at the state and local level, is best accomplished through the develop-

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ment of interagency mechanisms that allow these entities to transcend their diverse interests and limited jurisdictions.

(2) It is therefore the policy of the state of Washington to coordinate the activities of state and local agencies by establishing a biennial work plan that clearly delineates state and local actions necessary to protect and restore the biological health and diversity of Puget Sound. It is further the policy of the state to implement the Puget Sound water quality management plan to the maximum extent possible. To further the policy of the state, a recovery plan developed under the federal endangered species act for a portion or all of the Puget Sound shall be considered for inclusion into the Puget Sound water quality management plan. [1998 c 246 § 13; 1996 c 138 § 1.]

**90.71.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Action team" means the Puget Sound water quality action team.

(2) "Chair" means the chair of the action team.

(3) "Council" means the Puget Sound council created in RCW 90.71.030.

(4) "Puget Sound management plan" means the 1994 Puget Sound water quality management plan as it exists June 30, 1996, and as subsequently amended by the action team.

(5) "Support staff" means the staff to the action team.

(6) "Work plan" means the work plan and budget developed by the action team. [1996 c 138 § 2.]

**90.71.015 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 30.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**90.71.020 Puget Sound action team.** (1) The Puget Sound action team is created. The action team shall consist of: The directors of the departments of ecology; agriculture; natural resources; fish and wildlife; and community, trade, and economic development; the secretaries of the departments of health and transportation; the director of the parks and recreation commission; the director of the interagency committee for outdoor recreation; the administrative officer of the conservation commission designated in RCW 89.08.050; one person representing cities, appointed by the governor; one person representing counties, appointed by the governor; one person representing federally recognized tribes, appointed by the governor; and the chair of the action team. The action team shall also include the following ex officio nonvoting members: The regional director of the United States environmental protection agency; the regional administrator of the national marine fisheries service; and the regional supervisor of the United States fish and wildlife service. The members representing cities and counties shall each be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) The action team shall:

(a) Prepare a Puget Sound work plan and budget for inclusion in the governor's biennial budget;

(b) Coordinate monitoring and research programs as provided in RCW 90.71.060;

(c) Work under the direction of the action team chair as provided in RCW 90.71.040;

(d) Coordinate permitting requirements as necessary to expedite permit issuance for any local watershed plan developed pursuant to rules adopted under this chapter;

(e) Identify and resolve any policy or rule conflicts that may exist between one or more agencies represented on the action team;

(f) Periodically amend the Puget Sound management plan;

(g) Enter into, amend, and terminate contracts with individuals, corporations, or research institutions for the purposes of this chapter;

(h) Receive such gifts, grants, and endowments, in trust or otherwise, for the use and benefit of the purposes of the action team. The action team may expend the same or any income therefrom according to the terms of the gifts, grants, or endowments;

(i) Promote extensive public participation, and otherwise seek to broadly disseminate information concerning Puget Sound;

(j) Receive and expend funding from other public agencies;

(k) To reduce costs and improve efficiency, review by December 1, 1996, all requirements for reports and documentation from state agencies and local governments specified in the plan for the purpose of eliminating and consolidating reporting requirements; and

(l) Beginning in December 1998, and every two years thereafter, submit a report to the appropriate policy and fiscal committees of the legislature that describes and evaluates the successes and shortcomings of the current work plan relative to the priority problems identified for each geographic area of Puget Sound.

(3) By July 1, 1996, the action team shall begin developing its initial work plan, which shall include the coordination of necessary support staff.

(4) The action team shall incorporate, to the maximum extent possible, the recommendations of the council regarding amendments to the Puget Sound management plan and the work plan.

(5) All proceedings of the action team are subject to the open public meetings act under chapter 42.30 RCW. [1998 c 246 § 14; 1996 c 138 § 3.]

**90.71.030 Puget Sound council.** (1) There is established the Puget Sound council composed of eleven members. Seven members shall be appointed by the governor. In making these appointments, the governor shall include representation from business, the environmental community, agriculture, the shellfish industry, counties, cities, and the tribes. Two members shall be members of the senate selected by the president of the senate with one member selected from each caucus in the senate, and two members shall be members of the house of representatives selected by the speaker of the house of representatives with one member selected from each

caucus in the house of representatives. The legislative members shall be nonvoting members of the council. Appointments to the council shall reflect geographical balance and the diversity of population within the Puget Sound basin. Members shall serve four-year terms. Of the initial members appointed to the council, two shall serve for two years, two shall serve for three years, and two shall serve for four years. Thereafter members shall be appointed to four-year terms. Vacancies shall be filled by appointment in the same manner as the original appointment for the remainder of the unexpired term of the position being vacated. Nonlegislative members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members shall be reimbursed as provided in RCW 44.04.120.

(2) The council shall:

(a) Recommend to the action team projects and activities for inclusion in the biennial work plan;

(b) Recommend to the action team coordination of work plan activities with other relevant activities, including but not limited to, agencies' activities other than those funded through the plan, local plan initiatives, and governmental and nongovernmental watershed restoration and protection activities; and

(c) Recommend to the action team proposed amendments to the Puget Sound management plan.

(3) The chair of the action team shall convene the council at least four times per year and shall jointly convene the council and the action team at least two times per year. [1999 c 241 § 3; 1996 c 138 § 4.]

**90.71.040 Chair of action team.** (1) By June 1, 1996, the governor shall appoint a person in the governor's office to chair the action team. The chair shall serve at the pleasure of the governor.

(2) The chair shall be responsible for:

(a) Organizing the development of the council recommendations;

(b) Organizing the development of the work plan required under RCW 90.71.050;

(c) Presenting work plan and budget recommendations to the governor and the legislature;

(d) Overseeing the implementation of the elements of the work plan that receive funding through appropriations by the legislature; and

(e) Serving as chair of the council.

(3) The chair of the action team shall be a full-time employee responsible for the administration of all functions of the action team and the council, including hiring and terminating support staff, budget preparation, contracting, coordinating with the governor, the legislature, and other state and local entities, and the delegation of responsibilities as deemed appropriate. The salary of the chair shall be fixed by the governor, subject to RCW 43.03.040. [1996 c 138 § 5.]

**Effective date—1996 c 138 § 5:** "Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 138 § 19.]

**90.71.050 Work plans.** (1)(a) Each biennium, the action team shall prepare a Puget Sound work plan and budget for inclusion in the governor's biennial budget. The work

plan shall prescribe the necessary federal, state, and local actions to maintain and enhance Puget Sound water quality, including but not limited to, enhancement of recreational opportunities, and restoration of a balanced population of indigenous shellfish, fish, and wildlife. The work plan and budget shall include specific actions and projects pertaining to salmon recovery plans.

(b) In developing a work plan, the action team shall meet the following objectives:

(i) Use the plan elements of the Puget Sound management plan to prioritize local and state actions necessary to restore and protect the biological health and diversity of Puget Sound;

(ii) Consider the problems and priorities identified in local plans; and

(iii) Coordinate the work plan activities with other relevant activities, including but not limited to, agencies' activities that have not been funded through the plan, local plans, and governmental and nongovernmental watershed restoration activities.

(c) In developing a budget, the action team shall identify:

(i) The total funds to implement local projects originating from the planning process developed for nonpoint pollution; and

(ii) The total funds to implement any other projects designed primarily to restore salmon habitat.

(2) In addition to the requirements identified under RCW 90.71.020(2)(a), the work plan and budget shall:

(a) Identify and prioritize the local and state actions necessary to address the water quality problems in the following locations:

(i) Area 1: Island and San Juan counties;

(ii) Area 2: Skagit and Whatcom counties;

(iii) Area 3: Clallam and Jefferson counties;

(iv) Area 4: Snohomish, King, and Pierce counties; and

(v) Area 5: Kitsap, Mason, and Thurston counties;

(b) Provide sufficient funding to characterize local watersheds, provide technical assistance, and implement state responsibilities identified in the work plan. The number and qualifications of staff assigned to each region shall be determined by the types of problems identified pursuant to (a) of this subsection;

(c) Provide sufficient funding to implement and coordinate the Puget Sound ambient monitoring plan pursuant to RCW 90.71.060;

(d) Provide funds to assist local jurisdictions to implement elements of the work plan assigned to local governments and to develop and implement local plans;

(e) Provide sufficient funding to provide support staff for the action team; and

(f) Describe any proposed amendments to the Puget Sound management plan.

(3) The work plan shall be submitted to the appropriate policy and fiscal committees of the legislature by December 20th of each even-numbered year.

(4) The work plan shall be implemented consistent with the legislative provisos of the biennial appropriation acts. [1998 c 246 § 15; 1996 c 138 § 6.]

**90.71.060 Puget Sound research and monitoring.** In addition to other powers and duties specified in this chapter,

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the action team shall ensure implementation and coordination of the Puget Sound ambient monitoring program established in the Puget Sound management plan. The program shall include, at a minimum:

(1) A research program, including but not limited to methods to provide current research information to managers and scientists, and to establish priorities based on the needs of the action team;

(2) A monitoring program, including baselines, protocols, guidelines, and quantifiable performance measures. In consultation with state agencies, local and tribal governments, and other public and private interests, the action team shall develop and track quantifiable performance measures that can be used by the governor and the legislature to assess the effectiveness over time of programs and actions initiated under the plan to improve and protect Puget Sound water quality and biological resources. The performance measures shall be developed by June 30, 1997. The performance measures shall include, but not be limited to a methodology to track the progress of: Fish and wildlife habitat; sites with sediment contamination; wetlands; shellfish beds; and other key indicators of Puget Sound health. State agencies shall assist the action team in the development and tracking of these performance measures. The performance measures may be limited to a selected geographic area. [1996 c 138 § 7.]

**90.71.070 Work plan implementation.** (1) Local governments are required to implement local elements of the work plan subject to the availability of appropriated funds or other funding sources.

(2) The council shall review the progress of work plan implementation. Where prescribed actions have not been accomplished in accordance with the work plan, the responsible agency shall submit to the council written explanations for the shortfalls, together with proposed remedies. [1996 c 138 § 8.]

**90.71.080 Public participation.** The chair of the action team shall hold public hearings to solicit public comment on the work plan. [1996 c 138 § 9.]

**90.71.100 Shellfish - on-site sewage grant program—Priority areas—Memorandum of understanding.** (1) The action team shall establish a shellfish - on-site sewage grant program in Puget Sound and for Pacific and Grays Harbor counties. The action team shall provide funds to local health jurisdictions to be used as grants to individuals for improving their on-site sewage systems. The grants may be provided only in areas that have the potential to adversely affect water quality in commercial and recreational shellfish growing areas. A recipient of a grant shall enter into an agreement with the appropriate local health jurisdiction to maintain the improved on-site sewage system according to specifications required by the local health jurisdiction. The action team shall work closely with local health jurisdictions and shall endeavor to attain geographic equity between Willapa Bay and the Puget Sound when making funds available under this program. For the purposes of this subsection, "geographic equity" means issuing on-site sewage grants at a level that

matches the funds generated from the oyster reserve lands in that area.

(2) In the Puget Sound, the action team shall give first priority to areas that are:

(a) Identified as "areas of special concern" under WAC 246-272-01001; or

(b) Included within a shellfish protection district under chapter 90.72 RCW.

(3) In Grays Harbor and Pacific counties, the action team shall give first priority to preventing the deterioration of water quality in areas where commercial or recreational shellfish are grown.

(4) The action team and each participating local health jurisdiction shall enter into a memorandum of understanding that will establish an applicant income eligibility requirement for individual grant applicants from within the jurisdiction and other mutually agreeable terms and conditions of the grant program.

(5) The action team may recover the costs to administer this program not to exceed ten percent of the shellfish - on-site sewage grant program.

(6) For the 2001-2003 biennium, the action team may use up to fifty percent of the shellfish - on-site sewage grant program funds for grants to local health jurisdictions to establish areas of special concern under WAC 246-272-01001, or for operation and maintenance programs therein, where commercial and recreational uses are present. [2001 c 273 § 3.]

**90.71.900 Short title—1996 c 138.** This act may be known and cited as the Puget Sound water quality protection act. [1996 c 138 § 15.]

**90.71.901 Captions not law.** Captions used in this chapter do not constitute any part of the law. [1996 c 138 § 14.]

**90.71.902 Implementation and requirements of plan not affected by repeal—1990 c 115.** Nothing in \*RCW 43.131.370 shall affect the implementation and requirements of the Puget Sound water quality management plan existing on June 30, 1995, or such other effective date of repeal of the laws referenced in \*RCW 43.131.370. The implementation of the plan on and after that date shall be the responsibility of such entities as are provided by the legislature. [1990 c 115 § 13. Formerly RCW 90.70.902.]

**\*Reviser's note:** RCW 43.131.370, which sunsetted the Puget Sound water quality authority June 30, 1996, has been decodified. See Table of Disposition of Former RCW Sections, Volume 0.

**90.71.903 Transfer of powers, duties, and functions—References to executive director or Puget Sound water quality authority.** (1) The powers, duties, and functions of the Puget Sound water quality authority pertaining to the cleanup and protection of Puget Sound are transferred to the Puget Sound action team. All references to the executive director or the Puget Sound water quality authority in the Revised Code of Washington shall be construed to mean the chair of the action team or the action team when referring to the functions transferred in this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the

authority pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the action team. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the authority in carrying out the powers, functions, and duties transferred shall be made available to the action team. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the action team.

(b) Any appropriations made to the authority for carrying out the powers, functions, and duties transferred shall, on June 30, 1996, be transferred and credited to the action team.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the authority pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the action team. All existing contracts and obligations shall remain in full force and shall be performed by the action team.

(4) The transfer of the powers, duties, functions, and personnel of the authority shall not affect the validity of any act performed before June 30, 1996.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification. [1996 c 138 § 11.]

## Chapter 90.72 RCW

### SHELLFISH PROTECTION DISTRICTS

#### Sections

90.72.020	Shellfish tidelands.
90.72.030	Shellfish protection districts—Establishment—Governing body—Programs.
90.72.040	Shellfish protection districts—Creation—Boundaries—Cooperation with governmental entities—Abolition—Referendum to repeal creation—Certain fees not permitted.
90.72.045	Shellfish protection districts—Programs required after closure or downgrading of growing area classification.
90.72.060	Decisions addressing conflicting uses—Integration of the state environmental policy act and county ordinances and resolutions with programs.
90.72.065	Plans to control pollution effects of animal waste—Contracts with conservation districts.
90.72.070	Program financing—Activities not subject to fees, rates, or charges—Collection of charges or rates.
90.72.080	State water quality financial assistance—Priority to counties with shellfish protection districts.
90.72.900	Certain authority of counties not affected by chapter.
90.72.905	Severability—1992 c 100.

**90.72.020 Shellfish tidelands.** For purposes of this chapter, "shellfish tidelands" means all saltwater tidelands on which shellfish are grown or harvested for human consumption. [1985 c 417 § 2.]

**90.72.030 Shellfish protection districts—Establishment—Governing body—Programs.** The legislative authority of each county having shellfish tidelands within its boundaries is authorized to establish a shellfish protection district to include areas in which nonpoint pollution threatens the water quality upon which the continuation or restoration of shellfish farming or harvesting is dependent. The legislative authority shall constitute the governing body of the district and shall adopt a shellfish protection program to be effective within the district. The legislative authority may appoint a local advisory council to advise the legislative authority in preparation and implementation of shellfish protection programs. This program shall include any elements deemed appropriate to deal with the nonpoint pollution threatening water quality, including, but not limited to, requiring the elimination or decrease of contaminants in storm water runoff, establishing monitoring, inspection, and repair elements to ensure that on-site sewage systems are adequately maintained and working properly, assuring that animal grazing and manure management practices are consistent with best management practices, and establishing educational and public involvement programs to inform citizens on the causes of the threatening nonpoint pollution and what they can do to decrease the amount of such pollution. An element may be omitted where another program is effectively addressing those sources of nonpoint water pollution. Within the limits of RCW 90.72.040 and 90.72.070, the county legislative authority shall have full jurisdiction and authority to manage, regulate, and control its programs and to fix, alter, regulate, and control the fees for services provided and charges or rates as provided under those programs. Programs established under this chapter, may, but are not required to, be part of a system of sewerage as defined in RCW 36.94.010. [1992 c 100 § 2; 1985 c 417 § 3.]

**Findings—1992 c 100:** "The legislature finds that shellfish harvesting is important to our economy and way of life. Washington state is an international leader in the cultivation and production of shellfish. However, large portions of the state's productive recreational and commercial shellfish beds are closed to harvesting, and more are threatened, because of water pollution. The legislature finds that the problem of shellfish bed closures demands a public policy solution and that the state, local governments, and individuals must each take strong and swift action or this precious resource will be lost.

It is the goal of the legislature to prevent further closures of recreational and commercial shellfish beds, to restore water quality in saltwater tidelands to allow the reopening of at least one restricted or closed shellfish bed each year, and to ensure Washington state's commanding international position in shellfish production.

The legislature finds that failing on-site sewage systems and animal waste are the two most significant causes of shellfish bed closures over the past decade. Remedial actions at the local level are required to effectively address these problems.

The legislature finds that existing entities, including conservation districts and local health departments, should be used by counties to address the water quality problems affecting the recreational and commercial shellfish harvest.

The legislature finds that local action in each watershed where shellfish are harvested is required to protect this vital resource. The legislature hereby encourages all counties having saltwater tidelands within their boundaries to establish shellfish protection districts and programs designed to prevent any further degradation and contamination and to allow for restoration and reopening of closed shellfish growing areas." [1992 c 100 § 1.]

**90.72.040 Shellfish protection districts—Creation—Boundaries—Cooperation with governmental entities—Abolition—Referendum to repeal creation—Certain fees not permitted.** (1) The county legislative authority may cre-

ate a shellfish protection district on its own motion or by submitting the question to the voters of the proposed district and obtaining the approval of a majority of those voting. The boundaries of the district shall be determined by the legislative authority. The legislative authority may create more than one district. A district may include any area or areas within the county, whether incorporated or unincorporated. Counties shall coordinate and cooperate with cities, towns, and water-related special districts within their boundaries in establishing shellfish protection districts and carrying out shellfish protection programs. Where a portion of the proposed district lies within an incorporated area, the county shall develop procedures for the participation of the city or town in the determination of the boundaries of the district and the administration of the district, including funding of the district's programs. The legislative authority of more than one county may by agreement provide for the creation of a district including areas within each of those counties. County legislative authorities are encouraged to coordinate their plans and programs to protect shellfish growing areas, especially where shellfish growing areas are located within the boundaries of more than one county. The legislative authority or authorities creating a district may abolish a shellfish protection district on its or their own motion or by submitting the question to the voters of the district and obtaining the approval of a majority of those voting.

(2) If the county legislative authority creates a shellfish protection district by its own motion, any registered voter residing within the boundaries of the shellfish protection district may file a referendum petition to repeal the ordinance that created the district. Any referendum petition to repeal the ordinance creating the shellfish protection district shall be filed with the county auditor within seven days of passage of the ordinance. Within ten days of the filing of a petition, the county auditor shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in creation of the shellfish protection district and a negative answer to the question and a negative vote on the measure results in the shellfish protection district not being created. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than twenty-five percent of the registered voters residing within the boundaries of the shellfish protection district and file the signed petitions with the county auditor. Each petition form shall contain the ballot title and full text of the measure to be referred. The county auditor shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the county auditor shall submit the referendum measure to the registered voters residing in the shellfish protection district in a special election no later than one hundred twenty days after the signed petition has been filed with the county auditor. The special election may be conducted by mail ballot as provided for in \*chapter 29.36 RCW.

(3) The county legislative authority shall not impose fees, rates, or charges for shellfish protection district pro-

grams upon properties on which fees, rates, or charges are imposed under chapter 36.89 or 36.94 RCW for substantially the same programs and services. [1997 c 447 § 20; 1992 c 100 § 3; 1985 c 417 § 4.]

**\*Reviser's note:** Chapter 29.36 RCW was recodified as chapter 29A.40 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**Findings—1992 c 100:** See note following RCW 90.72.030.

**90.72.045 Shellfish protection districts—Programs required after closure or downgrading of growing area classification.** The county legislative authority shall create a shellfish protection district and establish a shellfish protection program to address causes of pollution within one hundred eighty days after the department of health, because of water quality degradation due to ongoing nonpoint sources of pollution, has, after June 11, 1992, closed or downgraded the classification of a recreational or commercial shellfish growing area within the boundaries of the county. [1992 c 100 § 4.]

**Findings—1992 c 100:** See note following RCW 90.72.030.

**90.72.060 Decisions addressing conflicting uses—Integration of the state environmental policy act and county ordinances and resolutions with programs.** Whenever a governmental entity makes a decision which addresses a matter in which there is a conflict between (1) on the one hand, a proposed development, proposed change in land use controls, or proposed change in the provision of utility services; and (2) on the other hand, the long-term use of an area for the growing or harvesting of shellfish, which area is within the boundaries of a shellfish protection district, then the governmental entity making the decision must observe the requirements of chapter 43.21C RCW and county ordinances or resolutions integrating the state environmental policy act of 1971 into the various programs under county jurisdiction. [1985 c 417 § 6.]

**90.72.065 Plans to control pollution effects of animal waste—Contracts with conservation districts.** Within available funding and as specified in the shellfish protection program, counties creating shellfish protection districts shall contract with conservation districts to draft plans with landowners to control pollution effects of animal waste. [1992 c 100 § 5.]

**Findings—1992 c 100:** See note following RCW 90.72.030.

**90.72.070 Program financing—Activities not subject to fees, rates, or charges—Collection of charges or rates.** The county legislative authority establishing a shellfish protection district may finance the protection program through (1) county tax revenues, (2) reasonable inspection fees and similar fees for services provided, (3) reasonable charges or rates specified in its protection program, or (4) federal, state, or private grants. Confined animal feeding operations subject to the national pollutant discharge elimination system and implementing regulations shall not be subject to fees, rates, or charges by a shellfish protection district. Facilities permitted and assessed fees for wastewater discharge under the national pollutant discharge elimination system shall not be

subject to fees, rates, or charges for wastewater discharge by a shellfish protection district. Lands classified as forest land under chapter 84.33 RCW and timber land under chapter 84.34 RCW shall not be subject to fees, rates, or charges by a shellfish protection district. Counties may collect charges or rates in the manner determined by the county legislative authority. [1992 c 100 § 6; 1985 c 417 § 7.]

**Findings—1992 c 100:** See note following RCW 90.72.030.

**90.72.080 State water quality financial assistance—Priority to counties with shellfish protection districts.** Counties that have formed shellfish protection districts shall receive high priority for state water quality financial assistance to implement shellfish protection programs, including grants and loans provided under chapters 43.99F, 70.146, and 90.50A RCW. [1992 c 100 § 7.]

**Findings—1992 c 100:** See note following RCW 90.72.030.

**90.72.900 Certain authority of counties not affected by chapter.** This chapter shall not be considered as diminishing or affecting the authority of a county to adopt and enforce programs or controls, within all or a portion of the county, to deal with nonpoint pollution. [1985 c 417 § 8.]

**90.72.905 Severability—1992 c 100.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 100 § 10.]

## Chapter 90.74 RCW

### AQUATIC RESOURCES MITIGATION

#### Sections

90.74.005	Findings—Intent.
90.74.010	Definitions.
90.74.020	Mitigation plans.
90.74.030	Regulatory decisions, guidance—Multiple requests for review of mitigation plans.

**90.74.005 Findings—Intent.** (1) The legislature finds that:

(a) The state lacks a clear policy relating to the mitigation of wetlands and aquatic habitat for infrastructure development;

(b) Regulatory agencies have generally required project proponents to use compensatory mitigation only at the site of the project's impacts and to mitigate narrowly for the habitat or biological functions impacted by a project;

(c) This practice of considering traditional on-site, in-kind mitigation may provide fewer environmental benefits when compared to innovative mitigation proposals that provide benefits in advance of a project's planned impacts and that restore functions or habitat other than those impacted at a project site; and

(d) Regulatory decisions on development proposals that attempt to incorporate innovative mitigation measures take an unreasonably long period of time and are subject to a great deal of uncertainty and additional expenses.

(2) The legislature therefore declares that it is the policy of the state to authorize innovative mitigation measures by

requiring state regulatory agencies to consider mitigation proposals for infrastructure projects that are timed, designed, and located in a manner to provide equal or better biological functions and values compared to traditional on-site, in-kind mitigation proposals.

(3) It is the intent of the legislature to authorize local governments to accommodate the goals of this chapter. It is not the intent of the legislature to: (a) Restrict the ability of a project proponent to pursue project specific mitigation; or (b) create any new authority for regulating wetlands or aquatic habitat beyond what is specifically provided for in this chapter. [1997 c 424 § 1.]

**90.74.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Mitigation" means sequentially avoiding impacts, minimizing impacts, or compensating for remaining unavoidable impacts.

(2) "Compensatory mitigation" means the restoration, creation, enhancement, or preservation of uplands, wetlands, or other aquatic resources for the purposes of compensating for unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved. "Compensatory mitigation" includes mitigation that:

(a) Occurs at the same time as, or in advance of, a project's planned environmental impacts;

(b) Is located in a site either on, near, or distant from the project's impacts; and

(c) Provides either the same or different biological functions and values as the functions and values impacted by the project.

(3) "Infrastructure development" means an action that is critical for the maintenance or expansion of an existing infrastructure feature such as a highway, rail line, airport, marine terminal, utility corridor, harbor area, or hydroelectric facility and is consistent with an approved land use planning process. This planning process may include the growth management act, chapter 36.70A RCW, or the shoreline management act, chapter 90.58 RCW, in areas covered by those chapters.

(4) "Mitigation plan" means a document or set of documents developed through joint discussions between a project proponent and environmental regulatory agencies that describe the unavoidable wetland or aquatic resource impacts of the proposed infrastructure development and the proposed compensatory mitigation for those impacts.

(5) "Project proponent" means a public or private entity responsible for preparing a mitigation plan.

(6) "Watershed" means an area identified as a state of Washington water resource inventory area under WAC 173-500-040 as it exists on July 27, 1997. [1997 c 424 § 2.]

**90.74.020 Mitigation plans.** (1) Project proponents may use a mitigation plan to propose compensatory mitigation within a watershed. A mitigation plan shall:

(a) Contain provisions that guarantee the long-term viability of the created, restored, enhanced, or preserved habitat, including assurances for protecting any essential biological functions and values defined in the mitigation plan;

(b) Contain provisions for long-term monitoring of any created, restored, or enhanced mitigation site; and

(c) Be consistent with the local comprehensive land use plan and any other applicable planning process in effect for the development area, such as an adopted subbasin or watershed plan.

(2) The departments of ecology and fish and wildlife may not limit the scope of options in a mitigation plan to areas on or near the project site, or to habitat types of the same type as contained on the project site. The departments of ecology and fish and wildlife shall fully review and give due consideration to compensatory mitigation proposals that improve the overall biological functions and values of the watershed or bay and accommodate the mitigation needs of infrastructure development.

The departments of ecology and fish and wildlife are not required to grant approval to a mitigation plan that the departments find does not provide equal or better biological functions and values within the watershed or bay.

(3) When making a permit or other regulatory decision under the guidance of this chapter, the departments of ecology and fish and wildlife shall consider whether the mitigation plan provides equal or better biological functions and values, compared to the existing conditions, for the target resources or species identified in the mitigation plan. This consideration shall be based upon the following factors:

(a) The relative value of the mitigation for the target resources, in terms of the quality and quantity of biological functions and values provided;

(b) The compatibility of the proposal with the intent of broader resource management and habitat management objectives and plans, such as existing resource management plans, watershed plans, critical areas ordinances, and shoreline master programs;

(c) The ability of the mitigation to address scarce functions or values within a watershed;

(d) The benefits of the proposal to broader watershed landscape, including the benefits of connecting various habitat units or providing population-limiting habitats or functions for target species;

(e) The benefits of early implementation of habitat mitigation for projects that provide compensatory mitigation in advance of the project's planned impacts; and

(f) The significance of any negative impacts to nontarget species or resources.

(4) A mitigation plan may be approved through a memorandum of agreement between the project proponent and either the department of ecology or the department of fish and wildlife, or both. [1997 c 424 § 3.]

**90.74.030 Regulatory decisions, guidance—Multiple requests for review of mitigation plans.** (1) In making regulatory decisions relating to wetland or aquatic resource mitigation, the departments of ecology and fish and wildlife shall, at the request of the project proponent, follow the guidance of RCW 90.74.005 through 90.74.020.

(2) If the department of ecology or the department of fish and wildlife receives multiple requests for review of mitigation plans, each department may schedule its review of these proposals to conform to available budgetary resources. [1997 c 424 § 4.]

## Chapter 90.76 RCW

## UNDERGROUND STORAGE TANKS

## Sections

90.76.005	Legislative finding and intent.
90.76.010	Definitions.
90.76.020	Department's powers and duties.
90.76.040	Environmentally sensitive areas.
90.76.050	Delivery of regulated substances—Expiration of subsection.
90.76.060	Investigation and access.
90.76.070	Enforcement.
90.76.080	Penalties.
90.76.090	Annual tank fee.
90.76.100	Underground storage tank account.
90.76.110	Preemption.
90.76.120	Annual report.
90.76.900	Captions not law.
90.76.901	Severability—1989 c 346.
90.76.902	Effective date—1989 c 346.

**Reviser's note—Sunset Act application:** The underground storage tank program is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.393. RCW 90.76.005 through 90.76.120 and 90.76.900 through 90.76.902 are scheduled for future repeal under RCW 43.131.394.

**90.76.005 Legislative finding and intent.** The legislature finds that leaking underground storage tanks containing petroleum and other regulated substances pose a serious threat to human health and the environment. To address this threat, the legislature intends for the department of ecology to establish an underground storage tank program designed, operated, and enforced in a manner that, at a minimum, meets the requirements for delegation of the federal underground storage tank program of the resource conservation and recovery act of 1976, as amended (42 U.S.C. Sec. 6901, et seq.). The legislature intends that statewide requirements for underground storage tanks adopted by the department be consistent with and no less stringent than the objectives outlined in the federal regulations.

The legislature further finds that certain areas of the state possess physical characteristics that make them especially vulnerable to threats from leaking underground storage tanks and that in these environmentally sensitive areas, local requirements more stringent than the statewide requirements may apply. [1989 c 346 § 1.]

**Sunset Act application:** See note following chapter digest.

**90.76.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department.

(3) "Facility compliance tag" means a marker, constructed of metal, plastic, or other durable material, that clearly identifies all qualifying underground storage tanks on the particular site for which it is issued.

(4) "Federal act" means the federal resource conservation and recovery act, as amended (42 U.S.C. Sec. 6901, et seq.).

(5) "Federal regulations" means the underground storage tanks regulations (40 C.F.R. Secs. 280 and 281) adopted by the United States environmental protection agency under the federal act.

Except as provided in this section and any rules adopted by the department under this chapter, the definitions con-

tained in the federal regulations apply to the terms in this chapter. [1998 c 155 § 1; 1989 c 346 § 2.]

**Sunset Act application:** See note following chapter digest.

**90.76.020 Department's powers and duties.** (1) The department shall adopt rules establishing requirements for all underground storage tanks that are regulated under the federal act, taking into account the various classes or categories of tanks to be regulated. The rules must be consistent with and no less stringent than the federal regulations and consist of requirements for the following:

(a) New underground storage tank system design, construction, installation, and notification;

(b) Upgrading existing underground storage tank systems;

(c) General operating requirements;

(d) Release detection;

(e) Release reporting;

(f) Out-of-service underground storage tank systems and closure; and

(g) Financial responsibility for underground storage tanks containing regulated substances.

(2) The department shall adopt rules:

(a) Establishing physical site criteria to be used in designating local environmentally sensitive areas;

(b) Establishing procedures for local government application for this designation; and

(c) Establishing procedures for local government adoption and department approval of rules more stringent than the statewide standards in these designated areas.

(3) The department shall establish by rule an administrative and enforcement program that is consistent with and no less stringent than the program required under the federal regulations in the areas of:

(a) Compliance monitoring, including procedures for recordkeeping and a program for systematic inspections;

(b) Enforcement;

(c) Public participation; and

(d) Information sharing.

(4) The department shall establish a program that provides for the annual licensing of underground storage tanks. The license shall take the form of a tank endorsement on the facility's annual master business license issued by the department of licensing. A tank is not eligible for a license unless the owner or operator can demonstrate compliance with the requirements of this chapter and the annual tank fees have been remitted. The department may revoke a tank license if a facility is not in compliance with this chapter. The master business license shall be displayed by the tank owner or operator in a location clearly identifiable.

(5)(a) The department shall issue a one-time "facility compliance tag" to correspond with the December 22, 1998, underground storage tank compliance deadline for corrosion, spill, and overfill protection. Facility compliance tags may only be issued for facilities that have installed the equipment required to meet corrosion, spill, and overfill protection standards that are required by December 22, 1998, and at the time of tag issuance have demonstrated financial responsibility and paid annual tank fees. The facility shall continue to maintain compliance with corrosion, spill, and overfill protection

standards, and financial responsibility, and have remitted annual tank fees to display a facility compliance tag. The facility compliance tag shall be displayed on the fire emergency shutoff device, or in the absence of such a device in close proximity to the fill pipes and clearly identifiable to persons delivering regulated substance to underground storage tanks.

(b) The department may revoke a facility compliance tag if a facility is not in compliance with the requirements needed to obtain or display the tag.

(6) The department may establish programs to certify persons who conduct inspections, testing, closure, cathodic protection, interior tank lining, corrective action, or other activities required under this chapter. Certification programs shall be designed to ensure that each certification will be effective in all jurisdictions of the state.

(7) When adopting rules under this chapter, the department shall consult with the state building code council to ensure coordination with the building and fire codes adopted under chapter 19.27 RCW. [1998 c 155 § 2; 1989 c 346 § 3.]

**Sunset Act application:** See note following chapter digest.

**90.76.040 Environmentally sensitive areas.** (1) A city, town, or county may apply to the department to have an area within its jurisdictional boundaries designated an environmentally sensitive area. A city, town, or county may submit a joint application with any other city, town, or county for joint administration under chapter 39.34 RCW of a single environmentally sensitive area located in both jurisdictions.

(2) A city, town, or county may adopt proposed ordinances or resolutions establishing requirements for underground storage tanks located within an environmentally sensitive area that are more stringent than the statewide standards established under RCW 90.76.020. Proposed local ordinances and resolutions shall only apply to new underground storage tank installations. The local government adopting the ordinances and resolutions shall submit them to the department for approval. Disapproved ordinances and resolutions may be modified and resubmitted to the department for approval. Proposed local ordinances and resolutions become effective when approved by the department.

(3) The department shall approve or disapprove each proposed local ordinance or resolution based on the following criteria:

(a) The area to be regulated is found to be an environmentally sensitive area based on rules adopted by the department; and

(b) The proposed local regulations are reasonably consistent with previously approved local regulations for similar environmentally sensitive areas.

(4) A city, town, or county for which a proposed local ordinance or resolution establishing more stringent requirements is approved by the department may establish local tank fees that meet the requirements of RCW 90.76.090, if such fees are necessary for enhanced program administration or enforcement. [1998 c 155 § 3; 1989 c 346 § 5.]

**Sunset Act application:** See note following chapter digest.

**90.76.050 Delivery of regulated substances—Expiration subsection.** (1) Between June 11, 1998, and Decem-

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ber 22, 1998, persons delivering regulated substances to underground storage tanks shall not deliver to facilities that do not have an underground storage tank license. This subsection expires December 22, 1998.

(2) After December 22, 1998, persons delivering regulated substances to underground storage tanks shall not deliver to facilities that do not have a facility compliance tag displayed as required in RCW 90.76.020(5)(a).

(3) A supplier shall not refuse to deliver regulated substances to an underground storage tank regulated under this chapter on the basis of its potential to leak contents where the facility is either tagged as required in this chapter or is in compliance with federal underground storage tank regulations and any state or local regulations then in effect. This section does not apply to a supplier who does not directly transfer a regulated substance into an underground storage tank. [1998 c 155 § 4; 1989 c 346 § 6.]

**Sunset Act application:** See note following chapter digest.

**90.76.060 Investigation and access.** (1) If necessary to determine compliance with the requirements of this chapter, an authorized representative of the state engaged in compliance inspections, monitoring, and testing may, by request, require an owner or operator to submit relevant information or documents. The department may subpoena witnesses, documents, and other relevant information that the department deems necessary. In the case of any refusal to obey the subpoena, the superior court for any county in which the person is found, resides, or transacts business has jurisdiction to issue an order requiring the person to appear before the department and give testimony or produce documents. Any failure to obey the order of the court may be punished by the court as contempt.

(2) Any authorized representative of the state may require an owner or operator to conduct monitoring or testing.

(3) Upon reasonable notice, an authorized representative of the state may enter a premises or site subject to regulation under this chapter or in which records relevant to the operation of an underground storage tank system are kept. In the event of an emergency or in circumstances where notice would undermine the effectiveness of an inspection, notice is not required. The authorized representative may copy these records, obtain samples of regulated substances, and inspect or conduct monitoring or testing of an underground storage tank system.

(4) For purposes of this section, the term "authorized representative" or "authorized representative of the state" means an enforcement officer, employee, or representative of the department. [1998 c 155 § 5; 1989 c 346 § 7.]

**Sunset Act application:** See note following chapter digest.

**90.76.070 Enforcement.** The director may seek appropriate injunctive or other judicial relief by filing an action in Thurston county superior court or issue such order as the director deems appropriate to:

(1) Enjoin any threatened or continuing violation of this chapter;

(2) Restrain immediately and effectively a person from engaging in unauthorized activity that results in a violation of

any requirement of this chapter and is endangering or causing damage to public health or the environment;

(3) Require compliance with requests for information, access, testing, or monitoring under RCW 90.76.060; or

(4) Assess and recover civil penalties authorized under RCW 90.76.080. [1989 c 346 § 8.]

**Sunset Act application:** See note following chapter digest.

**90.76.080 Penalties.** (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, a person who fails to notify the department pursuant to tank notification requirements or who submits false information is subject to a civil penalty not to exceed five thousand dollars per violation.

(2) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, a person who violates this chapter is subject to a civil penalty not to exceed five thousand dollars for each tank per day of violation. [1995 c 403 § 639; 1989 c 346 § 9.]

**Sunset Act application:** See note following chapter digest.

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**90.76.090 Annual tank fee.** (1) An annual tank fee of one hundred dollars per tank is effective from July 1, 1998, to June 30, 1999. Annually, beginning on July 1, 1999, and upon a finding by the department that a fee increase is necessary, the previous tank fee amount may be increased up to the fiscal growth factor for the next year. The fiscal growth factor is calculated by the office of financial management under RCW 43.135.025 for the upcoming biennium. The department shall use the fiscal growth factor to calculate the fee for the next year and shall publish the new fee by March 1st before the year for which the new fee is effective. The new tank fee is effective from July 1st to June 30th of every year. The tank fee shall be paid by every person who:

(a) Owns an underground storage tank located in this state; and

(b) Was required to provide notification to the department under the federal act.

This fee is not required of persons who have (i) permanently closed their tanks, and (ii) if required, have completed corrective action in accordance with the rules adopted under this chapter.

(2) The department may authorize the imposition of additional annual local tank fees in environmentally sensitive areas designated under RCW 90.76.040. Annual local tank fees may not exceed fifty percent of the annual state tank fee.

(3) State and local tank fees collected under this section shall be deposited in the account established under RCW 90.76.100.

(4) Other than the annual local tank fee authorized for environmentally sensitive areas, no local government may levy an annual tank fee on the ownership or operation of an underground storage tank. [1998 c 155 § 6; 1989 c 346 § 10.]

**Sunset Act application:** See note following chapter digest.

**90.76.100 Underground storage tank account.** The underground storage tank account is created in the state trea-

surey. Money in the account may only be spent, subject to legislative appropriation, for the administration and enforcement of the underground storage tank program established under this chapter. The account shall contain:

(1) All fees collected under RCW 90.76.090; and

(2) All fines or penalties collected under RCW 90.76.080. [1991 sp.s. c 13 § 72; 1989 c 346 § 11.]

**Sunset Act application:** See note following chapter digest.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**90.76.110 Preemption.** (1) Except as provided in RCW 90.76.040 and subsections (2), (3), (4), and (5) of this section, the rules adopted under this chapter supersede and preempt any state or local underground storage tank law, ordinance, or resolution governing any aspect of regulation covered by the rules adopted under this chapter.

(2) Provisions of the uniform fire code adopted under chapter 19.27 RCW, which are not more stringent than, and do not directly conflict with, rules adopted under this chapter are not superseded or preempted.

(3) Local laws, ordinances, and resolutions pertaining to local authority to take immediate action in response to a release of a regulated substance are not superseded or preempted.

(4) City, town, or county underground storage tank ordinances that are more stringent than the federal regulations and the uniform codes adopted under chapter 19.27 RCW and that are in effect on November 1, 1988, are not superseded or preempted. A city, town, or county with an ordinance that meets these criteria shall notify the department of the existence of that ordinance by July 1, 1989.

(5) Local laws, ordinances, and resolutions pertaining to permits and fees for the use of underground storage tanks in street right of ways that were in existence prior to July 1, 1990, are not superseded or preempted. [1991 c 83 § 1; 1989 c 346 § 12.]

**Sunset Act application:** See note following chapter digest.

**90.76.120 Annual report.** The department shall submit an annual report to the appropriate standing committees of the legislature for five years beginning January 1, 1990, on the implementation of the underground storage tank regulatory program, including a report on state and local tank fees. This report shall detail the number of corrective actions taken with regard to leaking underground storage tanks and their associated costs, including anticipated future cleanup costs. [1989 c 346 § 13.]

**Sunset Act application:** See note following chapter digest.

**90.76.900 Captions not law.** Section headings used in this chapter do not constitute any part of the law. [1989 c 346 § 15.]

**Sunset Act application:** See note following chapter digest.

**90.76.901 Severability—1989 c 346.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 346 § 14.]

**Sunset Act application:** See note following chapter digest.

**90.76.902 Effective date—1989 c 346.** (1) Except as provided in subsection (2) of this section, RCW 90.76.050, 90.76.110, and 19.27.080 take effect on July 1, 1990.

(2) This section shall apply only if this act becomes effective as provided under \*section 20(2) of this act. [1989 c 346 § 18.]

**\*Reviser's note:** Section 20(2) is an uncodified section that made a state reinsurance program for owners and operators of underground storage tanks a prerequisite to 1989 c 346 taking effect. 1989 c 383 created such a program.

**Sunset Act application:** See note following chapter digest.

## Chapter 90.80 RCW

### WATER CONSERVANCY BOARDS

#### Sections

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**90.80.005 Findings.** The legislature finds:

(1) Voluntary water right transfers can reallocate water use in a manner that will result in more efficient use of water resources;

(2) Voluntary water right transfers can help alleviate water shortages, save capital outlays, reduce development costs, and provide an incentive for investment in water conservation efforts by water right holders; and

(3) The state should expedite the administrative process for water right transfers by authorizing the establishment of water conservancy boards. [2001 c 237 § 6; 1997 c 441 § 1.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.010 Definitions.** The following definitions apply throughout this chapter, unless the context clearly requires otherwise.

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(1) "Alternate" means an individual: (a) Who is appointed by the county legislative authority or authorities under RCW 90.80.050(3); (b) who is trained under the requirements of RCW 90.80.040; and (c) who, while serving as a replacement for an absent or recused commissioner: (i) May serve and vote as a commissioner; (ii) is subject to any requirement applicable to a commissioner; and (iii) counts toward a quorum.

(2) "Board" means a water conservancy board created under this chapter.

(3) "Commissioner" means an individual who is appointed by the county legislative authority or authorities as a member of a water conservancy board under RCW 90.80.050(1), or an alternate appointed under RCW 90.80.050(3) while serving as a replacement for an absent or recused commissioner.

(4) "Department" means the department of ecology.

(5) "Director" means the director of the department of ecology.

(6) "Record of decision" means the conclusion reached by a water conservancy board regarding an application for a transfer filed with the board.

(7) "Transfer" means a transfer, change, amendment, or other alteration of a part or all of a water right authorized under RCW 90.03.380, 90.03.390, or 90.44.100. [2004 c 10 § 1; 2001 c 237 § 7; 1997 c 441 § 2.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.020 Water conservancy boards—Creation.** (1)

The county legislative authority of a county may create a water conservancy board, subject to approval by the director, for the purpose of expediting voluntary water transfers within the county.

(2) A water conservancy board may be initiated by: (a) A resolution of the county legislative authority; (b) a resolution presented to the county legislative authority calling for the creation of a board by the legislative authority of an irrigation district, public utility district that operates a public water system, a reclamation district, a city operating a public water system, or a water-sewer district that operates a public water system; (c) a resolution by the governing body of a cooperative or mutual corporation that operates a public water system serving one hundred or more accounts; (d) a petition signed by five or more water rights holders, including their addresses, who divert water for use within the county; or (e) any combination of (a) through (d) of this subsection. The resolution or petition must state the need for the board, include proposed bylaws or rules and procedures that will govern the operation of the board, identify the geographic boundaries where there is an initial interest in transacting water sales or transfers, and describe the proposed method for funding the operation of the board.

(3) After receiving a resolution or petition to create a board, a county legislative authority shall determine its sufficiency. If the county legislative authority finds that the resolution or petition is sufficient, or if the county is initiating the creation of a board upon its own motion, it shall hold at least one public hearing on the proposed creation of the board. Notice of the hearing shall be published at least once in a

newspaper of general circulation in the county not less than ten days nor more than thirty days before the date of the hearing. The notice shall describe the time, date, place, and purpose of the hearing, as well as the purpose of the board. Following the hearing, the county legislative authority may adopt a resolution approving the creation of the board if it finds that the board's creation is in the public interest. [1997 c 441 § 3.]

**90.80.030 Petition for board creation—Required information—Approval or denial—Description of training requirements.** (1) The county legislative authority shall forward a copy of the resolution or petition calling for the creation of the board, a copy of the resolution approving the creation of the board, and a summary of the public testimony presented at the public hearing to the director following the adoption of the resolution calling for the board's creation.

(2) The director shall approve or deny the creation of a board within forty-five days after the county legislative authority has submitted all information required under subsection (1) of this section. The director must determine whether the creation of the board would further the purposes of this chapter and is in the public interest. The director shall include a description of the necessary training requirements for commissioners in the notice of approval sent to the county legislative authority. [1997 c 441 § 4.]

**90.80.035 Water conservancy boards for water resource inventory areas—Multicounty water conservancy boards—Petition for creation.** (1) If a county is the only county having lands comprising a water resource inventory area as defined in chapter 173-500 WAC, the county may elect to establish a water conservancy board for the water resource inventory area, rather than for the entire county.

(2) Counties having lands within a water resource inventory area may jointly petition the department for establishment of a water conservancy board for the water resource inventory area. Counties may jointly petition the department to establish boards serving multiple counties or one or more water resource inventory areas. For any of these multicounty options, the counties must reach their joint determination on the decision to file the petition, on the proposed bylaws, and on other matters relating to the establishment and operation of the board in accordance with the provisions of this chapter and chapter 39.34 RCW, the interlocal cooperation act. Each county must meet the requirements of RCW 90.80.020(2). The counties must jointly determine the sufficiency of a petition under RCW 90.80.020(3) and each county legislative authority must hold a hearing in its county.

(3) If establishment of a multicounty water conservancy board under any of the options provided in subsection (2) of this section is approved by the department, the counties must jointly appoint the board commissioners and jointly appoint members to fill vacancies as they occur, and may jointly appoint alternates in accordance with the provisions of this chapter and chapter 39.34 RCW.

(4) A board established for more than one county or for one or more water resource inventory areas has the same powers as other boards established under this chapter. The

board has no jurisdiction outside the boundaries of the water resource inventory area or areas or the county or counties, as applicable, for which it has been established, except as provided in this chapter.

(5) The counties establishing a board for a multiple county area must designate a lead county for purposes of providing a single point of contact for communications with the department. The lead county shall forward the information required in RCW 90.80.030(1) for each county. [2004 c 10 § 2; 2001 c 237 § 8.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.040 Rules—Minimum training requirements and continuing education.** The director of the department may, as deemed necessary by the director, adopt rules in accordance with chapter 34.05 RCW necessary to carry out this chapter, including minimum requirements for the training and continuing education of commissioners. Training courses for commissioners shall include an overview of state water law and hydrology. Prior to commissioners taking action on proposed water right transfers, the commissioners shall comply with training requirements that include state water law and hydrology. [1997 c 441 § 5.]

**90.80.050 Corporate powers—Board composition—Members' terms, expenses—Alternates—Eligibility to be appointed.** (1) A water conservancy board constitutes a public body corporate and politic and a separate unit of local government in the state. Each board shall consist of three commissioners appointed by the county legislative authority or authorities as applicable for six-year terms. The county legislative authority or authorities shall stagger the initial appointment of commissioners so that the first commissioners who are appointed shall serve terms of two, four, and six years, respectively, from the date of their appointment. The county legislative authority or authorities may appoint two additional commissioners, for a total of five. If the county or counties elect to appoint five commissioners, the initial terms of the additional commissioners shall be for three and five-year terms respectively. All vacancies shall be filled for the unexpired term.

(2) The county legislative authority or authorities shall consider, but are not limited in appointing, nominations to the board by people or entities petitioning or requesting the creation of the board. The county legislative authority or authorities shall ensure that at least one commissioner is an individual water right holder who diverts or withdraws water for use within the area served by the board. The county legislative authority or authorities must appoint one person who is not a water right holder, except as provided in subsection (5) of this section. If the county legislative authority or authorities choose not to appoint five commissioners, and as of May 10, 2001, there is no commissioner on an existing board who is not a water right holder, the county or counties are not required to appoint a new commissioner until the first vacancy occurs. In making appointments to the board, the county legislative authority or authorities shall choose from among persons who are residents of the county or counties or

a county that is contiguous to the county that the water conservancy board is to serve.

(3) The county legislative authority or authorities may appoint up to two alternates to serve in a reserve capacity as replacements for absent or recused commissioners, and while serving in that capacity an alternate may serve for all or any portion of a meeting of the board. Alternates do not hold an appointed commissioner position on a board as set forth under subsection (1) of this section. An alternate shall be appointed to serve a six-year term.

(4) No commissioner may participate in a record of decision of a board until he or she has successfully completed the necessary training required under RCW 90.80.040. Commissioners shall serve without compensation, but are entitled to reimbursement for necessary travel expenses in accordance with RCW 43.03.050 and 43.03.060 and costs incident to receiving training.

(5) For the purposes [of] determining a person's eligibility to be appointed as a commissioner who is not a water right holder under this section, a person is not considered to be a water right holder: (a) By virtue of the person's receiving water from a municipal water supplier as defined in RCW 90.03.015, or (b) if the only water right held by the person is a right to the type of residential use of water that is exempted from permit requirements by RCW 90.44.050 and that right is for water from a well located in a county with a population that is not greater than one hundred fifty thousand people. [2004 c 104 § 2; 2004 c 10 § 3; 2001 c 237 § 10; 1997 c 441 § 6.]

**Reviser's note:** This section was amended by 2004 c 10 § 3 and by 2004 c 104 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Purpose—2004 c 104:** "The purpose of this act is to ensure that counties have a sufficient portion of their citizenry eligible to serve as commissioners of water conservancy boards to enable the appointing legislative authorities to fill positions on the boards in both urban and rural counties." [2004 c 104 § 1.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.055 Additional board powers.** (1) Except as provided in subsection (2) of this section, a board shall operate on a countywide basis or on an areawide basis in the case of a board with jurisdiction in more than one county or water resource inventory area, and have the following powers, in addition to any other powers granted in this chapter:

(a) Except as provided in subsection (2) of this section, a board may act upon applications for the same kinds of transfers that the department itself is authorized to act upon, including an application to establish a trust water right under chapter 90.38 or 90.42 RCW. A board may not act upon an application for the type of transfer within an irrigation district as described in RCW 90.03.380(3). If a board receives an application for a transfer between two irrigation districts as described in RCW 90.03.380(2), the board must, before publication of notice of the application, receive the concurrence specified in that section.

(b) A board may act upon an application to transfer a water right claim filed under chapter 90.14 RCW. In acting upon such an application, the board must make a tentative

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determination as to the validity and extent of the right, if any, embodied in the claim and may only issue a record of decision regarding a transfer of such a claim to the extent it is tentatively determined to be valid. Neither the board's tentative determination, nor the director's acceptance of such a tentative determination, constitutes an adjudication of the right under RCW 90.03.110 through 90.03.240 or 90.44.220, and such a determination does not preclude or prejudice a subsequent challenge to the validity, priority, or quantity of the right in a general adjudication under those sections.

(c) A board may establish a water right transfer information exchange through which all or part of a water right may be listed for sale or lease. The board may also accept and post notices in the exchange from persons interested in acquiring or leasing water rights from willing sellers.

(d) The director shall assign a representative of the department to provide technical assistance to each board. If requested by the board, the representative shall work with the board as it reviews applications for formal acceptance, prepares draft records of decision, and considers other technical or legal factors affecting the board's development of a final record of decision. A board may request and accept additional technical assistance from the department. A board may also request and accept assistance and support from the county government or governments of the county or counties in which it operates.

(2) The jurisdiction of a board shall not apply within the boundaries of a federal Indian reservation or to lands held in trust for an Indian band, tribe, or nation by the federal government. [2001 c 237 § 9.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.057 Quorum.** For purposes of carrying out the official business of a board, a quorum consists of the physical presence of two of the three members of a three-member board or three of the five members of a five-member board. A board may operate with one or two vacant positions as long as it meets the quorum requirement. [2001 c 237 § 19.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.060 Board powers—Funding.** (1) A water conservancy board may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or any interest therein, enter into and perform all necessary contracts, appoint and employ necessary agents and employees and fix their compensation, employ contractors including contracts for professional services, sue and be sued, and do any and all lawful acts required and expedient to carry out the purposes of this chapter.

(2) A board constitutes an independently funded entity, and may provide for its own funding as determined by the commissioners. The board may accept grants and may adopt fees for processing applications for transfers of water rights to fund the activities of the board. A board may not impose taxes or acquire property by the exercise of eminent domain. [1997 c 441 § 7.]

**90.80.065 Dissolution of board.** A water conservancy board may be formally dissolved by the county or jointly by the counties as applicable in which it operates by adoption of a resolution of the county legislative authority or authorities. Notice of the dissolution must be provided to the director. The department may petition the county legislative authority of the county or the lead county for a board to request that the board be dissolved for repeated statutory violations or demonstrated inability to perform the functions for which the board was created. [2001 c 237 § 16.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.070 Applications for water transfers—Notice—Record of decision—Review—Alternate serving as commissioner.** (1) A person proposing a transfer of a water right may elect to file an application with a water conservancy board, if a board has been established for the geographic area where the water is or would be diverted, withdrawn, or used. If the person has already filed an application with the department, the person may request that the department convey the application to the conservancy board with jurisdiction and the department must promptly forward the application. A board is not required to process an application filed with the board. If a board decides that it will not process an application, it must return the application to the applicant and must inform the applicant that the application may be filed with the department. An application to the board for a transfer shall be made on a form provided by the department. A board may require an applicant to submit within a reasonable time additional information as may be required by the board in order to review and act upon the application. At a minimum, the application shall include information sufficient to establish to the board's satisfaction that a right to the quantity of water being transferred exists, and a description of any applicable limitations on the right to use water, including the point of diversion or withdrawal, place of use, source of supply, purpose of use, quantity of use permitted, time of use, period of use, and the place of storage.

(2) The applicant for any proposed water right transfer may apply to a board for a record of decision on a transfer if the water proposed to be transferred is currently diverted, withdrawn, or used within the geographic area in which the board has jurisdiction, or would be diverted, withdrawn, or used within the geographic area in which the board has jurisdiction if the transfer is approved. In the case of a proposed water right transfer in which the water is currently diverted or withdrawn or would be diverted or withdrawn outside the geographic boundaries of the county or the water resource inventory area where the use is proposed to be made, the board shall hold a public hearing in the county of the diversion or withdrawal or proposed diversion or withdrawal. The board shall provide for prominent publication of notice of the hearing in a newspaper of general circulation published in the county in which the hearing is to be held for the purpose of affording an opportunity for interested persons to comment upon the application. If an application is for a transfer of water out of the water resource inventory area that is the source of the water, the board shall consult with the department regarding the application.

(3) After an application for a transfer is filed with the board, the board shall publish notice of the application and send notice to state agencies in accordance with the requirements of RCW 90.03.280. In addition, the board shall send notice of the application to any Indian tribe with reservation lands that would be, but for RCW 90.80.055(2), within the area in which the board has jurisdiction. The board shall also provide notice of the application to any Indian tribe that has requested that it be notified of applications. Any person may submit comments and other information to the board regarding the application. The comments and information may be submitted in writing or verbally at any public meeting of the board to discuss or decide on the application. The comments must be considered by the board in making its record of decision.

(4) If a majority of the board determines that the application is complete, and that the transfer is in accordance with RCW 90.03.380, 90.03.390, or 90.44.100, the board must issue a record of decision approving the transfer, subject to review by the director. In making its record of decision, the board must consider among other things whether the proposed transfer can be made without detriment or injury to existing water rights, including rights established for instream flows. The board must include in its record of decision any conditions that are deemed necessary for the transfer to qualify for approval under the applicable laws of the state. The basis for the record of decision of the board must be documented in a report of examination. The board's proposed approval must clearly state that the applicant is not permitted to proceed to effect the proposed transfer until a final decision is made by the director. In making its record of decision, the board must consider among other things whether the proposed transfer can be made without detriment or injury to existing water rights, including rights established for instream flows.

(5) If a majority of the board determines that the application cannot be approved under the applicable laws of the state of Washington, the board must make a record of decision denying the application together with its report of examination documenting its record of decision. The board's record of decision is subject to review by the director under RCW 90.80.080.

(6) When alternates appointed under the provisions of RCW 90.80.050(3) are serving as commissioners on a board, a majority vote of the board must include at least one commissioner appointed under the provisions of RCW 90.80.050(1).

(7) An alternate when serving as a commissioner in the review of an application before the board shall:

(a) Review the written record before the board and any exhibits provided for the review or provided at the hearing if a hearing was held;

(b) Review any audio or video recordings made of the proceedings on the application; and

(c) Conduct a site visit if a site visit by other commissioners acting on the application has been previously conducted.

(8) An alternate serving as a commissioner shall be guided by the conflict of interest standards applicable to all commissioners under RCW 90.80.120. The board shall provide notice of an alternate sitting as a commissioner to the

applicant and other participants in proceedings before the board in a timely manner to provide sufficient time for any challenges for conflict of interest to be made prior to the board's decision on the application. [2004 c 10 § 4; 2001 c 237 § 11; 1997 c 441 § 9.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.080 Records of decision—Transmittal to department and others—Internet posting—Review.** (1) The board must provide a copy of its record of decision to the applicant. The board shall submit its record of decision on the transfer application to the department for review. The board shall also submit its report of examination to the department summarizing factual findings on which the board relied in reaching its record of decision and a copy of the files and records upon which the board's record of decision is based. The board shall also promptly transmit notice by mail to any person who objected to the transfer or who requested notice of the board's record of decision.

(2) Upon receipt of a board's record of decision, the department shall promptly post the text of the record of decision transmittal form on the department's internet site. The director shall review each record of decision made by a board for compliance with applicable state water law.

(3) Any party to a transfer, third party who alleges his or her water right will be impaired by the proposed transfer, or other person may file a letter of concern or support with the department and the department may consider the concern or support expressed in the letter. Such letters must be received by the department within thirty days of the department's receipt of the board's record of decision.

(4) The director shall review the record of decision of the board and shall affirm, reverse, or modify the action of the board within forty-five days of receipt. The forty-five day time period may be extended for an additional thirty days by the director or at the request of the board or applicant. If the director fails to act within the prescribed time period, the board's record of decision becomes the decision of the department and is appealable as provided by RCW 90.80.090. If the director acts within the prescribed time period, the director's decision to affirm, modify, or reverse is appealable as provided by RCW 90.80.090, and the director's decision to remand is appealable as provided by \*RCW 90.80.120(2)(b). [2001 c 237 § 12; 1997 c 441 § 11.]

**\*Reviser's note:** RCW 90.80.120 was amended by 2004 c 10 § 5, changing subsection (2)(b) to subsection (3)(b).

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.090 Appeals from director's decisions.** The decision of the director to approve or deny an action to create a board, or to approve, deny, or modify a water right transfer either by action or inaction is appealable in the same manner as other water right decisions made pursuant to chapters 90.03 and 90.44 RCW. [2001 c 237 § 13; 1997 c 441 § 12.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

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**90.80.100 Damages arising from records of decisions on transfers—Immunity.** Neither the county or counties, the department, a conservancy board, or its employees, nor individual conservancy board commissioners shall be subject to any cause of action or claim for damages arising out of records of decisions on transfers made by a board under this chapter. [2001 c 237 § 14; 1997 c 441 § 13.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.110 Approval of interties.** Nothing in this chapter eliminates or lessens the requirements necessary for the approval of interties. [1997 c 441 § 15.]

**90.80.120 Conflicts of interest.** (1) A commissioner of a water conservancy board shall not engage in any act which is in conflict with the proper discharge of the official duties of a commissioner. A commissioner is deemed to have a conflict of interest if he or she:

(a) Has an ownership interest in a water right subject to an application for approval before the board;

(b) Receives or has a financial interest in an application submitted to the board or a project, development, or venture related to the approval of the application; or

(c) Solicits, accepts, or seeks anything of economic value as a gift, gratuity, or favor from any person, firm, or corporation involved in the application.

(2) In the event of a recusal of an appointed commissioner, an alternate may serve as a commissioner on a board and may act upon the official board business for which the conflict of interest exists.

(3) The department shall return a record of decision to a conservancy board without action where the department determines that any member of a board has violated subsection (1) of this section.

(a) If a person seeking to rely on this section to disqualify a commissioner knows of the basis for disqualification before the time the board issues a record of decision, the person must request the board to have the commissioner recuse himself or herself from further involvement in processing the application, or be barred from later raising that challenge.

(b) If the commissioner does not recuse himself or herself or if the person becomes aware of the basis for disqualification after the board issues a record of decision but within the time period under RCW 90.80.080(3) for filing objections with the department, the person must raise the challenge with the department. If the department determines that the commissioner should be disqualified under this section, the director must remand the record of decision to the board for reconsideration and resubmission of a record of decision. The disqualified commissioner shall not participate in any further board review of the application. The department's decision on whether to remand a record of decision under this section may only be appealed at the same time and in the same manner as an appeal of the department's decision to affirm, modify, or reverse the record of decision after remand.

(c) If the person becomes aware of the basis for disqualification after the time for filing objections with the department, the person may raise the challenge in an appeal of the

department's final decision under RCW 90.80.090. [2004 c 10 § 5; 2001 c 237 § 15; 1997 c 441 § 16.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.130 Application of open public meetings act.**

Water conservancy board activities are subject to the open public meetings act, chapter 42.30 RCW and to chapter 42.32 RCW. This includes announcing meetings in advance. [2001 c 237 § 17; 1997 c 441 § 17.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.135 Application of public records act.**

(1) A board is subject to the requirements of chapter 42.56 RCW. Each board must establish and maintain records of its proceedings and determinations. While in the possession of the board, all such records must be made available for inspection and copies must be provided to the public on request under the provisions of chapter 42.56 RCW.

(2) Upon the conclusion of its business involving a water right transfer application, a board must promptly send the original copies of all records relating to that application to the department for recordkeeping. A board may keep a copy of the original documents. After the records are transferred to the department, the responsibility for making the records available under chapter 42.56 RCW is transferred to the department. [2005 c 274 § 366; 2001 c 237 § 18.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.140 Transfers approved under chapter 90.03 or 90.44 RCW not affected.** Nothing in this chapter affects transfers that may be otherwise approved under chapter 90.03 or 90.44 RCW. [2001 c 237 § 20; 1997 c 441 § 18.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.150 Reports to legislative committees.**

The department shall report biennially by December 31st of each even-numbered year to the appropriate committees of the legislature on the boards formed or sought to be formed under the authority of this chapter, the transfer applications reviewed and other activities conducted by the boards, and the funding of such boards. Conservancy boards must provide information regarding their activities to the department to assist the department in preparing the report. [2001 c 237 § 21; 1997 c 441 § 19.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.80.900 Severability—1997 c 441.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [1997 c 441 § 20.]

**90.80.901 Reports to the legislature.** (1) By December 31, 2004, the department of ecology must report to the appropriate legislative committees the pertinent experience acquired in implementing the various components of chapter 237, Laws of 2001 that are under its jurisdiction.

(2) Beginning December 31, 2001, and ending on December 31, 2004, the department of ecology shall report to the legislature by January 1st of each year on the results of processing applications under RCW 90.03.380(5) and processing applications through water conservancy boards under chapter 90.80 RCW. In the report due on December 31, 2004, the department of ecology shall provide an evaluation and make recommendations regarding modification of any of the provisions of RCW 90.03.380(5).

(3) By October 1, 2001, the office of financial management must complete an assessment of watershed planning, including evaluation of the performance of both watershed planning units and state agencies involved in watershed planning. The office's assessment must address the progress of planning units toward completion of watershed plans and the use of funds provided by the state of Washington to planning units and state agencies for developing those plans. The assessment must include an assessment of the progress of planning units and the department of ecology in setting instream flows. The office must report the results of the assessment to the appropriate committees of the legislature, and the governor.

(4) Beginning December 31, 2001, and ending on December 31, 2004, the office of financial management shall review and report to the legislature by January 1st of each year on whether the department of ecology has adequate funding for fulfilling the department's responsibilities for processing applications through water conservancy boards under chapter 90.80 RCW.

(5) The office of financial management, in consultation with the departments of revenue, health, and ecology, must evaluate the long-term revenue impacts and the costs and benefits of the deductions and exclusions authorized by \*RCW 82.16.0431. The office of financial management must also evaluate the costs and benefits and revenue impacts of other potential water conservation tax incentives, including but not limited to those that may involve the sales, use, property, utility, and business and occupations taxes. The office of financial management must report its findings regarding tax incentives by December 31, 2001, to the legislature's standing committees with jurisdiction over water resources and the legislative fiscal committees.

(6) The office of financial management, in consultation with the departments of health and ecology, must evaluate the level of water savings occurring from water suppliers' use of the tax incentive provisions in \*RCW 82.16.0431 and must report its findings to the legislature by December 31, 2002. [2001 c 237 § 32.]

**\*Reviser's note:** RCW 82.16.0431 expired June 30, 2003.

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**Chapter 90.82 RCW****WATERSHED PLANNING**

(Formerly: Water resource management)

## Sections

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**90.82.005 Purpose.** The purpose of this chapter is to develop a more thorough and cooperative method of determining what the current water resource situation is in each water resource inventory area of the state and to provide local citizens with the maximum possible input concerning their goals and objectives for water resource management and development.

It is necessary for the legislature to establish processes and policies that will result in providing state agencies with more specific guidance to manage the water resources of the state consistent with current law and direction provided by local entities and citizens through the process established in accordance with this chapter. [1997 c 442 § 101.]

**90.82.010 Finding.** The legislature finds that the local development of watershed plans for managing water resources and for protecting existing water rights is vital to both state and local interests. The local development of these plans serves vital local interests by placing it in the hands of people: Who have the greatest knowledge of both the resources and the aspirations of those who live and work in the watershed; and who have the greatest stake in the proper, long-term management of the resources. The development of such plans serves the state's vital interests by ensuring that the state's water resources are used wisely, by protecting existing water rights, by protecting instream flows for fish, and by providing for the economic well-being of the state's citizenry and communities. Therefore, the legislature believes it necessary for units of local government throughout the state to engage in the orderly development of these watershed plans. [1997 c 442 § 102.]

**90.82.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Implementing rules" for a WRIA plan are the rules needed to give force and effect to the parts of the plan that

create rights or obligations for any party including a state agency or that establish water management policy.

(3) "Minimum instream flow" means a minimum flow under chapter 90.03 or 90.22 RCW or a base flow under chapter 90.54 RCW.

(4) "WRIA" means a water resource inventory area established in chapter 173-500 WAC as it existed on January 1, 1997.

(5) "Water supply utility" means a water, combined water-sewer, irrigation, reclamation, or public utility district that provides water to persons or other water users within the district or a division or unit responsible for administering a publicly governed water supply system on behalf of a county.

(6) "WRIA plan" or "plan" means the product of the planning unit including any rules adopted in conjunction with the product of the planning unit. [1997 c 442 § 103.]

**90.82.030 Principles.** In order to have the best possible program for appropriating and administering water use in the state, the legislature establishes the following principles and criteria to carry out the purpose and intent of chapter 442, Laws of 1997.

(1) All WRIA planning units established under this chapter shall develop a process to assure that water resource user interests and directly involved interest groups at the local level have the opportunity, in a fair and equitable manner, to give input and direction to the process.

(2) If a planning unit requests technical assistance from a state agency as part of its planning activities under this chapter and the assistance is with regard to a subject matter over which the agency has jurisdiction, the state agency shall provide the technical assistance to the planning unit.

(3) Plans developed under chapter 442, Laws of 1997 shall be consistent with and not duplicative of efforts already under way in a WRIA, including but not limited to watershed analysis conducted under state forest practices statutes and rules. [1997 c 442 § 104.]

**90.82.040 WRIA planning units—Watershed planning grants—Eligibility criteria—Administrative costs.**

(1) Once a WRIA planning unit has been initiated under RCW 90.82.060 and a lead agency has been designated, it shall notify the department and may apply to the department for funding assistance for conducting the planning and implementation. Funds shall be provided from and to the extent of appropriations made by the legislature to the department expressly for this purpose.

(2)(a) Each planning unit that has complied with subsection (1) of this section is eligible to receive watershed planning grants in the following amounts for the first three phases of watershed planning and phase four watershed plan implementation:

(i) Initiating governments may apply for an initial organizing grant of up to fifty thousand dollars for a single WRIA or up to seventy-five thousand dollars for a multi-WRIA management area in accordance with RCW 90.82.060(4);

(ii)(A) A planning unit may apply for up to two hundred thousand dollars for each WRIA in the management area for conducting watershed assessments in accordance with RCW 90.82.070, except that a planning unit that chooses to conduct

a detailed assessment or studies under (a)(ii)(B) of this subsection or whose initiating governments choose or have chosen to include an instream flow or water quality component in accordance with RCW 90.82.080 or 90.82.090 may apply for up to one hundred thousand additional dollars for each instream flow and up to one hundred thousand additional dollars for each water quality component included for each WRIA to conduct an assessment on that optional component and for each WRIA in which the assessments or studies under (a)(ii)(B) of this subsection are conducted.

(B) A planning unit may elect to apply for up to one hundred thousand additional dollars to conduct a detailed assessment of multipurpose water storage opportunities or for studies of specific multipurpose storage projects which opportunities or projects are consistent with and support the other elements of the planning unit's watershed plan developed under this chapter; and

(iii) A planning unit may apply for up to two hundred fifty thousand dollars for each WRIA in the management area for developing a watershed plan and making recommendations for actions by local, state, and federal agencies, tribes, private property owners, private organizations, and individual citizens, including a recommended list of strategies and projects that would further the purpose of the plan in accordance with RCW 90.82.060 through 90.82.100.

(b) A planning unit may request a different amount for phase two or phase three of watershed planning than is specified in (a) of this subsection, provided that the total amount of funds awarded do not exceed the maximum amount the planning unit is eligible for under (a) of this subsection. The department shall approve such an alternative allocation of funds if the planning unit identifies how the proposed alternative will meet the goals of this chapter and provides a proposed timeline for the completion of planning. However, the up to one hundred thousand additional dollars in funding for instream flow and water quality components and for water storage assessments or studies that a planning unit may apply for under (a)(ii)(A) of this subsection may be used only for those instream flow, water quality, and water storage purposes.

(c) By December 1, 2001, or within one year of initiating phase one of watershed planning, whichever occurs later, the initiating governments for each planning unit must inform the department whether they intend to have the planning unit establish or amend instream flows as part of its planning process. If they elect to have the planning unit establish or amend instream flows, the planning unit is eligible to receive one hundred thousand dollars for that purpose in accordance with (a)(ii) of this subsection. If the initiating governments for a planning unit elect not to establish or amend instream flows as part of the unit's planning process, the department shall retain one hundred thousand dollars to carry out an assessment to support establishment of instream flows and to establish such flows in accordance with RCW 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use these funds to amend an existing instream flow unless requested to do so by the initiating governments for a planning unit.

(d) In administering funds appropriated for supplemental funding for optional plan components under (a)(ii) of this subsection, the department shall give priority in granting the

available funds to proposals for setting or amending instream flows.

(e) A planning unit may apply for a matching grant for phase four watershed plan implementation following approval under the provisions of RCW 90.82.130. A match of ten percent is required and may include financial contributions or in-kind goods and services directly related to coordination and oversight functions. The match can be provided by the planning unit or by the combined commitments from federal agencies, tribal governments, local governments, special districts, or other local organizations. The phase four grant may be up to one hundred thousand dollars for each planning unit for each of the first three years of implementation. At the end of the three-year period, a two-year extension may be available for up to fifty thousand dollars each year. For planning units that cover more than one WRIA, additional matching funds of up to twenty-five thousand dollars may be available for each additional WRIA per year for the first three years of implementation, and up to twelve thousand five hundred dollars per WRIA per year for each of the fourth and fifth years.

(3)(a) The department shall use the eligibility criteria in this subsection (3) instead of rules, policies, or guidelines when evaluating grant applications at each stage of the grants program.

(b) In reviewing grant applications under this subsection (3), the department shall evaluate whether:

(i) The planning unit meets all of the requirements of this chapter;

(ii) The application demonstrates a need for state planning funds to accomplish the objectives of the planning process; and

(iii) The application and supporting information evidences a readiness to proceed.

(c) In ranking grant applications submitted at each stage of the grants program, the department shall give preference to applications in the following order of priority:

(i) Applications from existing planning groups that have been in existence for at least one year;

(ii) Applications that address protection and enhancement of fish habitat in watersheds that have aquatic fish species listed or proposed to be listed as endangered or threatened under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq. and for which there is evidence of an inability to supply adequate water for population and economic growth from:

(A) First, multi-WRIA planning; and

(B) Second, single WRIA planning;

(iii) Applications that address protection and enhancement of fish habitat in watersheds or for which there is evidence of an inability to supply adequate water for population and economic growth from:

(A) First, multi-WRIA planning; and

(B) Second, single WRIA planning.

(d) Except for phase four watershed plan implementation, the department may not impose any local matching fund requirement as a condition for grant eligibility or as a preference for receiving a grant.

(4) The department may retain up to one percent of funds allocated under this section to defray administrative costs.

(5) Planning under this chapter should be completed as expeditiously as possible, with the focus being on local stakeholders cooperating to meet local needs.

(6) Funding provided under this section shall be considered a contractual obligation against the moneys appropriated for this purpose. [2003 1st sp.s. c 4 § 2; 2001 c 237 § 2; 1998 c 247 § 1; 1997 c 442 § 105.]

**Findings—2003 1st sp.s. c 4:** "The legislature declares and reaffirms that a core principle embodied in chapter 90.82 RCW is that state agencies must work cooperatively with local citizens in a process of planning for future uses of water by giving local citizens and the governments closest to them the ability to determine the management of water in the WRIA or WRAs being planned.

The legislature further finds that this process of local planning must have all the tools necessary to accomplish this task and that it is essential for the legislature to provide a clear statutory process for implementation so that the locally developed plan will be the adopted and implemented plan to the greatest extent possible." [2003 1st sp.s. c 4 § 1.]

**Finding—Intent—2001 c 237:** "The legislature is committed to meeting the needs of a growing population and a healthy economy statewide; to meeting the needs of fish and healthy watersheds statewide; and to advancing these two principles together, in increments over time.

The legislature finds that improved management of the state's water resources, clarifying the authorities, requirements, and timelines for establishing instream flows, providing timely decisions on water transfers, clarifying the authority of water conservancy boards, and enhancing the flexibility of our water management system to meet both environmental and economic goals are important steps to providing a better future for our state.

The need for these improvements is particularly urgent as we are faced with drought conditions. The failure to act now will only increase the potential negative effects on both the economy and the environment, including fisheries resources.

Deliberative action over several legislative sessions and interim periods between sessions will be required to address the long-term goal of improving the responsiveness of the state water code to meet the diverse water needs of the state's citizenry. It is the intent of the legislature to begin this work now by providing tools to enable the state to respond to imminent drought conditions and other immediate problems relating to water resources management. It is also the legislature's intent to lay the groundwork for future legislation for addressing the state's long-term water problems." [2001 c 237 § 1.]

**Severability—2001 c 237:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 237 § 33.]

**Effective date—2001 c 237:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2001]." [2001 c 237 § 34.]

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.82.043 Implementation plan.** (1) Within one year of accepting funding under RCW 90.82.040(2)(e), the planning unit must complete a detailed implementation plan. Submittal of a detailed implementation plan to the department is a condition of receiving grants for the second and all subsequent years of the phase four grant.

(2) Each implementation plan must contain strategies to provide sufficient water for: (a) Production agriculture; (b) commercial, industrial, and residential use; and (c) instream flows. Each implementation plan must contain timelines to achieve these strategies and interim milestones to measure progress.

(3) The implementation plan must clearly define coordination and oversight responsibilities; any needed interlocal agreements, rules, or ordinances; any needed state or local administrative approvals and permits that must be secured; and specific funding mechanisms.

(4) In developing the implementation plan, the planning unit must consult with other entities planning in the watershed management area and identify and seek to eliminate any activities or policies that are duplicative or inconsistent.

(5) By December 1, 2003, and by December 1st of each subsequent year, the director of the department shall report to the appropriate legislative standing committees regarding statutory changes necessary to enable state agency approval or permit decision making needed to implement a plan approved under this chapter. [2003 1st sp.s. c 4 § 3.]

**Findings—2003 1st sp.s. c 4:** See note following RCW 90.82.040.

**90.82.048 Implementation plan—Timelines and milestones.** (1) The timelines and interim milestones in a detailed implementation plan required by RCW 90.82.043 must address the planned future use of existing water rights for municipal water supply purposes, as defined in RCW 90.03.015, that are inchoate, including how these rights will be used to meet the projected future needs identified in the watershed plan, and how the use of these rights will be addressed when implementing instream flow strategies identified in the watershed plan.

(2) The watershed planning unit or other authorized lead agency shall ensure that holders of water rights for municipal water supply purposes not currently in use are asked to participate in defining the timelines and interim milestones to be included in the detailed implementation plan.

(3) The department of health shall annually compile a list of water system plans and plan updates to be reviewed by the department during the coming year and shall consult with the departments of community, trade, and economic development, ecology, and fish and wildlife to: (a) Identify watersheds where further coordination is needed between water system planning and local watershed planning under this chapter; and (b) develop a work plan for conducting the necessary coordination. [2003 1st sp.s. c 5 § 9.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**90.82.050 Limitations on liability.** (1) This chapter shall not be construed as creating a new cause of action against the state or any county, city, town, water supply utility, conservation district, or planning unit.

(2) Notwithstanding RCW 4.92.090, 4.96.010, and 64.40.020, no claim for damages may be filed against the state or any county, city, town, water supply utility, tribal governments, conservation district, or planning unit that or member of a planning unit who participates in a WRIA planning unit for performing responsibilities under this chapter. [1997 c 442 § 106.]

**90.82.060 Initiation of watershed planning—Scope of planning—Technical assistance from state agencies.** (1) Planning conducted under this chapter must provide for a process to allow the local citizens within a WRIA or multi-WRIA area to join together in an effort to: (a) Assess the status of the water resources of their WRIA or multi-WRIA area; and (b) determine how best to manage the water resources of the WRIA or multi-WRIA area to balance the competing resource demands for that area within the parameters under RCW 90.82.120.

(2) Watershed planning under this chapter may be initiated for a WRIA only with the concurrence of: (a) All counties within the WRIA; (b) the largest city or town within the WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water from the WRIA or, for a WRIA with lands within the Columbia Basin project, the water supply utility obtaining from the Columbia Basin project the largest quantity of water for the WRIA. To apply for a grant for organizing the planning unit as provided for under RCW 90.82.040(2)(a), these entities shall designate the entity that will serve as the lead agency for the planning effort and indicate how the planning unit will be staffed. For purposes of this chapter, WRIA 40 shall be divided such that the portion of the WRIA located entirely within the Stemilt and Squilchuck subbasins shall be considered WRIA 40a and the remaining portion shall be considered WRIA 40b. Planning may be conducted separately for WRIA 40a and 40b. WRIA 40a shall be eligible for one-fourth of the funding available for a single WRIA, and WRIA 40b shall be eligible for three-fourths of the funding available for a single WRIA.

(3) Watershed planning under this chapter may be initiated for a multi-WRIA area only with the concurrence of: (a) All counties within the multi-WRIA area; (b) the largest city or town in each WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water in each WRIA.

(4) If entities in subsection (2) or (3) of this section decide jointly and unanimously to proceed, they shall invite all tribes with reservation lands within the management area.

(5) The entities in subsection (2) or (3) of this section, including the tribes if they affirmatively accept the invitation, constitute the initiating governments for the purposes of this section.

(6) The organizing grant shall be used to organize the planning unit and to determine the scope of the planning to be conducted. In determining the scope of the planning activities, consideration shall be given to all existing plans and related planning activities. The scope of planning must include water quantity elements as provided in RCW 90.82.070, and may include water quality elements as contained in RCW 90.82.090, habitat elements as contained in RCW 90.82.100, and instream flow elements as contained in RCW 90.82.080. The initiating governments shall work with state government, other local governments within the management area, and affected tribal governments, in developing a planning process. The initiating governments may hold public meetings as deemed necessary to develop a proposed scope of work and a proposed composition of the planning unit. In developing a proposed composition of the planning unit, the initiating governments shall provide for representation of a wide range of water resource interests.

(7) Each state agency with regulatory or other interests in the WRIA or multi-WRIA area to be planned shall assist the local citizens in the planning effort to the greatest extent practicable, recognizing any fiscal limitations. In providing such technical assistance and to facilitate representation on the planning unit, state agencies may organize and agree upon their representation on the planning unit. Such technical assistance must only be at the request of and to the extent desired by the planning unit conducting such planning. The

number of state agency representatives on the planning unit shall be determined by the initiating governments in consultation with the governor's office.

(8) As used in this section, "lead agency" means the entity that coordinates staff support of its own or of other local governments and receives grants for developing a watershed plan. [2003 c 328 § 1; 2001 c 229 § 1; 1998 c 247 § 2.]

**90.82.070 Water quantity component.** Watershed planning under this chapter shall address water quantity in the management area by undertaking an assessment of water supply and use in the management area and developing strategies for future use.

(1) The assessment shall include:

(a) An estimate of the surface and ground water present in the management area;

(b) An estimate of the surface and ground water available in the management area, taking into account seasonal and other variations;

(c) An estimate of the water in the management area represented by claims in the water rights claims registry, water use permits, certificated rights, existing minimum instream flow rules, federally reserved rights, and any other rights to water;

(d) An estimate of the surface and ground water actually being used in the management area;

(e) An estimate of the water needed in the future for use in the management area;

(f) An identification of the location of areas where aquifers are known to recharge surface bodies of water and areas known to provide for the recharge of aquifers from the surface; and

(g) An estimate of the surface and ground water available for further appropriation, taking into account the minimum instream flows adopted by rule or to be adopted by rule under this chapter for streams in the management area including the data necessary to evaluate necessary flows for fish.

(2) Strategies for increasing water supplies in the management area, which may include, but are not limited to, increasing water supplies through water conservation, water reuse, the use of reclaimed water, voluntary water transfers, aquifer recharge and recovery, additional water allocations, or additional water storage and water storage enhancements. The objective of these strategies is to supply water in sufficient quantities to satisfy the minimum instream flows for fish and to provide water for future out-of-stream uses for water identified in subsection (1)(e) and (g) of this section and to ensure that adequate water supplies are available for agriculture, energy production, and population and economic growth under the requirements of the state's growth management act, chapter 36.70A RCW. These strategies, in and of themselves, shall not be construed to confer new water rights. The watershed plan must address the strategies required under this subsection.

(3) The assessment may include the identification of potential site locations for water storage projects. The potential site locations may be for either large or small projects and cover the full range of possible alternatives. The possible alternatives include off-channel storage, underground stor-

age, the enlargement or enhancement of existing storage, and on-channel storage. [2001 2nd sp.s. c 19 § 2; 1998 c 247 § 3.]

**Intent—2001 2nd sp.s. c 19:** "The legislature recognizes the potential for additional water storage as a solution to the water supply needs of the state. Last year the legislature created a task force to examine the role of increased water storage in providing water supplies to meet the needs of fish, population growth, and economic development, and to enhance the protection of people's lives and their property and the protection of aquatic habitat through flood control facilities. One solution discussed by the task force to address the state's water supply problem is to store water when there is excess runoff and stream flow, and deliver or release it during the low flow period when it is needed. The task force discussed the need for assessments of potential site locations for water storage projects. The legislature intends this act to assist in obtaining the assessments relating to water storage." [2001 2nd sp.s. c 19 § 1.]

### 90.82.080 Instream flow component—Rules—

**Report.** (1)(a) If the initiating governments choose, by majority vote, to include an instream flow component, it shall be accomplished in the following manner:

(i) If minimum instream flows have already been adopted by rule for a stream within the management area, unless the members of the local governments and tribes on the planning unit by a recorded unanimous vote request the department to modify those flows, the minimum instream flows shall not be modified under this chapter. If the members of local governments and tribes request the planning unit to modify instream flows and unanimous approval of the decision to modify such flow is not achieved, then the instream flows shall not be modified under this section;

(ii) If minimum stream flows have not been adopted by rule for a stream within the management area, setting the minimum instream flows shall be a collaborative effort between the department and members of the planning unit. The department must attempt to achieve consensus and approval among the members of the planning unit regarding the minimum flows to be adopted by the department. Approval is achieved if all government members and tribes that have been invited and accepted on the planning unit present for a recorded vote unanimously vote to support the proposed minimum instream flows, and all nongovernmental members of the planning unit present for the recorded vote, by a majority, vote to support the proposed minimum instream flows.

(b) The department shall undertake rule making to adopt flows under (a) of this subsection. The department may adopt the rules either by the regular rules adoption process provided in chapter 34.05 RCW, the expedited rules adoption process as set forth in RCW 34.05.353, or through a rules adoption process that uses public hearings and notice provided by the county legislative authority to the greatest extent possible. Such rules do not constitute significant legislative rules as defined in RCW 34.05.328, and do not require the preparation of small business economic impact statements.

(c) If approval is not achieved within four years of the date the planning unit first receives funds from the department for conducting watershed assessments under RCW 90.82.040, the department may promptly initiate rule making under chapter 34.05 RCW to establish flows for those streams and shall have two additional years to establish the instream flows for those streams for which approval is not achieved.

(2006 Ed.)

(2)(a) Notwithstanding RCW 90.03.345, minimum instream flows set under this section for rivers or streams that do not have existing minimum instream flow levels set by rule of the department shall have a priority date of two years after funding is first received from the department under RCW 90.82.040, unless determined otherwise by a unanimous vote of the members of the planning unit but in no instance may it be later than the effective date of the rule adopting such flow.

(b) Any increase to an existing minimum instream flow set by rule of the department shall have a priority date of two years after funding is first received for planning in the WRIA or multi-WRIA area from the department under RCW 90.82.040 and the priority date of the portion of the minimum instream flow previously established by rule shall retain its priority date as established under RCW 90.03.345.

(c) Any existing minimum instream flow set by rule of the department that is reduced shall retain its original date of priority as established by RCW 90.03.345 for the revised amount of the minimum instream flow level.

(3) Before setting minimum instream flows under this section, the department shall engage in government-to-government consultation with affected tribes in the management area regarding the setting of such flows.

(4) Nothing in this chapter either: (a) Affects the department's authority to establish flow requirements or other conditions under RCW 90.48.260 or the federal clean water act (33 U.S.C. Sec. 1251 et seq.) for the licensing or relicensing of a hydroelectric power project under the federal power act (16 U.S.C. Sec. 791 et seq.); or (b) affects or impairs existing instream flow requirements and other conditions in a current license for a hydroelectric power project licensed under the federal power act.

(5) If the planning unit is unable to obtain unanimity under subsection (1) of this section, the department may adopt rules setting such flows.

(6) The department shall report annually to the appropriate legislative standing committees on the progress of instream flows being set under this chapter, as well as progress toward setting instream flows in those watersheds not being planned under this chapter. The report shall be made by December 1, 2003, and by December 1st of each subsequent year. [2003 1st sp.s. c 4 § 4; 1998 c 247 § 4.]

**Findings—2003 1st sp.s. c 4:** See note following RCW 90.82.040.

**90.82.085 Instream flows—Assessing and setting or amending.** By October 1, 2001, the department of ecology shall complete a final nonproject environmental impact statement that evaluates stream flows to meet the alternative goals of maintaining, preserving, or enhancing instream resources and the technically defensible methodologies for determining these stream flows. Planning units and state agencies assessing and setting or amending instream flows must, as a minimum, consider the goals and methodologies addressed in the nonproject environmental impact statement. A planning unit or state agency may assess, set, or amend instream flows in a manner that varies from the final nonproject environmental impact statement if consistent with applicable instream flow laws. [2001 c 237 § 3.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.82.090 Water quality component.** If the initiating governments choose to include a water quality component, the watershed plan shall include the following elements:

(1) An examination based on existing studies conducted by federal, state, and local agencies of the degree to which legally established water quality standards are being met in the management area;

(2) An examination based on existing studies conducted by federal, state, and local agencies of the causes of water quality violations in the management area, including an examination of information regarding pollutants, point and nonpoint sources of pollution, and pollution-carrying capacities of water bodies in the management area. The analysis shall take into account seasonal stream flow or level variations, natural events, and pollution from natural sources that occurs independent of human activities;

(3) An examination of the legally established characteristic uses of each of the nonmarine bodies of water in the management area;

(4) An examination of any total maximum daily load established for nonmarine bodies of water in the management area, unless a total maximum daily load process has begun in the management area as of the date the watershed planning process is initiated under RCW 90.82.060;

(5) An examination of existing data related to the impact of fresh water on marine water quality;

(6) A recommended approach for implementing the total maximum daily load established for achieving compliance with water quality standards for the nonmarine bodies of water in the management area, unless a total maximum daily load process has begun in the management area as of the date the watershed planning process is initiated under RCW 90.82.060; and

(7) Recommended means of monitoring by appropriate government agencies whether actions taken to implement the approach to bring about improvements in water quality are sufficient to achieve compliance with water quality standards.

This chapter does not obligate the state to undertake analysis or to develop strategies required under the federal clean water act (33 U.S.C. Sec. 1251 et seq.). This chapter does not authorize any planning unit, lead agency, or local government to adopt water quality standards or total maximum daily loads under the federal clean water act. [1998 c 247 § 5.]

**90.82.100 Habitat component.** If the initiating governments choose to include a habitat component, the watershed plan shall be coordinated or developed to protect or enhance fish habitat in the management area. Such planning must rely on existing laws, rules, or ordinances created for the purpose of protecting, restoring, or enhancing fish habitat, including the shoreline management act, chapter 90.58 RCW, the growth management act, chapter 36.70A RCW, and the forest practices act, chapter 76.09 RCW. Planning established under this section shall be integrated with strategies developed under other processes to respond to potential and actual listings of salmon and other fish species as being threatened or endangered under the federal endangered species act, 16

U.S.C. Sec. 1531 et seq. Where habitat restoration activities are being developed under chapter 246, Laws of 1998, such activities shall be relied on as the primary nonregulatory habitat component for fish habitat under this chapter. [1998 c 247 § 6.]

**90.82.110 Identification of projects and activities.** The planning unit shall review historical data such as fish runs, weather patterns, land use patterns, seasonal flows, and geographic characteristics of the management area, and also review the planning, projects, and activities that have already been completed regarding natural resource management or enhancement in the management area and the products or status of those that have been initiated but not completed for such management in the management area, and incorporate their products as appropriate so as not to duplicate the work already performed or underway.

The planning group is encouraged to identify projects and activities that are likely to serve both short-term and long-term management goals and that warrant immediate financial assistance from the state, federal, or local government. If there are multiple projects, the planning group shall give consideration to ranking projects that have the greatest benefit and schedule those projects that should be implemented first. [1998 c 247 § 7.]

**90.82.120 Plan parameters.** (1) Watershed planning developed and approved under this chapter shall not contain provisions that: (a) Are in conflict with existing state statutes, federal laws, or tribal treaty rights; (b) impair or diminish in any manner an existing water right evidenced by a claim filed in the water rights claims registry established under chapter 90.14 RCW or a water right certificate or permit; (c) require a modification in the basic operations of a federal reclamation project with a water right the priority date of which is before June 11, 1998, or alter in any manner whatsoever the quantity of water available under the water right for the reclamation project, whether the project has or has not been completed before June 11, 1998; (d) affect or interfere with an ongoing general adjudication of water rights; (e) modify or require the modification of any waste discharge permit issued under chapter 90.48 RCW; (f) modify or require the modification of activities or actions taken or intended to be taken under a habitat restoration work schedule developed under chapter 246, Laws of 1998; or (g) modify or require the modification of activities or actions taken to protect or enhance fish habitat if the activities or actions are: (i) Part of an approved habitat conservation plan and an incidental take permit, an incidental take statement, a management or recovery plan, or other cooperative or conservation agreement entered into with a federal or state fish and wildlife protection agency under its statutory authority for fish and wildlife protection that addresses the affected habitat; or (ii) part of a water quality program adopted by an irrigation district under chapter 87.03 RCW or a board of joint control under chapter 87.80 RCW. This subsection (1)(g) applies as long as the activities or actions continue to be taken in accordance with the plan, agreement, permit, or statement. Any assessment conducted under RCW 90.82.070, 90.82.090, or 90.82.100 shall take into consideration such activities and

actions and those taken under the forest practices rules, including watershed analysis adopted under the forest practices act, chapter 76.09 RCW.

(2) Watershed planning developed and approved under this chapter shall not change existing local ordinances or existing state rules or permits, but may contain recommendations for changing such ordinances or rules.

(3) Notwithstanding any other provision of this chapter, watershed planning shall take into account forest practices rules under the forest practices act, chapter 76.09 RCW, and shall not create any obligations or restrictions on forest practices additional to or inconsistent with the forest practices act and its implementing rules, whether watershed planning is approved by the counties or the department. [1998 c 247 § 8.]

**90.82.130 Plan approval—Public notice and hearing—Revisions.** (1)(a) Upon completing its proposed watershed plan, the planning unit may approve the proposal by consensus of all of the members of the planning unit or by consensus among the members of the planning unit appointed to represent units of government and a majority vote of the nongovernmental members of the planning unit.

(b) If the proposal is approved by the planning unit, the unit shall submit the proposal to the counties with territory within the management area. If the planning unit has received funding beyond the initial organizing grant under RCW 90.82.040, such a proposal approved by the planning unit shall be submitted to the counties within four years of the date that funds beyond the initial funding are first drawn upon by the planning unit.

(c) If the watershed plan is not approved by the planning unit, the planning unit may submit the components of the plan for which agreement is achieved using the procedure under (a) of this subsection, or the planning unit may terminate the planning process.

(2)(a) With the exception of a county legislative authority that chooses to opt out of watershed planning as provided in (c) of this subsection, the legislative authority of each of the counties with territory in the management area shall provide public notice of and conduct at least one public hearing on the proposed watershed plan submitted under this section. After the public hearings, the legislative authorities of these counties shall convene in joint session to consider the proposal. The counties may approve or reject the proposed watershed plan for the management area, but may not amend it. Approval of such a proposal shall be made by a majority vote of the members of each of the counties with territory in the management area.

(b) If a proposed watershed plan is not approved, it shall be returned to the planning unit with recommendations for revisions. Approval of such a revised proposal by the planning unit and the counties shall be made in the same manner provided for the original watershed plan. If approval of the revised plan is not achieved, the process shall terminate.

(c) A county legislative authority may choose to opt out of watershed planning under this chapter and the public hearing processes under (a) and (b) of this subsection if the county's affected territory within a particular management area is: (i) Less than five percent of the total territory within the management area; or (ii) five percent or more of the total territory within the management area and all other initiating

governments within the management area consent. A county meeting these conditions and choosing to opt out shall notify the department and the other initiating governments of that choice prior to commencement of plan adoption under the provisions of (a) of this subsection. A county choosing to opt out under the provisions of this section shall not be bound by obligations contained in the watershed plan adopted for that management area under this chapter. Even if a county chooses to opt out under the provisions of this section, the other counties within a management area may adopt a proposed watershed plan as provided in this chapter.

(3) The planning unit shall not add an element to its watershed plan that creates an obligation unless each of the governments to be obligated has at least one representative on the planning unit and the respective members appointed to represent those governments agree to adding the element that creates the obligation. A member's agreeing to add an element shall be evidenced by a recorded vote of all members of the planning unit in which the members record support for adding the element. If the watershed plan is approved under subsections (1) and (2) of this section and the plan creates obligations: (a) For agencies of state government, the agencies shall adopt by rule the obligations of both state and county governments and rules implementing the state obligations, or, with the consent of the planning unit, may adopt policies, procedures, or agreements related to the obligations or implementation of the obligations in addition to or in lieu of rules. The obligations on state agencies are binding upon adoption of the obligations, and the agencies shall take other actions to fulfill their obligations as soon as possible, and should annually review implementation needs with respect to budget and staffing; (b) for counties, the obligations are binding on the counties and the counties shall adopt any necessary implementing ordinances and take other actions to fulfill their obligations as soon as possible, and should annually review implementation needs with respect to budget and staffing; or (c) for an organization voluntarily accepting an obligation, the organization must adopt policies, procedures, agreements, rules, or ordinances to implement the plan, and should annually review implementation needs with respect to budget and staffing.

(4) After a plan is adopted in accordance with subsection (3) of this section, and if the department participated in the planning process, the plan shall be deemed to satisfy the watershed planning authority of the department with respect to the components included under the provisions of RCW 90.82.070 through 90.82.100 for the watershed or watersheds included in the plan. The department shall use the plan as the framework for making future water resource decisions for the planned watershed or watersheds. Additionally, the department shall rely upon the plan as a primary consideration in determining the public interest related to such decisions.

(5) Once a WRIA plan has been approved under subsection (2) of this section for a watershed, the department may develop and adopt modifications to the plan or obligations imposed by the plan only through a form of negotiated rule making that uses the same processes that applied in that watershed for developing the plan.

(6) As used in this section, "obligation" means any action required as a result of this chapter that imposes upon a tribal government, county government, or state government, either:

A fiscal impact; a redeployment of resources; or a change of existing policy. [2003 1st sp.s. c 4 § 5; 2001 c 237 § 4; 1998 c 247 § 9.]

**Findings—2003 1st sp.s. c 4:** See note following RCW 90.82.040.

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

**90.82.140 Use of monitoring recommendations in RCW 77.85.210.** In conducting assessments and other studies that include monitoring components or recommendations, the department and planning units shall implement the monitoring recommendations developed under \*RCW 77.85.210. [2001 c 298 § 2.]

**\*Reviser's note:** RCW 77.85.210 was repealed by 2005 c 309 § 10.

**Finding—Intent—2001 c 298:** "The legislature finds that a comprehensive program of monitoring is fundamental to making sound public policy and programmatic decisions regarding salmon recovery and watershed health. Monitoring provides accountability for results of management actions and provides the data upon which an adaptive management framework can lead to improvement of strategies and programs. Monitoring is also a required element of any salmon recovery plan submitted to the federal government for approval. While numerous agencies and citizen organizations are engaged in monitoring a wide range of salmon recovery and watershed health parameters, there is a greater need for coordination of monitoring efforts, for using limited monitoring resources to obtain information most useful for achieving relevant local, state, and federal requirements regarding watershed health and salmon recovery, and for making the information more accessible to those agencies and organizations implementing watershed health programs and projects. Regarding salmon recovery monitoring, the state independent science panel has concluded that many programs already monitor indicators relevant to salmonids, but the efforts are largely uncoordinated or unlinked among programs, have different objectives, use different indicators, lack support for sharing data, and lack shared statistical designs to address specific issues raised by listing of salmonid species under the federal endangered species act.

Therefore, it is the intent of the legislature to encourage the refocusing of existing agency monitoring activities necessary to implement a comprehensive watershed health monitoring program, with a focus on salmon recovery. The program should: Be based on a framework of greater coordination of existing monitoring activities; require monitoring activities most relevant to adopted local, state, and federal watershed health objectives; and facilitate the exchange of monitoring information with agencies and organizations carrying out watershed health, salmon recovery, and water resources management planning and programs." [2001 c 298 § 1.]

**90.82.900 Part headings not law—1997 c 442.** As used in this act, part headings constitute no part of the law. [1997 c 442 § 803.]

**90.82.901 Severability—1997 c 442.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 442 § 805.]

**90.82.902 Captions not law—1998 c 247.** As used in this act, captions constitute no part of the law. [1998 c 247 § 15.]

## Chapter 90.84 RCW

### WETLANDS MITIGATION BANKING

#### Sections

90.84.005 Findings—Purpose—Intent.  
90.84.010 Definitions.

90.84.020 Wetlands or wetlands banks—Authority for regulating.  
90.84.030 Rules—Submission of proposed rules to legislative committees.  
90.84.040 Certification of banks—Approval of use of credits by state and local governments.  
90.84.050 Approval of use of credits by the department—Requirements.  
90.84.060 Interpretation of chapter and rules.  
90.84.070 Application to public and private mitigation banks.  
90.84.900 Severability—1998 c 248.

**90.84.005 Findings—Purpose—Intent.** (1) The legislature finds that wetlands mitigation banks are an important tool for providing compensatory mitigation for unavoidable impacts to wetlands. The legislature further finds that the benefits of mitigation banks include: (a) Maintenance of the ecological functioning of a watershed by consolidating compensatory mitigation into a single large parcel rather than smaller individual parcels; (b) increased potential for the establishment and long-term management of successful mitigation by bringing together financial resources, planning, and scientific expertise not practicable for many project-specific mitigation proposals; (c) increased certainty over the success of mitigation and reduction of temporal losses of wetlands since mitigation banks are typically implemented and functioning in advance of project impacts; (d) potential enhanced protection and preservation of the state's highest value and highest functioning wetlands; (e) a reduction in permit processing times and increased opportunity for more cost-effective compensatory mitigation for development projects; and (f) the ability to provide compensatory mitigation in an efficient, predictable, and economically and environmentally responsible manner. Therefore, the legislature declares that it is the policy of the state to authorize wetland mitigation banking.

(2) The purpose of this chapter is to support the establishment of mitigation banks by: (a) Authorizing state agencies and local governments, as well as private entities, to achieve the goals of this chapter; and (b) providing a predictable, efficient, regulatory framework, including timely review of mitigation bank proposals. The legislature intends that, in the development and adoption of rules for banks, the department establish and use a collaborative process involving interested public and private entities. [1998 c 248 § 1.]

**90.84.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Banking instrument" means the documentation of agency and bank sponsor concurrence on the objectives and administration of the bank that describes in detail the physical and legal characteristics of the bank, including the service area, and how the bank will be established and operated.

(2) "Bank sponsor" means any public or private entity responsible for establishing and, in most circumstances, operating a bank.

(3) "Credit" means a unit of trade representing the increase in the ecological value of the site, as measured by acreage, functions, and/or values, or by some other assessment method.

(4) "Department" means the department of ecology.

(5) "Wetlands mitigation bank" or "bank" means a site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of

providing compensatory mitigation in advance of authorized impacts to similar resources.

(6) "Mitigation" means sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.

(7) "Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

(8) "Service area" means the designated geographic area in which a bank can reasonably be expected to provide appropriate compensation for unavoidable impacts to wetlands.

(9) "Unavoidable" means adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved. [1998 c 248 § 3.]

**90.84.020 Wetlands or wetlands banks—Authority for regulating.** This chapter does not create any new authority for regulating wetlands or wetlands banks beyond what is specifically provided for in this chapter. No authority is granted to the department under this chapter to adopt rules or guidance that apply to wetland projects other than banks under this chapter. [1998 c 248 § 2.]

**90.84.030 Rules—Submission of proposed rules to legislative committees.** Subject to the requirements of this chapter, the department, through a collaborative process, shall adopt rules for:

(1) Certification, operation, and monitoring of wetlands mitigation banks. The rules shall include procedures to assure that:

(a) Priority is given to banks providing for the restoration of degraded or former wetlands;

(b) Banks involving the creation and enhancement of wetlands are certified only where there are adequate assurances of success and that the bank will result in an overall environmental benefit; and

(c) Banks involving the preservation of wetlands or associated uplands are certified only when the preservation is in conjunction with the restoration, enhancement, or creation of a wetland, or in other exceptional circumstances as determined by the department consistent with this chapter;

(2) Determination and release of credits from banks. Procedures regarding credits shall authorize the use and sale of credits to offset adverse impacts and the phased release of credits as different levels of the performance standards are met;

(3) Public involvement in the certification of banks, using existing statutory authority;

(4) Coordination of governmental agencies;

(5) Establishment of criteria for determining service areas for each bank;

(6) Performance standards; and

(7) Long-term management, financial assurances, and remediation for certified banks.

Before adopting rules under this chapter, the department shall submit the proposed rules to the appropriate standing committees of the legislature. By January 30, 1999, the department shall submit a report to the appropriate standing committees of the legislature on its progress in developing rules under this chapter. [1998 c 248 § 4.]

(2006 Ed.)

**90.84.040 Certification of banks—Approval of use of credits by state and local governments.** (1) The department may certify only those banks that meet the requirements of this chapter. Certification shall be accomplished through a banking instrument. The local jurisdiction in which the bank is located shall be signatory to the banking instrument.

(2) State agencies and local governments may approve use of credits from a bank for any mitigation required under a permit issued or approved by that state agency or local government to compensate for the proposed impacts of a specific public or private project. [1998 c 248 § 5.]

**90.84.050 Approval of use of credits by the department—Requirements.** Prior to authorizing use of credits from a bank as a means of mitigation under a permit issued or approved by the department, the department must assure that all appropriate and practicable steps have been undertaken to first avoid and then minimize adverse impacts to wetlands. In determining appropriate steps to avoid and minimize adverse impacts to wetlands, the department shall take into consideration the functions and values of the wetland, including fish habitat, ground water quality, and protection of adjacent properties. The department may approve use of credits from a bank when:

(1) The credits represent the creation, restoration, or enhancement of wetlands of like kind and in close proximity when estuarine wetlands are being mitigated;

(2) There is no practicable opportunity for on-site compensation; or

(3) Use of credits from a bank is environmentally preferable to on-site compensation. [1998 c 248 § 6.]

**90.84.060 Interpretation of chapter and rules.** The interpretation of this chapter and rules adopted under this chapter must be consistent with applicable federal guidance for the establishment, use, and operation of wetlands mitigation banks as it existed on June 11, 1998, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this chapter. [1998 c 248 § 7.]

**90.84.070 Application to public and private mitigation banks.** This chapter applies to public and private mitigation banks. [1998 c 248 § 8.]

**90.84.900 Severability—1998 c 248.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1998 c 248 § 9.]

**Chapter 90.86 RCW**

**JOINT LEGISLATIVE COMMITTEE ON WATER SUPPLY DURING DROUGHT**

Sections

- 90.86.010 Joint legislative committee on water supply during drought.
- 90.86.020 Membership.
- 90.86.030 Meetings—Requests for information—Reports from department of ecology—Recommendations to the legislature.
- 90.86.900 Effective date—2005 c 60.

**90.86.010 Joint legislative committee on water supply during drought.** The joint legislative committee on water supply during drought is created. [2005 c 60 § 1.]

**90.86.020 Membership.** The committee shall consist of four senators and four representatives who shall be selected biennially as follows:

(1) The president of the senate shall appoint four members from the senate to serve on the committee, including the chair of the committee responsible for water resource issues. Two members from each major political party must be appointed.

(2) The speaker of the house of representatives shall appoint four members from the house of representatives to serve on the committee, including the chair of the committee responsible for water resource issues. Two members from each major political party must be appointed.

(3) The committee shall elect a chair and a vice-chair. The chair shall be a member of the house of representatives in even-numbered years and a member of the senate in odd-numbered years.

(4) The presiding officer of the appropriate legislative chamber shall fill any vacancies occurring on the committee by appointment from the same political party as the departing member.

(5) Members shall serve until their successors are appointed as provided in this section, or until they are no longer members of the legislature, whichever is sooner. [2005 c 60 § 2.]

**90.86.030 Meetings—Requests for information—Reports from department of ecology—Recommendations to the legislature.** (1) The joint legislative committee on water supply during drought shall convene from time to time at the call of the chair when a drought conditions order under RCW 43.83B.405 is in effect, or when the chair determines, in consultation with the department of ecology, that it is likely that such an order will be issued within the next year.

(2) The committee may request and review information relating to water supply conditions in the state, and economic, environmental, and other impacts relating to decreased water supply being experienced or anticipated. The governor's executive water emergency committee, the department of ecology, the water supply advisory committee, and other state agencies with water management or related responsibilities shall cooperate in responding to requests from the committee.

(3) During drought conditions in which an order issued under RCW 43.83B.405 is in effect, the department of ecology shall provide to the committee no less than monthly a report describing drought response activities of the department and other state and federal agencies participating on the water supply availability committee. The report shall include information regarding applications for, and approvals and denials of emergency water withdrawals and temporary changes or transfers of, water rights under RCW 43.83B.410.

(4) The committee from time to time shall make recommendations to the senate and house of representatives on budgetary and legislative actions that will improve the state's drought response programs and planning. [2005 c 60 § 3.]

**90.86.900 Effective date—2005 c 60.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 14, 2005]. [2005 c 60 § 5.]

## Chapter 90.88 RCW

### AQUATIC REHABILITATION ZONES

#### Sections

90.88.005	Findings—Intent.
90.88.010	Designation by the legislature—Zone one established.
90.88.020	Hood Canal rehabilitation program—State lead agency—Local management board.
90.88.030	Aquatic zone one—Roles of Hood Canal coordinating council and Puget Sound action team—Participation of governments and nonprofit organizations—Project funding, priorities, and criteria—Reports.
90.88.040	Forest practices—Nonapplicability of chapter.
90.88.050	Scope of chapter.
90.88.060	Hood Canal aquatic rehabilitation account.
90.88.900	Effective date—2005 c 478.
90.88.901	Regulatory authority not conferred.
90.88.902	Activities subject to appropriations.
90.88.903	Effective date—2005 c 479.

**90.88.005 Findings—Intent.** (1) The legislature finds that Hood Canal is a precious aquatic resource of our state. The legislature finds that Hood Canal is a rich source of recreation, fishing, aquaculture, and aesthetic enjoyment for the citizens of this state. The legislature also finds that Hood Canal has great cultural significance for the tribes in the Hood Canal area. The legislature therefore recognizes Hood Canal's substantial environmental, cultural, economic, recreational, and aesthetic importance in this state.

(2) The legislature finds that Hood Canal is a marine water of the state at significant risk. The legislature finds that Hood Canal has a "dead zone" related to low-dissolved oxygen concentrations, a condition that has recurred for many years. The legislature also finds that this problem and various contributors to the problem were documented in the May 2004 *Preliminary Assessment and Corrective Action Plan* published by the state Puget Sound action team and the Hood Canal coordinating council.

(3) The legislature further finds that significant research, monitoring, and study efforts are currently occurring regarding Hood Canal's low-dissolved oxygen concentrations. The legislature also finds numerous public, private, and community organizations are working to provide public education and identify potential solutions. The legislature recognizes that, while some information and research is now available and some potential solutions have been identified, more research and analysis is needed to fully develop a program to address Hood Canal's low-dissolved oxygen concentrations.

(4) The legislature finds a need exists for the state to take action to address Hood Canal's low-dissolved oxygen concentrations. The legislature also finds establishing an aquatic rehabilitation zone for Hood Canal will serve as a statutory framework for future regulations and programs directed at recovery of this important aquatic resource.

(5) The legislature therefore intends to establish an aquatic rehabilitation zone for Hood Canal as the framework to address Hood Canal's low-dissolved oxygen concentrations. The legislature also intends to incorporate provisions

in the new statutory chapter creating the designation as solutions are identified regarding this problem. [2005 c 478 § 1.]

**90.88.010 Designation by the legislature—Zone one established.** (1) Aquatic rehabilitation zones may be designated by the legislature for areas whose surrounding marine water bodies pose serious environmental or public health concerns.

(2) Aquatic rehabilitation zone one is established. Aquatic rehabilitation zone one includes all watersheds that drain to Hood Canal south of a line projected from Tala Point in Jefferson county to Foulweather Bluff in Kitsap county. [2005 c 478 § 2.]

**90.88.020 Hood Canal rehabilitation program—State lead agency—Local management board.** (1) The development of a program for rehabilitation of Hood Canal is authorized in Jefferson, Kitsap, and Mason counties within the aquatic rehabilitation zone one.

(2) The Puget Sound action team is designated as the state lead agency for the rehabilitation program authorized in this section.

(3) The Hood Canal coordinating council is designated as the local management board for the rehabilitation program authorized in this section.

(4) The Puget Sound action team and the Hood Canal coordinating council must each approve and must comanage projects under the rehabilitation program authorized in this section. [2005 c 479 § 2.]

**Findings—2005 c 479:** "(1) The legislature finds that Hood Canal is a precious aquatic resource of our state. The legislature finds that Hood Canal is a rich source of recreation, fishing, aquaculture, and aesthetic enjoyment for the citizens of this state. The legislature also finds that Hood Canal has great cultural significance for the tribes in the Hood Canal area. The legislature therefore recognizes Hood Canal's substantial environmental, cultural, economic, recreational, and aesthetic importance to Washington.

(2) The legislature finds that Hood Canal is a marine water of the state at significant risk. The legislature finds that Hood Canal has a "dead zone" related to low-dissolved oxygen concentrations, a condition that has recurred for many years. The legislature also finds this problem and various contributors to the problem were documented in the May 2004 *Preliminary Assessment and Corrective Action Plan* published by the state Puget Sound action team and the Hood Canal coordinating council.

(3) The legislature further finds that significant research, monitoring, and study efforts are currently occurring regarding Hood Canal's low-dissolved oxygen concentrations. The legislature recognizes that federal, state, tribal, and local governments and other organizations and entities are coordinating research, monitoring, and modeling efforts through the Hood Canal low-dissolved oxygen program. The legislature also recognizes that these entities and others are continuing individual efforts to study and identify potential solutions for Hood Canal's low-dissolved oxygen concentrations. The legislature also recognizes numerous public, private, and community organizations are working to provide public education regarding Hood Canal's low-dissolved oxygen concentrations. The legislature recognizes and encourages the continuation of these efforts.

(4) The legislature finds a need exists for the state to provide additional resources to address Hood Canal's low-dissolved oxygen concentrations. The legislature also finds a need exists to designate the state and local entities to develop, coordinate, and administer a Hood Canal rehabilitation program and funding." [2005 c 479 § 1.]

**Forest practices—Nonapplicability of act—2005 c 479:** "This act does not apply to forest practices regulated under chapter 76.09 RCW." [2005 c 479 § 4.]

**90.88.030 Aquatic zone one—Roles of Hood Canal coordinating council and Puget Sound action team—Participation of governments and nonprofit organizations—**

(2006 Ed.)

**Project funding, priorities, and criteria—Reports.** (1) The Hood Canal coordinating council shall serve as the local management board for aquatic rehabilitation zone one. The local management board shall coordinate local government efforts with respect to the program authorized according to RCW 90.88.020. In the Hood Canal area, the Hood Canal coordinating council also shall:

(a) Serve as the lead entity and the regional recovery organization for the purposes of chapter 77.85 RCW for Hood Canal summer chum; and

(b) Assist in coordinating activities under chapter 90.82 RCW.

(2) When developing and implementing the program authorized in RCW 90.88.020 and when establishing funding criteria according to subsection (7) of this section, the Puget Sound action team and the local management board shall solicit participation by federal, tribal, state, and local agencies and universities and nonprofit organizations with expertise in areas related to program activities. The local management board may include state and federal agency representatives, or additional persons, as nonvoting management board members or may receive technical assistance and advice from them in other venues. The local management board also may appoint technical advisory committees as needed.

(3) The local management board and the Puget Sound action team shall participate in the development of the program authorized under RCW 90.88.020.

(4) The local management board and its participating local and tribal governments shall assess concepts for a regional governance structure and shall submit a report regarding the findings and recommendations to the appropriate committees of the legislature by December 1, 2007.

(5) Any of the local management board's participating counties and tribes, any federal, tribal, state, or local agencies, or any universities or nonprofit organizations may continue individual efforts and activities for rehabilitation of Hood Canal. Nothing in this section limits the authority of units of local government to enter into interlocal agreements under chapter 39.34 RCW or any other provision of law.

(6) The local management board may not exercise authority over land or water within the individual counties or otherwise preempt the authority of any units of local government.

(7) The local management board and the Puget Sound action team each may receive and disburse funding for projects, studies, and activities related to Hood Canal's low-dissolved oxygen concentrations. The Puget Sound action team and the local management board shall jointly coordinate a process to prioritize projects, studies, and activities for which the Puget Sound action team receives state funding specifically allocated for Hood Canal corrective actions to implement this section. The local management board and the Puget Sound action team shall establish criteria for funding these projects, studies, and activities based upon their likely value in addressing and resolving Hood Canal's low-dissolved oxygen concentrations. Final approval for projects under this section requires the consent of both the Puget Sound action team and the local management board. Projects under this section must be comanaged by the Puget Sound action team and the local management board. Nothing in this section prohibits any federal, tribal, state, or local agencies,

universities, or nonprofit organizations from receiving funding for specific projects that may assist in the rehabilitation of Hood Canal.

(8) The local management board may hire and fire staff, including an executive director, enter into contracts, accept grants and other moneys, disburse funds, make recommendations to local governments about potential regulations and the development of programs and incentives upon request, pay all necessary expenses, and choose a fiduciary agent.

(9) The local management board shall report its progress on a quarterly basis to the legislative bodies of the participating counties and tribes and the participating state agencies. The local management board also shall submit an annual report describing its efforts and successes in implementing the program established according to RCW 90.88.020 to the appropriate committees of the legislature. [2005 c 479 § 3.]

**Findings—Forest practices—Nonapplicability of act—2005 c 479:** See notes following RCW 90.88.020.

**90.88.040 Forest practices—Nonapplicability of chapter.** This chapter does not apply to forest practices regulated under chapter 76.09 RCW. [2005 c 478 § 3.]

**90.88.050 Scope of chapter.** This chapter does not alter, diminish, or expand the jurisdictional authorities in other statutes or affect the application of other statutory requirements or programs that do not specifically refer to aquatic rehabilitation zones. [2005 c 478 § 4.]

**90.88.060 Hood Canal aquatic rehabilitation account.** The Hood Canal aquatic rehabilitation account is created in the state treasury. All gifts, grants, federal moneys, or appropriations made to the account must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for programs and projects to protect and restore Hood Canal, including implementing RCW 90.88.020 and 90.88.030. [2006 c 366 § 1.]

**90.88.900 Effective date—2005 c 478.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2005]. [2005 c 478 § 6.]

**90.88.901 Regulatory authority not conferred.** Nothing in chapter 479, Laws of 2005 provides any regulatory authority to the Puget Sound action team or the Hood Canal coordinating council. [2005 c 479 § 5.]

**90.88.902 Activities subject to appropriations.** The activities of the Puget Sound action team and the Hood Canal coordinating council required by chapter 479, Laws of 2005 are subject to the availability of amounts appropriated for this specific purpose. [2005 c 479 § 6.]

**90.88.903 Effective date—2005 c 479.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its

existing public institutions, and takes effect immediately [May 16, 2005]. [2005 c 479 § 8.]

## Chapter 90.90 RCW

### COLUMBIA RIVER BASIN WATER SUPPLY

#### Sections

90.90.005	Finding.
90.90.010	Columbia river basin water supply development account—Use for storage facilities and access to water supplies—Evaluation—Public comment—Use of net water savings.
90.90.020	Allocation and development of water supplies.
90.90.030	Voluntary regional agreements—Scope and application—Reports to legislature—Definitions.
90.90.040	Columbia river water supply inventory—Long-term water supply and demand forecast.
90.90.050	Columbia river mainstem water resources information system.
90.90.900	Effective date—2006 c 6.

**90.90.005 Finding.** (1) The legislature finds that a key priority of water resource management in the Columbia river basin is the development of new water supplies that includes storage and conservation in order to meet the economic and community development needs of people and the instream flow needs of fish.

(2) The legislature therefore declares that a Columbia river basin water supply development program is needed, and directs the department of ecology to aggressively pursue the development of water supplies to benefit both instream and out-of-stream uses. [2006 c 6 § 1.]

**90.90.010 Columbia river basin water supply development account—Use for storage facilities and access to water supplies—Evaluation—Public comment—Use of net water savings.** (1) The Columbia river basin water supply development account is created in the state treasury. The account may receive direct appropriations from the legislature, receipts of any funds pursuant to RCW 90.90.020 and 90.90.030, or funds from any other sources.

(2)(a) Expenditures from the Columbia river basin water supply development account may be used to assess, plan, and develop new storage, improve or alter operations of existing storage facilities, implement conservation projects, or any other actions designed to provide access to new water supplies within the Columbia river basin for both instream and out-of-stream uses. Except for the development of new storage projects, there shall be no expenditures from this account for water acquisition or transfers from one water resource inventory area to another without specific legislative authority.

(b) Two-thirds of the funds placed in the account shall be used to support the development of new storage facilities; the remaining one-third shall be used for the other purposes listed in this section.

(3)(a) Funds may not be expended from this account for the construction of a new storage facility until the department of ecology evaluates the following:

- (i) Water uses to be served by the facility;
- (ii) The quantity of water necessary to meet those uses;
- (iii) The benefits and costs to the state of meeting those uses, including short-term and long-term economic, cultural, and environmental effects; and

(iv) Alternative means of supplying water to meet those uses, including the costs of those alternatives and an analysis of the extent to which long-term water supply needs can be met using these alternatives.

(b) The department of ecology may rely on studies and information developed through compliance with other state and federal permit requirements and other sources. The department shall compile its findings and conclusions, and provide a summary of the information it reviewed.

(c) Before finalizing its evaluation under the provisions of this section, the department of ecology shall make the preliminary evaluation available to the public. Public comment may be made to the department within thirty days of the date the preliminary evaluation is made public.

(4) Net water savings achieved through conservation measures funded by the account shall be placed in trust in proportion to the state funding provided to implement a project.

(5) Net water savings achieved through conservation measures funded by the account developed within the boundaries of the federal Columbia river reclamation project and directed to the Odessa subarea to reduce the use of ground water for existing irrigation is exempt from the provisions of subsection (4) of this section.

(6) Moneys in the Columbia river basin water supply development account created in this section may be spent only after appropriation.

(7) Interest earned by deposits in the account will be retained in the account. [2006 c 6 § 2.]

**90.90.020 Allocation and development of water supplies.** (1)(a) Water supplies secured through the development of new storage facilities made possible with funding from the Columbia river basin water supply development account shall be allocated as follows:

(i) Two-thirds of active storage shall be available for appropriation for out-of-stream uses; and

(ii) One-third of active storage shall be available to augment instream flows and shall be managed by the department of ecology. The timing of releases of this water shall be determined by the department of ecology, in cooperation with the department of fish and wildlife and fisheries comanagers, to maximize benefits to salmon and steelhead populations.

(b) Water available for appropriation under (a)(i) of this subsection but not yet appropriated shall be temporarily available to augment instream flows to the extent that it does not impair existing water rights.

(2) Water developed under the provisions of this section to offset out-of-stream uses and for instream flows is deemed adequate mitigation for the issuance of new water rights provided for in subsection (1)(a) of this section and satisfies all consultation requirements under state law related to the issuance of new water rights.

(3) The department of ecology shall focus its efforts to develop water supplies for the Columbia river basin on the following needs:

(a) Alternatives to ground water for agricultural users in the Odessa subarea aquifer;

(b) Sources of water supply for pending water right applications;

(2006 Ed.)

(c) A new uninterruptible supply of water for the holders of interruptible water rights on the Columbia river mainstem that are subject to instream flows or other mitigation conditions to protect stream flows; and

(d) New municipal, domestic, industrial, and irrigation water needs within the Columbia river basin.

(4) The one-third/two-thirds allocation of water resources between instream and out-of-stream uses established in this section does not apply to applications for changes or transfers of existing water rights in the Columbia river basin. [2006 c 6 § 3.]

**90.90.030 Voluntary regional agreements—Scope and application—Reports to legislature—Definitions.**

*(Expires June 30, 2012.)* (1) The department of ecology may enter into voluntary regional agreements for the purpose of providing new water for out-of-stream use, streamlining the application process, and protecting instream flow.

(2) Such agreements shall ensure that:

(a) For water rights issued from the Columbia river mainstem, there is no negative impact on Columbia river mainstem instream flows in the months of July and August as a result of the new appropriations issued under the agreement;

(b) For water rights issued from the lower Snake river mainstem, there is no negative impact on Snake river mainstem instream flows from April through August as a result of the new appropriations issued under the agreement; and

(c) Efforts are made to harmonize such agreements with watershed plans adopted under the authority of chapter 90.82 RCW that are applicable to the area covered by the agreement.

(3) The protection of instream flow as set forth in subsection (2) of this section is adequate for purposes of mitigating instream flow impacts resulting from any appropriations for out-of-stream use made under a voluntary regional agreement, and the only applicable consultation provisions under state law regarding instream flow impacts shall be those set forth in subsection (4) of this section.

(4) Before executing a voluntary agreement under this section, the department of ecology shall:

(a) Provide a sixty-day period for consultation with county legislative authorities and watershed planning groups with jurisdiction over the area where the water rights included in the agreement are located, the department of fish and wildlife, and affected tribal governments, and federal agencies. The department of fish and wildlife shall provide written comments within that time period. The consultation process for voluntary regional agreements developed under the provisions of this section is deemed adequate for the issuance of new water rights provided for in this section and satisfies all consultation requirements under state law related to the issuance of new water rights; and

(b) Provide a thirty-day public review and comment period for a draft agreement, and publish a summary of any public comments received. The thirty-day review period shall not begin until after the department of ecology has concluded its consultation under (a) of this subsection and the comments that have been received by the department are made available to the public.

(5) The provisions of subsection (4) of this section satisfy all applicable consultation requirements under state law.

(6) The provisions of this section and any voluntary regional agreements developed under such provisions may not be relied upon by the department of ecology as a precedent, standard, or model that must be followed in any other voluntary regional agreements.

(7) Nothing in this section may be interpreted or administered in a manner that precludes the processing of water right applications under chapter 90.03 or 90.44 RCW that are not included in a voluntary regional agreement.

(8) Nothing in this section may be interpreted or administered in a manner that impairs or diminishes a valid water right or a habitat conservation plan approved for purposes of compliance with the federal endangered species act.

(9) The department of ecology shall monitor and evaluate the water allocated to instream and out-of-stream uses under this section, evaluate the program, and provide an interim report to the appropriate committees of the legislature by June 30, 2008. A final report shall be provided to the appropriate committees of the legislature by June 30, 2011.

(10) If the department of ecology executes a voluntary agreement under this section that includes water rights appropriated from the lower Snake river mainstem, the department shall develop aggregate data in accordance with the provisions of RCW 90.90.050 for the lower Snake river mainstem.

(11) Any agreement entered into under this section shall remain in full force and effect through the term of the agreement regardless of the expiration of this section.

(12) The definitions in this subsection apply to this section and RCW 90.90.050, and may only be used for purposes of implementing these sections.

(a) "Columbia river mainstem" means all water in the Columbia river within the ordinary high water mark of the main channel of the Columbia river between the border of the United States and Canada and the Bonneville dam, and all ground water within one mile of the high water mark.

(b) "Lower Snake river mainstem" means all water in the lower Snake river within the ordinary high water mark of the main channel of the lower Snake river from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all ground water within one mile of the high water mark.

(13) This section expires June 30, 2012. [2006 c 6 § 4.]

**90.90.040 Columbia river water supply inventory—Long-term water supply and demand forecast.** (1) To support the development of new water supplies in the Columbia river and to protect instream flow, the department of ecology shall work with all interested parties, including interested county legislative authorities and watershed planning groups, adjacent to the Columbia river, and affected tribal governments, to develop a Columbia river water supply inventory and a long-term water supply and demand forecast. The inventory must include:

(a) A list of conservation projects that have been implemented under this chapter and the amount of water conservation they have achieved; and

(b) A list of potential water supply and storage projects in the Columbia river basin, including estimates of:

(i) Cost per acre-foot;

(ii) Benefit to fish and other instream needs;

(iii) Benefit to out-of-stream needs; and

(iv) Environmental and cultural impacts.

(2) The department of ecology shall complete the first Columbia river water supply inventory by November 15, 2006, and shall update the inventory annually thereafter.

(3) The department of ecology shall complete the first Columbia river long-term water supply and demand forecast by November 15, 2006, and shall update the report every five years thereafter. [2006 c 6 § 5.]

**90.90.050 Columbia river mainstem water resources information system.** (1) In order to better understand current water use and instream flows in the Columbia river mainstem, the department of ecology shall establish and maintain a Columbia river mainstem water resources information system that provides the information necessary for effective mainstem water resource planning and management.

(2) To accomplish the objective in subsection (1) of this section, the department of ecology shall use information compiled by existing local watershed planning groups, federal agencies, the Bonneville power administration, irrigation districts, conservation districts in the basin, and other available sources. The information shall include:

(a) The total aggregate quantity of water rights issued under state permits and certificates and filed under state claims on the Columbia river mainstem and for ground water within one mile of the mainstem; and

(b) The total aggregate volume of current water use under these rights as metered and reported by water users under current law.

(3) The department of ecology shall publish the aggregate data on the department's web site no later than June 30, 2009, and shall periodically update the data.

(4) For purposes of this section, the definition of Columbia river mainstem in RCW 90.90.030(12) shall apply and the use of the definition is solely limited to the purpose of collecting data to meet the information requirements of this section. [2006 c 6 § 6.]

**90.90.900 Effective date—2006 c 6.** This act takes effect July 1, 2006. [2006 c 6 § 10.]

# Title 91

## WATERWAYS

### Chapters

#### 91.08 Public waterways.

*Appropriation of water for public and industrial purposes: Chapter 90.16 RCW.*

*Assessments and charges against state lands: Chapter 79.44 RCW.*

*Cities and towns*

*dikes, levees, embankments—Authority to construct: RCW 35.21.090.*  
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*Construction projects in state waters: Chapter 77.55 RCW.*

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*Counties, joint canal construction: RCW 36.64.060.*

*Dams, height on tributaries of Columbia river: Chapter 77.55 RCW.*

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*Easements over public lands: Chapter 79.36 RCW.*

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*First class cities—City may let wharves: RCW 35.22.410.*

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*Marine employees—Public employment relations: Chapter 47.64 RCW.*

*Material removed for channel or harbor improvement, or flood control—Use for public purpose: RCW 79.140.110.*

*Navigation and harbor improvements: Title 88 RCW.*

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### Chapter 91.08 RCW

#### PUBLIC WATERWAYS

##### Sections

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- 91.08.020 Accessible lands defined.
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- 91.08.090 Board's powers and duties—In general—County immune from expense.
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- 91.08.620 Unclaimed funds, disposal of.
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- 91.08.650 Enforcement.
- 91.08.660 Construction—1911 c 23.

**91.08.010 Public waterways authorized.** Whenever in any county of this state the owners of lands bordering upon or accessible to any navigable water shall desire to improve their said lands, hereinafter designated as the "district," by the

construction of a new public waterway, or the deepening or enlargement of an existing public waterway, for the floatage of vessels and the drainage of swamp and overflowed lands, and the proposed improvement will increase the public revenues and be of other public benefit, they may present the plan of such proposed waterway to the board of county commissioners of such county, hereinafter designated the "board," and have the same acted upon as provided in this chapter. [1911 c 23 § 1; RRS § 9777.]

**91.08.020 Accessible lands defined.** Lands shall be deemed accessible to such waterway when by reason of their nearness to the same their value will be materially increased by the construction or deepening or widening of such waterway. [1911 c 23 § 2; RRS § 9778.]

**91.08.030 Petition—By whom signed—Contents—Notice of filing—Discharge of proceedings.** The plan of such proposed waterway shall be presented to the board by a written petition of owners of lands which it is represented will be improved by the construction, deepening or widening of such waterway; and such petition shall be signed by the owners of thirty-five percent or more of the area of lands in the district, and shall be verified by one or more of the petitioners to the effect that the signatures attached are the genuine signature of the persons or corporations signing the same. Each petitioner shall add a description of the lands he owns. If petitioners are unmarried persons they shall so state. If lands are owned by married persons, husband and wife shall join in the petition. If a petitioner is a corporation, the signature shall be accompanied by a certified copy of a resolution of the board of directors or trustees of the corporation authorizing the person signing the petition for the corporation to execute it. If lands included in the petition are owned by minors, insane persons, or other persons under guardianship in this state, the petition may be signed by the guardians of such persons: PROVIDED, That the signature be accompanied by a certified copy of an order of the superior court having the guardianship of such person in charge, authorizing the guardian to sign the petition. A petition may consist of one or more separate papers or sheets which are identified with the subject matter.

The petitioners shall file with the board, with their petition, a map of the lands in the district and a statement showing each separate ownership of lands as shown by the public records of the county, and their location in the county, with the names of the owners as shown by such records, and the location of the proposed waterway if a new waterway is to be constructed. If an existing waterway is to be deepened the map shall show its location, and if it is to be widened the map shall show its location and the extent to which it is to be widened. With the petition there shall also be presented satisfactory evidence from the real property records of the county that the petitioners are severally the owners in fee simple of their respective tracts of land, and that all taxes and assessments due thereon are paid. If it is proposed that any lands in the district shall be filled with the material dug or dredged from such waterway, the petition shall so state, and the map of the district and plan of the improvement shall show the location, depth and yardage of such fill. The petition may also

fix the price per cubic yard at which such fill shall be charged to the land filled, which charge shall be added to the assessment for the improvement to be made upon such lands and be paid as a part thereof. If the price of filling is not fixed by the petition it may be fixed by the board.

At any time after the filing of such petition one or more of the petitioners may file and record in the office of the auditor of the county, notice of the pendency of the proceeding, describing the boundaries of the proposed district, and from the time of such filing all persons shall be deemed to have notice of the pendency of the proceeding and be bound thereby. Upon the hearing upon such petition, hereinafter provided, if the same be denied any person interested may file in the office of said county auditor a certified copy of the order denying the same, whereupon the auditor shall enter the discharge of the notice of the pendency of the proceeding on the margin of the record thereof. And the like discharge may be filed whenever the proceeding is terminated for any other reason. [1911 c 23 § 3; RRS § 9779. Formerly RCW 91.08.030, 91.08.040, and 91.08.050.]

**91.08.060 Cost bond filed with petition.** Said petitioners shall at the time of filing their petition with the board, file a bond executed by one or more of their number as principals, and in behalf of all, and by a surety corporation authorized to become surety upon public bonds in this state, which bond shall run to the state of Washington as obligee and be in the sum of five hundred dollars, conditioned that they will pay all costs of the proceeding in case for any reason the petition shall not be granted, or in case no fund shall thereafter be created for the payment of the expense attending said proposed waterway improvement. And said petitioners shall, from time to time as the board shall estimate and order, pay the costs and expenses of such proceeding. [1911 c 23 § 4; RRS § 9780.]

**91.08.070 Petition may be amended—Order for hearing—Notice—Record.** The petition, after the filing thereof, shall be taken up and considered by the county legislative authority at the next regular or special meeting thereof, or as soon thereafter as may be convenient, and if the petition be defective in any particular it may be amended and an adjournment of the matter may be had to permit of the amendment, for a time not exceeding thirty days. If the petition be defective and be not sufficiently amended within the adjournment taken, it shall be dismissed. But if the petition is sufficient, or if by amendment it be made sufficient, it shall be the duty of the county legislative authority to enter an order setting a time for a public hearing thereon within thirty days from the date of the order, and directing the clerk of the county legislative authority to give notice of the time and place of the hearing in the official newspaper of the county by publication therein at least once each week for three successive weeks before the time of hearing. The notice shall be addressed to the owners of lands not petitioning, as shown by the petition or as may be ascertained to be the fact, and to all other persons known and unknown having or claiming an interest in the lands in the district, and shall state the pendency of the proceeding, its object, the names of the signers of the petition, the number of acres of land they claim to own,

the whole number of acres proposed to be improved, the boundaries of the lands to be included in the improvement district, and the time and place of hearing. And notice shall also be given that at the time and place named, or at such time as the same may be adjourned to, the board will consider the petition under the provisions of this chapter, and will hear all objections offered by interested parties and grant or refuse the petition as it may be advised. The clerk of the board shall keep a record of all orders, hearings and proceedings of the board in reference to the waterway district in a separate bound book, designated as the record of proceedings as to such district. [1985 c 469 § 96; 1911 c 23 § 5; RRS § 9781.]

**91.08.080 Hearing—Findings—Order.** At the time and place prescribed in the said notice any owner of land within said proposed improvement district may file with the board his written consent to the proposed improvement, and he shall then be considered as a petitioner; and if the owners of more than one half of the lands within the district, including the lands represented by the petition, shall assent to the prayer of said petition, the board shall then proceed to hear and consider any objections which may have been filed at that or any previous time, and may adjourn such hearing from day to day. If the board after full hearing on the merits of the proposed waterway shall be satisfied that the same will be of benefit to the public interests, and that private benefit will result to the lands within the district sufficient to equal the cost of the proposed improvement, they may make findings accordingly and declare their intention to establish the waterway district under the name of the ". . . . Waterway District" and make the improvement as prayed for; but if the owners of less than one half of the lands in the district shall assent to the creation thereof and the making of the proposed improvement, the board shall deny the petition and the proceeding shall be dismissed. [1911 c 23 § 6; RRS § 9782.]

**91.08.090 Board's powers and duties—In general—County immune from expense.** Upon the entry of an order creating such waterway district by the board, it shall have power to perform all the duties and exercise all of the authority conferred upon it by this chapter, and shall have the right to sue and be sued in all matters pertaining to such district as the representative thereof, in the same manner and to the same extent as in all other county affairs. But such district shall bear all the expenses of such action on the part of the board, and the county shall be at no expense or charge therefor. [1911 c 23 § 7; RRS § 9783.]

**91.08.100 Board's powers and duties—Right of eminent domain.** Said board shall have the right of eminent domain for the acquisition of lands necessary to the construction or widening of the proposed waterway, and may cause all necessary lands to be condemned and appropriated or damaged for the use of said waterway, and make just compensation therefor. The private property of the state, the county, and other public or quasi-public corporations (except incorporated cities and towns), and of private corporations, shall be subject to the same rights of eminent domain at the suit of said board as the property of private individuals. [1911 c 23 § 8; RRS § 9784.]

(2006 Ed.)

**91.08.110 Bridging part of cost.** Whenever in aid of the construction or widening of any such waterway it shall be necessary to cross or disturb any existing public highway or railroad, the cost of bridging the waterway or otherwise substantially continuing the highway or railroad may be ascertained and paid as a part of the cost of the improvement if such cost is not otherwise provided for. [1911 c 23 § 9; RRS § 9785.]

**91.08.120 Eminent domain—Order to acquire or condemn property.** Whenever the said board shall desire to condemn and acquire land, or damage lands or property for any purpose authorized by this chapter, said board shall make an order therefor wherein it shall be provided that such land or damages shall be paid for wholly by special assessment upon the property within said waterway district, and the proceeding thereafter shall be as herein specified. [1911 c 23 § 10; RRS § 9786.]

**91.08.130 Eminent domain—Petition to condemn.** The board shall file a petition, verified by its chairman and signed by the prosecuting attorney, in the superior court of the county, praying that the property described may be taken or damaged for the purpose specified and that compensation therefor be ascertained by a jury or by the court in case a jury be waived. Such petition shall allege the creation of the waterway district and contain a copy of the order directing the proceeding, a reasonably accurate description of the lots or parcels of land or other property which will be taken or damaged, and the names of the owners and occupants of said lands and of said persons having any interest therein so far as known to the said board, or as appears from the records in the office of the county auditor. [1911 c 23 § 11; RRS § 9787.]

**91.08.140 Eminent domain—Summons.** Upon the filing of the petition aforesaid a summons returnable as summons in other civil actions, shall be issued and served upon the persons made parties defendant, together with a copy of the petition, as in other civil actions; and in case any of the defendants are unknown or reside out of the state, a summons for publication shall issue and publication be made and return and proof thereof be made in the same manner as is or shall be provided by the laws of the state for service upon nonresident or unknown defendants in other civil actions. Notice so given by publication shall be sufficient to authorize the court to hear and determine the suit as though all parties had been sued by their proper names and had been personally served. [1911 c 23 § 12; RRS § 9788.]

*Civil procedure—Commencement of actions: Chapter 4.28 RCW.*

**91.08.150 Eminent domain—Service in case of public lands—Legal counsel.** In case the land or other property sought to be taken or damaged is state land, the summons and copy of petition shall be served upon the commissioner of public lands; if it is county land it shall be served upon the county auditor, and if school land, upon the county auditor and the chairman of the board of directors of the school district. Service upon other parties defendant, public or private, shall be made in the same manner as is or shall be provided by law for service of summons in other civil actions. If the

state is made a defendant the attorney general shall represent it. If the county is a defendant the court shall appoint an attorney to represent it at all stages of the proceedings, and may allow him compensation for his services as costs of the proceeding. [1911 c 23 § 13; RRS § 9789.]

*Civil procedure—Commencement of actions: Chapter 4.28 RCW.*

*Department of natural resources to exercise powers and duties—Indemnification of private parties: RCW 43.30.411.*

*Eminent domain where state land is involved: RCW 8.28.010.*

*Public lands treated as private lands: RCW 91.08.570.*

**91.08.160 Eminent domain—Finding of public use—Jury—Dismissal.** Upon the return of said summons, or as soon thereafter as the business of the court will permit, the said court shall proceed to the hearing of such petition and shall adjudicate whether the proposed condemnation is for a public use, and if its judgment is that the proposed use is public, it shall empanel a jury to ascertain the just compensation to be paid for the lands or property taken or damaged, unless a jury be waived; but if any defendant or party in interest shall demand, and the court shall deem it proper, separate juries may be empaneled as to the separate compensation or damages to be paid to any one or more of such defendants or parties in interest. Should the court determine that the proposed use is not public, it shall dismiss the proceeding. [1911 c 23 § 14; RRS § 9790.]

**91.08.170 Eminent domain—New parties may be admitted.** The jury or court shall also ascertain the just compensation to be paid to any person found to have an interest in any lot or parcel of land or property which may be taken or damaged for such improvement, whether or not such person's name or such lot or parcel of land or other property is mentioned or described in said petition: PROVIDED, That such person shall first be admitted as a party defendant to such suit by such court and shall file a statement of his interest in, and a description of, the lot or parcel of land or other property in respect to which he claims compensation. [1911 c 23 § 15; RRS § 9791.]

*Procedure after findings: RCW 91.08.210.*

*Substitute defendant: RCW 91.08.220.*

**91.08.180 Eminent domain—Jury may view property.** The court may upon motion of the petitioners, or of any defendant, direct that the jury under the charge of an officer of the court and accompanied by such person or persons as may be appointed by the court to point out the property sought to be taken or damaged, shall view the lands or property taken or damaged for the proposed improvement. [1911 c 23 § 16; RRS § 9792.]

**91.08.190 Eminent domain—Measure of damage to buildings.** If there be any building standing in whole or in part upon any land to be taken, the jury or court shall add to the finding of the value of the land taken, the value or damage to such building as the case may require. If the entire building is taken, or if it is damaged so that it cannot be readjusted to premises of the owner, then the measure of damages shall include the fair market value of the building. If part of the building is taken, or it is damaged but can be readjusted or

replaced on premises of the owner, then the measure of damages shall be the cost of readjusting or moving the building or part thereof left, together with the depreciation in the market value of said building by reason of said readjustment or moving. [1911 c 23 § 17; RRS § 9793.]

**91.08.200 Eminent domain—Findings as interests appear—Interpleader.** If the land and buildings belong to different parties, or if the title to the property be divided into different interests by lease or otherwise, the damage done to each of such parties or interests may be separately found by the jury or court on the written request of any party. And in making such findings the jury or court shall first find and set forth the total amount of the damage to said lands and buildings and all premises therein, estimating the same as an entire estate and as if the same were the sole property of one owner in fee simple; and they shall then apportion the damages so found among the several parties entitled to the same in proportion to their several interests and claims. But no delay in ascertaining the amount of compensation shall be occasioned by any doubt or contest which may arise as to the ownership of the property or any part thereof, or as to the extent of the interest of any defendant in the property to be taken or damaged, but in such case the jury or court shall ascertain the entire compensation or damage that should be paid for the property and the court may thereafter require adverse claimants to interplead so as to fully determine their rights and interests in the compensation so ascertained, and may make such order as may be necessary in regard to the deposit or payment of such compensation and the division thereof. [1911 c 23 § 18; RRS § 9794.]

**91.08.210 Eminent domain—Procedure after findings.** Upon the filing of the findings of the jury or court, the proceedings of the court regarding new trial and the entry of judgment thereon, shall be the same as in other civil actions, and the judgment shall be such as the nature of the case may require. The final judgment of the court shall be that the lands and property taken and damaged shall, upon payment of the sums awarded, vest in the county as and for a public waterway. The court shall continue or adjourn the case from time to time as to all defendants named in such petition who shall not have been served with process or brought in by publication, and new summons may issue or new publication be made at any time, and upon such defendants being brought in the court may empanel a jury to ascertain the compensation so to be made to such defendants for property taken or damaged, or may proceed without a jury if none be demanded, and like proceedings shall be had for such purpose as are herein provided. [1911 c 23 § 19; RRS § 9795.]

*Civil procedure*

*judgments: Chapters 4.56 through 4.64, 4.72 RCW.*

*new parties may be admitted: RCW 91.08.170.*

*new trials: Chapter 4.76 RCW.*

**91.08.220 Eminent domain—Substitution of new owner as defendant.** The court shall have power at any time, upon proof that any defendant who has not been served with process has ceased to be an owner since the filing of such petition, to substitute the new owner as a defendant, and after due service of the summons and petition upon him pro-

ceed as though he had been a party in the first instance; and the court may upon any finding of the jury, or at any time during the course of the proceedings, enter every such order, rule, judgment or decree as the nature of the case may require. [1911 c 23 § 20; RRS § 9796.]

*New parties may be admitted:* RCW 91.08.170.

*Procedure after findings:* RCW 91.08.210.

#### **91.08.230 Eminent domain—Guardian ad litem.**

When it shall appear from said petition or otherwise, at any time during the proceedings upon such petition, that any infant, insane or distracted person is interested in any property that is to be taken or damaged, the court shall appoint a guardian ad litem for such infant or insane or distracted person to appear and defend for him, her or them; and the court shall make such order or decree as it shall deem proper to protect and secure the interest of such infant or insane or distracted person in such property, or the compensation which shall be awarded therefor. [1911 c 23 § 21; RRS § 9797.]

**91.08.240 Eminent domain—Damage irrespective of benefits.** The compensation to be ascertained by the jury or court shall be irrespective of any benefit from the improvement proposed, and the finding shall state separately the value of land taken from any tract and the damage, if any, to remaining land by reason of the severance. [1911 c 23 § 22; RRS § 9798.]

**91.08.250 Eminent domain—Finality of judgment—Appellate review—Waiver of review.** Any final judgment rendered by said court upon the findings of the court or a jury, shall be the lawful and sufficient condemnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings and all costs which shall be taxed as in other civil cases: PROVIDED, That in case any defendant recovers no award, no costs shall be taxed. Such judgment shall be final and conclusive as to the damages caused by such improvement, unless appellate review is sought, and no review shall delay proceedings under the order of said board if it shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs; but such board after making such payment into court shall be liable to such owner or owners, or parties interested, for the payment of any further compensation which may at any time be finally awarded to such parties seeking review in said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor and abide any rule or order of the court in relation to the matter in controversy. In case of review by the supreme court or the court of appeals of the state, the money so paid into the superior court by the board, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the owner of the land, real estate, premises, or other property, accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived conclusively appellate review and final judgment may be rendered in the superior court as in other cases. [1988 c 202 § 94; 1971 c 81 § 180; 1911 c 23 § 23; RRS § 9799.]

**Rules of court:** Cf. RAP 2.5(b).

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**Severability—1988 c 202:** See note following RCW 2.24.050.

*Appellate review:* RCW 91.08.580.

*Civil procedure—Costs:* Chapter 4.84 RCW.

**91.08.260 Eminent domain—Decree of appropriation.** The court upon proof that the judgment, together with costs, has been paid to the person entitled thereto, or has been paid into court, shall enter an order that the board shall have the right at any time thereafter to take possession of or damage the property in respect to which such compensation shall have been so made or paid into court as aforesaid, and thereupon the title to any property so taken shall be vested in fee simple in the public as a water highway. [1911 c 23 § 24; RRS § 9800.]

**91.08.270 Assessment procedure—Petition—Assessment commissioners.** Said board shall, upon the entry of the condemnation judgment, file in the same proceeding a supplementary petition, praying the court that an assessment be made upon the lands in the district for the purpose of raising an amount necessary to pay the compensation and damages awarded for the property taken or damaged, with costs of the proceedings, and for the estimated cost of the proposed improvement; and the court shall thereupon appoint three competent disinterested persons as commissioners to make such assessment. Said commissioners shall include in such assessment the compensation and damages awarded for the property taken or damaged, with legal interest from the date of entry of the judgment, and with all costs and expenses of the proceedings incurred to the time of their appointment, or to the time when said proceedings was referred to them, together with the probable further costs and expenses of the proceeding, including therein the estimated cost of making and collecting such assessment. The petitioners for the improvement shall be entitled to have included in the costs of the proceeding, and repaid to them, such reasonable sums as they may have expended in preparing the maps and plans of the improvement and procuring the names of landowners for filing with the petition. Such expenditures to be approved and allowed by the court. [1911 c 23 § 25; RRS § 9801.]

*Invalidity of assessments—Reassessment:* RCW 91.08.520.

*Public lands treated as private lands—Assessment of:* RCW 91.08.575.

**91.08.280 Assessment procedure—Oath and compensation of commissioners.** Said commissioners, before entering upon their duties, shall take and subscribe an oath that they will faithfully perform the duties of the office to which they are appointed, and will to the best of their abilities make true and impartial assessments according to the law. Every commissioner shall receive compensation at the rate of five dollars per day for each day actually spent in making the assessment herein provided for, upon his filing in the proceeding a verified statement showing the number of days he has actually spent therein; and upon the approval of said statement by the judge of the court in which the proceeding is pending, the board shall issue a warrant in the amount so approved, upon the special fund created to pay the awards and costs of said proceeding; and the fees of such commissioners so paid, and all expenses returned by them and

allowed by the court shall be included in the cost and expense of such proceeding. [1911 c 23 § 26; RRS § 9802.]

**91.08.290 Assessment procedure—Apportionment of assessment.** It shall be the duty of such commissioners to examine the lands in the district and to apportion and assess the amount of the judgment, interest and costs as hereinbefore defined, of the condemnation proceeding, and of the estimated cost of the proposed improvement, and of the price of any fill made with material dug or dredged from such waterway, upon the several lots, blocks, tracts and parcels of land in said district, in the proportion in which they will be severally benefited; which assessment shall be a proportionate charge upon each square foot of land contained in each separate lot, block, tract or parcel of land. [1911 c 23 § 27; RRS § 9803.]

**91.08.300 Assessment procedure—Assessment roll.** The commissioners shall make or cause to be made an assessment roll in which shall appear the names of the owners, so far as known, a description of each lot, block, tract or parcel of land or other property, and the amounts assessed thereon as special benefits thereto, specifying separately the benefits from the opening of the waterway, for construction, and for fill if any, and certify such assessment roll to the court before which said proceeding is pending, within sixty days after the date of the order referring said proceeding to them, or within such extension of said period as shall be allowed by the court. In determining the benefit to be assessed upon any lot or parcel of land for the opening of the waterway, the commissioners shall ascertain from the finding of the court or jury whether or not it is remaining land after the severance of land taken from an original lot or parcel for right-of-way of such proposed waterway, and the damage awarded to such remaining land, if any, allowed by reason of the severance; and for such opening shall assess as benefits to such remaining land only the excess of the benefit accruing thereto over the damage awarded by the finding. [1911 c 23 § 28; RRS § 9804.]

**91.08.310 Assessment procedure—Order for hearing on roll—Notice.** Upon its completion the commissioners shall return their assessment roll into court, and thereupon the court shall make an order setting a time for the hearing thereon before the court, which day shall be at least thirty days after the entry of the order. The commissioners shall give notice of the assessment and of the day fixed by the court for the hearing thereon in the following manner:

(1) They shall at least twenty days prior to the date fixed for the hearing on the roll, mail to each owner of the property assessed, whose name and address is known to them, a notice substantially in the following form:

"(Title of cause.) To . . . . .: Pursuant to an order of the superior court of the State of Washington, in and for the county of . . . . . there will be a hearing in the above entitled cause on . . . . . at . . . . . upon the assessment roll prepared by the commissioners heretofore appointed by the court to assess the property specially benefited by the (here describe nature of improvement); and you are hereby required if you desire to make any objection to the assessment roll, to file your objections to the same before the date herein fixed for

the hearing upon the roll, a description of your property and the amount assessed against it for the aforesaid improvement is as follows: (Description of property and amount assessed against it.)

.....  
.....  
.....  
Commissioners."

(2) They shall cause at least twenty days' notice to be given of the hearing by publishing the same at least once a week for two successive weeks in the official county newspaper. The notice so required to be published may be substantially as follows:

"(Title of cause.) Special Assessment Notice. Notice is hereby given to all persons interested, that an assessment roll has been filed in the above entitled cause providing for the assessment upon the property benefited of the cost of (here insert brief description of improvement) and that the roll has been set down for hearing on the . . . . day of . . . . . at . . . . . The boundaries of the assessment district are substantially as follows: (here insert an approximate description of the assessment district.) All persons desiring to object to the assessment roll are required to file their objections before said date fixed for the hearing upon the roll, and appear on the day fixed for hearing before the court.

.....  
.....  
.....  
Commissioners."

[1985 c 469 § 97; 1911 c 23 § 29; RRS § 9805.]

**91.08.320 Assessment procedure—Proof of service of notice.** On or before the day fixed for the hearing, the affidavit of one or more of the commissioners shall be filed in said court showing the mailing of the notices above prescribed, and an affidavit of the publisher of the newspaper showing the publication of notice, with a copy of the published notice attached, which affidavit shall be received as prima facie proof of the giving of notice as herein required. [1911 c 23 § 30; RRS § 9806.]

**91.08.330 Assessment procedure—Cause may be continued.** If twenty days shall not have elapsed between the first publication of such notice and the day set for hearing, the hearing shall be continued until such time as the court shall order. The court shall retain full jurisdiction of the matter until final judgment on the assessments, and if the notice given shall prove invalid or insufficient the court shall order new notice to be given. [1911 c 23 § 31; RRS § 9807.]

**91.08.340 Assessment procedure—Hearing—Findings—Judgment.** Any person interested in any property assessed and desiring to object to the assessment thereon, shall file his objections to such report at any time before the day set for hearing said roll, and serve a copy thereof upon the prosecuting attorney. As to all property to the assessment upon which no objections are filed and served, as herein provided, default may be entered and the assessment confirmed by the court. On the hearing of objections the report of the

commissioners shall be competent evidence to support the assessment, but either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law tried by the court without a jury; and if it shall appear that the property of the objector is assessed more or less than it will be benefited, or more or less than its proportionate share of the cost of the condemnation and improvement, the court shall so find, and it shall also find the amount in which said property ought to be assessed and correct the assessment accordingly. Judgment shall be entered confirming the assessment roll as originally filed or as corrected, as the case may require. [1911 c 23 § 32; RRS § 9808.]

*Civil procedure: Title 4 RCW.*

**91.08.350 Assessment procedure—Roll may be recast—New commissioners.** The court before which any such proceeding may be pending shall have authority at any time before final judgment to modify, alter, change, annul or confirm any assessment roll returned as aforesaid, or cause any such assessment roll to be recast by the same commissioners whenever it shall be necessary for the obtainment of justice; or it may appoint other commissioners in the place of all or any of the commissioners first appointed for the purpose of making such assessment or modifying, altering, changing or recasting the same, and may take all such proceedings and make all such orders as may be necessary to make a true and just assessment of the cost of such condemnation and improvement according to the principals of this chapter, and may from time to time, as may be necessary, continue the proceeding for that purpose as to the whole or any part of the premises. [1911 c 23 § 33; RRS § 9809.]

*Invalidity of assessments—Reassessment: RCW 91.08.520.*

**91.08.360 Assessment procedure—Judgment separate as to each tract—Effect of appeal.** The judgment of the court confirming the assessment roll shall have the effect of a separate judgment as to each tract or parcel of land or other property assessed, and any appeal from such judgment shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. Such judgment shall be a proportionate lien upon each square foot of the property assessed from the date of entry until payment shall be made. [1911 c 23 § 34; RRS § 9810.]

*Appellate review: RCW 91.08.580.*

**91.08.370 Assessment procedure—Roll certified to treasurer—Interest on assessment upon appeal.** The clerk of the court in which such judgment is rendered shall certify a copy of the assessment roll as confirmed, and of the judgment confirming the same, to the treasurer of the county, or if there has been an appeal taken from any part of such judgment, then he shall certify such part of the roll and judgment as is not included in such appeal, and the remainder when final judgment is entered: PROVIDED, That if upon such appeal the judgment of the superior court shall be affirmed, the assessments on such property as to which appeal has been taken shall bear interest at the same rate and from the same date which other assessments not paid within the time hereafter provided shall bear. Such copy of the assessment roll shall

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be sufficient warrant to the county treasurer to collect the assessments therein specified in the manner hereinafter provided. [1911 c 23 § 35; RRS § 9811.]

**91.08.380 Assessment procedure—Notice of filing roll.** The treasurer receiving such certified copy of the assessment roll and judgment shall immediately give notice thereof by publishing such notice at least once in the official newspaper or newspapers of such county, if such newspaper or newspapers there be; and if there be no such official newspaper, then by publishing such notice in some newspaper of general circulation in the county. Such notice may be in substantially the following form:

"SPECIAL ASSESSMENT NOTICE.

Public notice is hereby given that the superior court of . . . . . county, State of Washington, has rendered judgment for a special assessment upon property benefited by the following improvement (here insert the character and location of the improvement in general terms) as will more fully appear from the certified copy of the assessment roll on file in my office, and that the undersigned is authorized to collect such assessments. All persons interested are hereby notified that they can pay the amounts assessed, or any part thereof, without interest, at my office (here insert location of office) within sixty days from the date hereof.

Dated this . . . . . day of . . . . . A.D. 19 . . .

.....  
Treasurer of .....  
county, Washington."

[1911 c 23 § 36; RRS § 9812.]

**91.08.390 Payment of assessment—Alternate methods.** The owner of any land charged with an assessment under this chapter, may discharge the same from all liability for the cost of such condemnation and improvement by paying the entire assessment charged against his land, without interest, within the time fixed by the notice of the county treasurer for the payment thereof; or within said time he may pay a part of such assessment and allow the remainder to continue as an assessment upon his land to be collected and paid as hereinafter provided; or within said time he may pay the entire assessment per square foot upon any part of his land, providing that he shall when paying such partial assessment give to the treasurer a description of the tract paid for. [1911 c 23 § 37; RRS § 9813.]

*Payment of assessments by satisfying judgment: RCW 91.08.590.*

**91.08.400 Payment of assessment—Record of payment without interest.** When any assessment shall be paid either in full or in part only, within the time for payment without interest fixed by his notice, the treasurer shall note the fact of such payment opposite the assessment. [1911 c 23 § 38; RRS § 9814.]

**91.08.410 Payment of assessment—Installments—Collection.** Immediately after the expiration of the time fixed by his notice for payment of assessments without interest, the treasurer shall divide the several assessments which

remain unpaid in whole or in part into ten equal amounts or installments, as near as may be, without fractional cents, and enter said installments upon the roll opposite the several assessments, numbering the same from one to ten successively. And thereafter said treasurer shall annually for ten years, before the time fixed by law for the collection of state and county taxes, add one of the said assessment installments with interest for one year from the expiration of the time for payment without interest, or of the anniversary thereof, at a rate determined by the board on the entire unpaid assessment, to the tax levied upon the property assessed, where said tax appears upon the county tax roll, and collect said installment and interest, without reduction of percentage for prepayment, at the same time and in the same manner as state and county taxes are collected. And after delinquency said installments and interest shall be subject to the same charges for increased interest and penalties as are other delinquent taxes. But no tax sale of lands assessed under this chapter shall discharge the same from the lien of any unpaid installments of the assessment against it until all installments and interest are fully paid. [1981 c 156 § 34; 1911 c 23 § 39; RRS § 9815.]

*Collection of taxes: Chapter 84.56 RCW.*

**91.08.420 Payment of assessment—Record of installment payments.** As each assessment installment is paid the treasurer shall note the payment thereof in the proper place upon the assessment roll. [1911 c 23 § 40; RRS § 9816.]

**91.08.430 Payment of assessment—Payment in full or in part—Interest—Segregation.** The owner of any lands assessed under this chapter may at any time after the time fixed by the treasurer's notice for payment without interest, discharge his lands from the unpaid assessment by paying the principal of all installments unpaid with interest thereon at a rate determined by the board to the next anniversary of the time fixed as aforesaid; or he may pay one or more installments, with like interest, beginning with installment number ten and continuing in the inverse numerical order of installments. The successor in title to any part of his lands may have the proportionate assessment segregated on the roll and charged to such part upon his producing to the treasurer his recorded deed to such part. [1981 c 156 § 35; 1911 c 23 § 41; RRS § 9817.]

**91.08.440 Payment of assessment—Interest on last installment.** The last installment of any assessment paid shall include interest thereon at a rate determined by the board to the actual date of payment. [1981 c 156 § 36; 1911 c 23 § 42; RRS § 9818.]

**91.08.450 Payment of assessment—Land taken for public use.** Should any of the lands assessed under this chapter be taken for or dedicated to public use, for highway or any other public purpose, before the taking or dedication shall be complete or take effect there shall be paid to the county treasurer a sum equal to the principal of the unpaid assessment upon said land at its proportionate rate per square foot, with interest thereon for one year at a rate determined by the board; and the treasurer shall credit the principal sum paid to

the unpaid installments upon the tract as originally assessed. [1981 c 156 § 38; 1911 c 23 § 43; RRS § 9819.]

**91.08.460 Payment of assessment—Treasurer's report.** Immediately after expiration of the time fixed by the treasurer for the payment of assessments levied under this chapter, he shall report to the board in writing the sum collected by him and in his hands to the credit of the assessment roll; and thereafter and on or before the first days of January and July in each year he shall make written reports to said board of the sums collected by him upon said roll, stating in detail the amount of principal, interest and penalty so collected, the amount of principal remaining uncollected, and also, in detail, the principal and interest paid out by him under authority of the board, and the balance in his hands to the credit of the roll. [1911 c 23 § 44; RRS § 9820.]

**91.08.465 Bonds—Authorized—Purposes for issuance.** Should the owners of any lands assessed to pay for an improvement contemplated by this chapter, fail to pay the assessments thereon in full on or before the day fixed by the treasurer's notice as the time for payment without interest, the board shall provide and issue bonds of the district to the total amount of the unpaid assessments, which bonds may either be issued to persons contracting to perform the work of making the improvement, or exchange with them for warrants; or be issued in exchange for work or materials; or they may be sold outright as hereinafter provided. Such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 265; 1911 c 23 § 45; RRS § 9821. Formerly RCW 91.08.470, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**91.08.480 Bonds—Terms, form, interest, execution.** (1) Such bonds shall be issued pursuant to an order made by the board and by their terms shall be made payable on or before a date not to exceed ten years from and after the date of their issue, which latter date shall also be fixed by such order. They shall bear interest at the rate or rates as authorized by the board, which interest shall be payable semiannually at periods named; shall be of such denomination as shall be provided in the order directing the issue, but not less than one hundred dollars nor more than one thousand dollars; shall be numbered from one upward consecutively and each bond shall be signed by the president of the board and attested by its clerk: PROVIDED, HOWEVER, That any coupons may, in lieu of being so signed, have printed thereon facsimile signatures of said officers. Each bond shall in the body thereof refer to the improvement to pay for which the same is issued; shall provide that the principal sum therein named and the interest thereon shall be payable out of the fund created for the payment of the cost and expense of said improvement, and not otherwise; and shall not be issued in an amount which, together with the assessments already paid, will exceed the cost and expense of the said condemnation and improvement. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 266; 1970 ex.s. c 56 § 105; 1969 ex.s. c 232 § 48; 1911 c 23 § 46; RRS § 9822.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

#### **91.08.485 Bonds—Sale or exchange for par value.**

(1) Said bonds, whether sold or exchanged, shall be disposed of for not less than their par value and accrued interest.

(2) Notwithstanding subsection (1) of this section, such bonds may be sold in accordance with chapter 39.46 RCW. [1983 c 167 § 267; 1911 c 23 § 47; RRS § 9823. Formerly RCW 91.08.470, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**91.08.490 Bonds—Sale of.** (1) Before making any sale of such bonds the board shall advertise the sale and invite sealed bids therefor, by publication in the county official newspaper at least once, and in such other manner as it sees fit, for a period of thirty days. At the time and place fixed for receiving bids the board shall open all bids presented and may either award the bonds to the highest bidder or reject all bids. Delivery of the bonds and payment therefor may be as required by the board. The purchaser of any such bonds shall pay the money due therefor to the county treasurer, who shall place it in the district fund.

(2) Notwithstanding subsection (1) of this section, such bonds may be sold in accordance with chapter 39.46 RCW. [1983 c 167 § 268; 1911 c 23 § 48; RRS § 9824.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**91.08.500 Bonds—Payment.** The treasurer shall pay the interest on the bonds authorized to be issued by this chapter, on presentation of matured coupons therefor, out of the funds of the district in his hands. Whenever there shall be sufficient money in any such fund (not less than one thousand dollars) over and above sufficient for the payment of matured interest on all outstanding bonds, to pay the principal of one or more bonds, the treasurer shall call in and pay the bonds in their numerical order: PROVIDED, That the call for bonds shall be made by publication in the official newspaper of the county within five days after the semiannual interest period, and shall state that bonds numbered . . . . . (giving the serial numbers of the bonds called) will be paid on presentation; and that after a date named, not more than fifteen days thereafter, interest on the bonds called shall cease. [1985 c 469 § 98; 1911 c 23 § 49; RRS § 9825.]

**91.08.510 Bonds—Recourse of owner limited to special assessment—Bond to so state.** The owner of any bond issued under authority of this chapter shall not have any claim therefor against any person, body or corporation, except from the special assessment made for the improvement for which such bond was issued; but his remedy in case of nonpayment shall be confined to the enforcement of such assessment. A

copy of this section shall be plainly written, printed or engraved on each bond so issued. [1983 c 167 § 269; 1911 c 23 § 50; RRS § 9826.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

#### **91.08.520 Invalidity of assessments—Reassessment.**

In all cases of assessments for improvements under this chapter, wherein such assessment shall have failed to be valid in whole or in part for want of form or insufficiency, informality or irregularity, or nonconformance with the provisions of this chapter, the board is hereby authorized to cause such assessments to be reassessed and to enforce their collection in accordance herewith. [1911 c 23 § 51; RRS § 9827.]

*Assessment procedure: RCW 91.08.270 through 91.08.380.*

**91.08.530 Construction—Contractor's bond—Bidder's deposit—Claims.** After the confirmation of the assessment roll of any improvement district provided for herein, the board shall proceed at once with the construction of the improvement, and in carrying on the construction it shall have full charge and management thereof and the power to employ such assistants as it may deem necessary, and purchase all material required in such construction; and it shall have power to let the whole or any part of the work of the improvement to the lowest and best bidder therefor, after public advertisement and call for bids; and in case of such letting of a contract it shall have the power also to enter into all necessary agreements with the contractor in the premises: PROVIDED, That in the case of the letting of a contract the board shall require the contractor to give a bond in the amount of the contract price, with sureties to be approved by the board and running to the board as obligee therein, conditioned for the faithful and accurate performance of his or her contract by the contractor, and that he or she will pay, or cause to be paid, all just claims of all persons performing labor upon or rendering services in doing the work, or furnishing materials, merchandise or provisions used by the contractor in the construction of the improvement. The bond shall be filed and recorded in the office of the auditor of the county and every subcontractor on any such work shall file and record a like bond in the full amount of his or her subcontract. Unless otherwise paid their claims for labor or services, materials, merchandise or provisions, the claimants may have recourse by suit upon such bond in their own names: PROVIDED, That no such claim or suit shall be maintained unless the persons making the claim shall within thirty days after the completion of the improvement, file their claims, duly verified, to the effect that the amounts thereof are just and due and are unpaid, with the clerk of the board. Each bidder for a contract to be let under this section shall deliver with his or her bid a check for five percent of the amount of the bid, drawn upon a bank in this state and certified by the bank, as surety to the board that the bidder will enter into the contract with the board. The checks of unsuccessful bidders will be returned to them when an award of the contract has been made by the board. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. [1996 c 18 § 16; 1911 c 23 § 52; RRS § 9828.]

*Contractor's bond: Chapter 39.08 RCW.*

**91.08.540 Construction—Installment payments—Reserve.** During the construction of the improvement said board shall have the right to allow payment therefor to contractors in installments as the work progresses, in proportion to the amount of work completed: PROVIDED, That no such allowance or payment shall be made for exceeding seventy-five percent of the proportionate amount of the work completed; and twenty-five percent of the contract price shall be reserved at all times by said board until such work is fully completed, and shall not be paid until thirty days have expired after such completion. Upon completion of the work and the production of satisfactory evidence to the board that all just claims for labor, materials, goods, wares, merchandise and provisions furnished to the contractor have been paid, the board shall accept the improvement and pay the contract price therefor. [1911 c 23 § 53; RRS § 9829.]

**91.08.550 Warrants.** The indebtedness of any such district on contracts, or upon employment or for supplies, shall be paid by warrants on the district fund only, to be issued by the board upon allowed written claims. Such warrants shall be in form the same as county warrants, or as nearly the same as may be practicable; shall draw the legal rate of interest from the date of their presentation to the county treasurer for payment, and shall be signed by the chairman and attested by the clerk: PROVIDED, That no warrants shall be issued in payment of any indebtedness of such district for less than the face or par value. [1911 c 23 § 54; RRS § 9830.]

*Public contracts and indebtedness—Interest rate on warrants: Chapter 39.56 RCW.*

**91.08.560 Warrants—Payment.** All warrants issued under RCW 91.08.550 may be presented by the holders thereof to the county treasurer, who shall pay them or endorse thereon the date of presentation for payment and if the same are not paid, and the reason for their nonpayment; and no warrant shall draw interest until it is so presented and endorsed by the county treasurer. It shall be the duty of the treasurer from time to time, when he has sufficient funds in his hands for the purpose, to give notice to warrant holders to present their warrants for payment; such notice to be given by advertisement in the county newspaper. And thirty days after the first publication of said notice the warrants called shall cease to bear interest. Said notice shall be published once each week for two weeks consecutively, and such warrants shall be called and paid in the order of their endorsement. [1911 c 23 § 55; RRS § 9831.]

**91.08.570 Public lands not devoted to public use to be treated as private lands.** State, school, county, school district, and other lands belonging to other public corporations which will be benefited by the construction, deepening or widening of any such waterway, and which are not devoted to public use, shall be subject to the provisions of this chapter, and the owners thereof by and through the proper authorities, shall be made parties in all proceedings affecting said lands, and shall have the same rights and be liable to the same right of eminent domain as the lands of private persons or corporations. [1911 c 23 § 56; RRS § 9832. FORMER PART OF

SECTION: 1911 c 23 § 57; RRS § 9833, now codified as RCW 91.08.575.]

*Eminent domain procedure—Service in case of public lands: RCW 91.08.150.*

**91.08.575 Public lands not devoted to public use to be treated as private lands—Assessment.** Lands belonging to the state, and school, county, school district and other lands belonging to public corporations and which are not devoted to public use, which are benefited by any improvement instituted under the provisions of this chapter, shall be assessed in the same manner as lands of private persons and corporations, and the assessment shall be paid by the proper authorities. [1911 c 23 § 57; RRS § 9833. Formerly RCW 91.08.570, part.]

*Assessment procedure: RCW 91.08.270 through 91.08.380, 91.08.520.*

**91.08.580 Appellate review.** Any person aggrieved by any condemnation judgment for compensation or damages, or by any judgment confirming an assessment upon land for benefits under this chapter, may seek appellate review of the judgment as in other civil cases. [1988 c 202 § 95; 1971 c 81 § 181; 1911 c 23 § 58; RRS § 9834.]

*Rules of court: Method of appellate review, Cf. Title 2 RAP, RAP 18.22.*

**Severability—1988 c 202:** See note following RCW 2.24.050.

**91.08.590 Payment of assessments by satisfying judgment.** Any defendant in a condemnation proceeding under this chapter, whose remaining land, or whose other lands in the district, shall be assessed for benefits arising from the improvement, may pay his assessments in full, if they be less than his condemnation judgment, at or before the time fixed by the treasurer for the payment of assessments without interest, by satisfying his judgment upon the judgment docket and producing to the treasurer the certificate of the county clerk that the judgment has been satisfied. And if his assessments be greater than his condemnation judgments he may, within the same time, pay his assessment to the extent of his judgment by the like satisfaction and the like production of the clerk's certificate to the treasurer. In each case the treasurer shall note the payment and the manner thereof on the assessment roll and report the same to the board. [1911 c 23 § 59; RRS § 9835.]

*Payment of assessment: RCW 91.08.390 through 91.08.460.*

**91.08.600 Purchase of filling material.** At any time before the completion of excavations required for the construction, deepening or widening of a waterway under this chapter, when there will be surplus material dug or dredged from such waterway, any owner of land within the district, for the filling of whose land no provision has theretofore been made, may have such surplus material delivered upon his land for filling purposes upon paying the cost of such delivery in a sum to be fixed by the board. The sum so fixed shall be paid to the treasurer at such time and in such manner as the board may prescribe, and shall be credited to the district fund. [1911 c 23 § 60; RRS § 9836.]

**91.08.610 Surplus money in district fund transferred to road fund.** Should there be any money remaining in the

district fund after the payment in full of all of the obligations of the district, it shall be transferred to and become a part of the road fund of the county. [1911 c 23 § 61; RRS § 9837.]

*"County road fund" created: RCW 36.82.010.*

**91.08.620 Unclaimed funds, disposal of.** Should any sum of money paid into court as compensation or damages for land or property taken or damaged in any condemnation proceeding under this chapter be uncalled for the period of two years, the county clerk shall satisfy the judgment therefor and pay the money in his hands to the treasurer for the road fund of the county. But upon application to the board of county commissioners within four years after such payment, the party entitled thereto shall be paid such money by the county without interest: PROVIDED, That if any such party, being a natural person, was under legal disabilities when such money was paid to the treasurer, the time within which he or his legal representatives shall make application for the payment thereof shall not expire until one year after his death or the removal of his disabilities. [1911 c 23 § 62; RRS § 9838.]

**91.08.630 Waterways as highways—Control of.** Every waterway constructed, deepened or widened under this chapter shall, from and after the completion thereof, be a public highway for vessels and an outlet for swamp or overflow water which may be drained into it from any lands in the district or tributary thereto, and shall be under the care and control of the board of county commissioners of the county as are other highways: PROVIDED, That whenever any such waterway shall thereafter be included within the limits of any city or town, the care and control thereof shall pass to the corporate authorities of such city or town. [1911 c 23 § 63; RRS § 9839.]

**91.08.640 Fees for serving process.** The fees for the service of all process necessary to be served under the provisions of this chapter shall be the same as those for like services in other civil cases. [1911 c 23 § 65; RRS § 9841.]

*Fees of county officers: Chapter 36.18 RCW.*

**91.08.650 Enforcement.** The superior court may compel the performance of duties imposed by this chapter, and may on proper application therefor issue its mandatory injunction for such purpose. [1911 c 23 § 66; RRS § 9842.]

**91.08.660 Construction—1911 c 23.** This chapter shall not be held to be an exclusive method of constructing, deepening or widening such waterways, nor in conflict with any other method which may be provided by law. [1911 c 23 § 64; RRS § 9840.]



## POPULAR NAMES TABLE

This table lists a number of legislative acts by their popularly known name and sets forth the RCW Title(s), chapter(s) or section(s) under which the act is found in the Revised Code of Washington.

Popular Name of Act	RCW Cite	Popular Name of Act	RCW Cite
Academic and vocational integration development program . . . . .	28A.630.860-28A.630.880	Community and technical college act . . . . .	Ch. 28B.50
Administrative procedure act. . . . .	Ch. 34.05	Community juvenile accountability act . . . . .	13.40.500-13.40.550
Adoption support demonstration act of 1971 . . . . .	74.13.100-74.13.145	Community mental health services act . . . . .	Ch. 71.24
Affordable housing act. . . . .	Ch. 43.185A	Community redevelopment financing act . . . . .	Ch. 39.88
Agricultural enabling act . . . . .	Chs. 15.65, 15.66	Condominium act. . . . .	Ch. 64.34
Agricultural marketing and fair practices act . . . . .	Ch. 15.83	Conservation district law . . . . .	Ch. 89.08
Airport zoning act . . . . .	Ch. 14.12	Consumer access to vision care act . . . . .	Ch. 18.95
Alcoholism and drug addiction treatment and support act . . . . .	Ch. 74.50	Consumer loan act . . . . .	Ch. 31.04
Alcoholism and intoxication treatment act . . . . .	Ch. 70.96A	Consumer protection act . . . . .	Ch. 19.86
Anatomical gift act. . . . .	68.50.520-68.50.630	Continuity of government act . . . . .	Ch. 42.14
Anti-harassment act of 1985 . . . . .	Ch. 9A.46	Controlled substances, uniform act . . . . .	Ch. 69.50
Antitrust/consumer protection improvement act . . . . .	19.86.090-19.86.095, 19.86.140	Controlled substances therapeutic research act . . . . .	Ch. 69.51
Arson reporting immunity act . . . . .	Ch. 48.50	Cooperative forest management services act. . . . .	Ch. 76.52
Athlete agents registration act . . . . .	Ch. 18.175	Corporation act. . . . .	Title 23B
Auctioneer registration act. . . . .	Ch. 18.11	Corrections reform act of 1981 . . . . .	Ch. 72.09
Award for excellence in education program act . . . . .	28A.625.010-28A.625.065	Cosmetologists, barbers, and manicurists act . . . . .	Ch. 18.16
Award for excellence in teacher preparation act . . . . .	28A.625.350-28A.625.390	Counselors, omnibus credentialing act . . . . .	Ch. 18.19
Bank stabilization act. . . . .	Ch. 30.56	Credit services organizations act . . . . .	Ch. 19.134
Basic juvenile court act . . . . .	Ch. 13.14	Credit union act . . . . .	Ch. 31.12
Becca bill . . . . .	Ch. 13.32A	Credit union share guaranty association act. . . . .	Ch. 31.12A
Beef commission act . . . . .	Ch. 16.67	Criminal code. . . . .	Title 9A
Budget act for cities over 300,000 population. . . . .	Ch. 35.32A	Criminal extradition, uniform act . . . . .	Ch. 10.88
Building code act, state . . . . .	Ch. 19.27	Criminal investigatory act of 1971 . . . . .	Ch. 10.27
Business corporation act . . . . .	Title 23B	Criminal justice information act . . . . .	Ch. 10.98
Business license center act. . . . .	Ch. 19.02	Criminal profiteering act . . . . .	Ch. 9A.82
Business opportunity fraud act . . . . .	Ch. 19.110	Criminal records privacy act . . . . .	Ch. 10.97
Business records as evidence act . . . . .	Ch. 5.45	Crop credit act . . . . .	Ch. 31.16
Caustic poison act . . . . .	Ch. 69.36	Declaratory judgments act . . . . .	Ch. 7.24
Center for volunteerism and citizen service act. . . . .	Ch. 43.150	Detective agencies and detectives law . . . . .	Ch. 18.165
Certified real estate appraiser act. . . . .	Ch. 18.140	Disciplinary act, uniform. . . . .	Ch. 18.130
Charter boat safety act . . . . .	Ch. 88.04	Displaced homemaker act . . . . .	Ch. 28B.04
Child abuse and neglect act . . . . .	Ch. 26.44	Documents of Title. . . . .	Ch. 62A.7
Child custody jurisdiction act . . . . .	Ch. 26.27	Domestic violence protection act. . . . .	Ch. 26.50
Children and family services act . . . . .	Ch. 74.14A	Early childhood assistance act of 1985 . . . . .	Ch. 28A.215
City and county jails act. . . . .	Ch. 70.48	Educational employment relations act. . . . .	Ch. 41.59
Civil rights act . . . . .	49.60.400-49.60.401	Electronic authentication act . . . . .	Ch. 19.34
Civil service law . . . . .	Ch. 41.06	Emergency management act . . . . .	Ch. 38.52
Clean air act . . . . .	Ch. 70.94	Emergency medical services and trauma care system act . . . . .	Ch. 70.168
Clean indoor air act . . . . .	Ch. 70.160	Employee cooperative corporations act . . . . .	Ch. 23.78
Code of military justice . . . . .	Ch. 38.38	Employment agency act. . . . .	Ch. 19.31
Collection agency act. . . . .	Ch. 19.16	Employment security act . . . . .	Title 50
College savings bond act of 1988 . . . . .	Ch. 28B.106	Energy financing voter approval act . . . . .	Ch. 80.52
Commercial driver's license act. . . . .	Ch. 46.25	Enforcement of foreign judgments act. . . . .	Ch. 6.36
Commercial feed law . . . . .	Ch. 15.53	Environmental coordination procedures act . . . . .	Ch. 90.62
Commercial fertilizer act . . . . .	Ch. 15.54	Environmental restoration jobs act of 1993 . . . . .	Ch. 43.21J
Common trust fund act, uniform . . . . .	Ch. 11.102	Escrow agent registration act. . . . .	Ch. 18.44
		Estate and transfer tax act of 1988. . . . .	Ch. 83.100
		Facsimile signatures of public officials act . . . . .	Ch. 39.62
		Fair campaign practices act . . . . .	Ch. 42.17 (passim)
		Fair credit reporting act . . . . .	Ch. 19.182

Popular Name of Act	RCW Cite
Fairness in lending act . . . . .	30.04.505-30.04.515
Family farm water act . . . . .	Ch. 90.66
Family independence program . . . . .	Ch. 74.21
Family leave . . . . .	Ch. 49.78
Family reconciliation act . . . . .	Ch. 13.32A
Federal court local law certificate procedure act . . . . .	Ch. 2.60
Federal lien registration act . . . . .	Ch. 60.68
Financial institution individual account deposit act . . . . .	Ch. 30.22
Firearms act . . . . .	Ch. 9.41
Firemen's relief and pensions—1947 act . . . . .	Ch. 41.16
Firemen's relief and pensions—1955 act . . . . .	Ch. 41.18
Fireworks law . . . . .	Ch. 70.77
Fish marketing act . . . . .	Ch. 24.36
Fish and wildlife code . . . . .	Title 77
Flammable fabrics act . . . . .	Ch. 70.110
Food, drug, and cosmetics act . . . . .	Ch. 69.04
Food processing act . . . . .	Ch. 69.07
Foreign judgments, uniform enforcement of . . . . .	Ch. 6.36
Foreign-money claims act . . . . .	Ch. 6.44
Foreign money-judgments recognition act . . . . .	Ch. 6.40
Foreign protection order full faith and credit act . . . . .	Ch. 26.52
Forest practices act of 1974 . . . . .	76.09.010-76.09.280
Franchise investment protection act . . . . .	Ch. 19.86
Fraudulent transfer act . . . . .	Ch. 19.40
Fresh fruit sales limitation act . . . . .	Ch. 15.21
Fresh pursuit act . . . . .	Ch. 10.89
Funds transfers . . . . .	Ch. 62A.4A
Game and game fish . . . . .	Title 77
Gasoline dealer bill of rights act . . . . .	Ch. 19.120
Geothermal resources act . . . . .	Ch. 79.76
Good samaritan act . . . . .	4.24.300-4.24.310
Growth management act . . . . .	Ch. 36.70A
Habitual traffic offenders act . . . . .	Ch. 46.65
Hazardous waste management act . . . . .	Ch. 70.105
Head injury prevention act . . . . .	43.70.400-43.70.440, 46.70.530, 46.70.535
Health care access act of 1987 . . . . .	Ch. 70.47
Health care false claim act . . . . .	Ch. 48.80
Health care information act . . . . .	Ch. 70.02
Health care patient bill of rights . . . . .	48.43.500-48.43.550
Health care reform act . . . . .	Ch. 41.05
Health insurance coverage access act . . . . .	Ch. 48.41
Health maintenance organization act of 1975 . . . . .	Ch. 48.46
Health planning and resources development act . . . . .	Ch. 70.38
Health professions act . . . . .	Ch. 18.120
High-technology education and training act . . . . .	Ch. 28B.65
Highway advertising control act of 1961 . . . . .	Ch. 47.42
Holocaust victims insurance relief act . . . . .	Ch. 48.104
Honey act . . . . .	Ch. 69.28
Horizontal property regimes act . . . . .	Ch. 64.32
Hospital and medical facilities survey and construction act . . . . .	Ch. 70.40
Housing authorities law . . . . .	Ch. 35.82
Housing cooperation law . . . . .	Ch. 35.83
Housing policy act . . . . .	Ch. 43.185B

Popular Name of Act	RCW Cite
Immigration assistant practices act . . . . .	Ch. 19.154
Indian reservation criminal jurisdiction retrocession act . . . . .	37.12.100-37.12.140
Industrial insurance act . . . . .	Title 51
Industrial safety and health act (WISHA) . . . . .	Ch. 49.17
Insurance code . . . . .	Title 48
Insurance guaranty association act . . . . .	Ch. 48.32
Insurance premium finance company act . . . . .	Ch. 48.56
Insurer holding company act . . . . .	Ch. 48.31B
Insurers liquidation act . . . . .	Ch. 48.99
Interlocal cooperation act . . . . .	Ch. 39.34
Interstate compact on juveniles . . . . .	Ch. 13.24
Interstate corrections compact . . . . .	Ch. 72.74
Interstate family support act . . . . .	Ch. 26.21
Intrastate corrections compact . . . . .	Ch. 72.76
Investment securities . . . . .	Ch. 62A.8
Judicial notice of foreign laws act . . . . .	Ch. 5.24
Judicial retirement account act . . . . .	Ch. 2.14
Judicial retirement system act . . . . .	Ch. 2.10
Juvenile court act, basic . . . . .	Ch. 13.04
Juvenile court act in cases relating to dependency of a child and the termination of a parent and child relationship . . . . .	Ch. 13.34
Juvenile justice act of 1977 . . . . .	Ch. 13.40
Kosher food products act of 1985 . . . . .	Ch. 69.90
Land development act . . . . .	Ch. 58.19
Land-use petition act . . . . .	Ch. 36.70C
Landlord-tenant act . . . . .	Ch. 59.18
Law enforcement officers' and fire fighters' retirement system . . . . .	Ch. 41.26
Lease-purchase agreement act . . . . .	Ch. 63.19
Leases . . . . .	Ch. 62A.2A
Lemon law . . . . .	Ch. 19.118
Letters of credit . . . . .	Ch. 62A.5
Life and disability insurance guaranty association act . . . . .	Ch. 48.32A
Limited liability company act . . . . .	Ch. 25.15
Limited partnership act . . . . .	Ch. 25.10
Liquor law . . . . .	Title 66
Living wills . . . . .	Ch. 70.122
Long-term care insurance act . . . . .	Ch. 48.84
Management of institutional funds, uniform act . . . . .	Ch. 24.44
Managing general agents act . . . . .	Ch. 48.98
Manufactured home real property act . . . . .	Ch. 65.20
Marine recreation land act of 1964 . . . . .	Ch. 43.99
Massachusetts trust act of 1959 . . . . .	Ch. 23.90
Maternity care access act . . . . .	74.09.760-74.09.820
Meat inspection act . . . . .	Ch. 16.49A
Medical use of marijuana act . . . . .	Ch. 69.51A
Medicare supplemental health insurance act . . . . .	Ch. 48.66
Military justice, code of . . . . .	Ch. 38.38
Milk pooling act . . . . .	Ch. 15.35
Mill tailings licensing and perpetual care act of 1979 . . . . .	Ch. 70.121
Minimum wage act . . . . .	Ch. 49.46
Minor student capacity to borrow act . . . . .	Ch. 26.30
Minority and women-owned businesses assistance, omnibus act . . . . .	Ch. 43.172

<b>Popular Name of Act</b>	<b>RCW Cite</b>
Manufactured/mobile home landlord-tenant act . . . . .	Ch. 59.20
Model toxics control act . . . . .	Chs. 70.105D, 82.21
Mortgage broker practices act . . . . .	Ch. 19.146
Motion picture fair competition act . . . . .	Ch. 19.58
Motor fuel quality act . . . . .	Ch. 19.112
Motor vehicle fuel importer user tax act . . . . .	Ch. 82.37
Motorcycle dealers' franchise act. . . . .	Ch. 46.94
Municipal revenue bond act. . . . .	Ch. 35.41
Municipal water and sewer facilities act . . . . .	Ch. 35.91
Mutual aid peace officer powers act of 1985. . . . .	Ch. 10.93
Natural death act . . . . .	Ch. 70.122
Negotiable instruments . . . . .	Ch. 62A.3
Noise control act of 1974. . . . .	Ch. 70.107
Nonprofit corporation act. . . . .	Ch. 24.03
Nonprofit miscellaneous and mutual corporation act . . .	Ch. 24.06
Nonresident violator compact . . . . .	Ch. 46.23
Nursing home administrator licensing act. . . . .	Ch. 18.52
Nursing homes auditing and cost reimbursement act of 1980 . . . . .	Ch. 74.46
Occupational therapy practice act . . . . .	Ch. 18.59
Ocean resources management act . . . . .	Ch. 43.143
Oil and gas conservation act . . . . .	Ch. 78.52
Oil recycling act. . . . .	Ch. 70.951
Omnibus minority and women-owned businesses assistance act . . . . .	Ch. 43.172
Open public meetings act. . . . .	Ch. 42.30
Optometry board act . . . . .	Ch. 18.54
Optometry law . . . . .	Ch. 18.53
Parentage act . . . . .	Ch. 26.26
Parenting act . . . . .	Chs. 26.09, 26.10
Partnership act, revised uniform . . . . .	Ch. 25.05
Patient bill of rights . . . . .	48.43.500-48.43.550
Persistent offender accountability act . . . . .	9.94A.030, 9.94A.120, 9.94A.392-9.94A.394
Pesticide application act. . . . .	Ch. 17.21
Pesticide control act . . . . .	Ch. 15.58
Photographic copies of business and public records as evidence act. . . . .	Ch. 5.46
Pilotage act. . . . .	Ch. 88.16
Pipeline safety act . . . . .	Ch. 81.88
Planning enabling act. . . . .	Ch. 36.70
Podiatric physician and surgeon act. . . . .	Ch. 18.22
Poison prevention act of 1974 . . . . .	Ch. 70.106
Pollution disclosure act of 1971. . . . .	Ch. 90.52
Principal and income act of 2002 . . . . .	Ch. 11.104A
Private detective agencies and detectives law . . . . .	Ch. 18.165
Professional engineers registration act . . . . .	Ch. 18.43
Professional service corporation act . . . . .	Ch. 18.100
Project DREAM act . . . . .	28A.630.750-28A.630.789
Project even start . . . . .	Ch. 28A.610
Prompt payment act . . . . .	Ch. 39.76
Proportional registration act. . . . .	Ch. 46.87
Public accountancy act. . . . .	Ch. 18.04
Public employees' collective bargaining act . . . . .	Ch. 41.56
Public employees' retirement system. . . . .	Ch. 41.40
Public water system coordination act of 1977 . . . . .	Ch. 70.116

<b>Popular Name of Act</b>	<b>RCW Cite</b>
Puget Sound water quality protection act . . . . .	Ch. 90.71
Radioactive waste act. . . . .	Ch. 43.200
Radioactive waste storage and transportation act of 1980 . . . . .	Ch. 70.99
Real estate appraiser act. . . . .	Ch. 18.140
Real estate contract forfeiture act . . . . .	Ch. 61.30
Reclamation act . . . . .	Ch. 89.16
Recreation districts act for counties. . . . .	Ch. 36.69
Recreation trails system act . . . . .	Ch. 67.32
Redistricting act . . . . .	Ch. 44.05
Refunding bond act . . . . .	Ch. 39.53
Regulation of business and professions act . . . . .	Ch. 18.235
Regulation of health professions act . . . . .	Ch. 18.120
Regulatory fairness act. . . . .	Ch. 19.85
Reinsurance intermediary act. . . . .	Ch. 48.94
Rendition of accused persons act. . . . .	Ch. 10.91
Reorganization of districts into improvement districts . . . . .	Chs. 82.20, 85.22
Reproductive privacy act . . . . .	Ch. 9.02
Residential landlord-tenant act of 1973 . . . . .	Ch. 59.18
Residential property disclosure . . . . .	Ch. 64.06
Revised airports act . . . . .	Ch. 14.08
Revised uniform partnership act . . . . .	Ch. 25.05
Rural health . . . . .	Ch. 70.175
Safe drinking water act . . . . .	Ch. 70.119A
Scenic and recreational highway act of 1967 . . . . .	Ch. 47.39
Scenic vistas act of 1971 . . . . .	Ch. 47.72 (passim)
School-to-work transitions program . . . . .	28A.630.860-28A.630.880
Secured transactions. . . . .	Ch. 62A.9
Securities act . . . . .	Ch. 21.20
Seed act . . . . .	Ch. 15.49
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### ADVERSE PARTIES

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## ALCOHOL AND DRUG ADDICTION TREATMENT

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### FINANCIAL AID, STUDENT

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### GOVERNOR-ELECT

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# OCCUPATIONAL INFORMATION SERVICE—FORECAST

## OCCUPATIONAL INFORMATION

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## SKAMANIA COUNTY

### SKAMANIA COUNTY

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### STOCKHOLDERS

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