

Title 91

WATERWAYS

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Chapter 91.08 RCW PUBLIC WATERWAYS

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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 or she 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. [2013 c 23 § 615; 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 or her written consent to the proposed improvement, and he or she 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. [2013 c 23 § 616; 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.]

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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 chair 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. [2013 c 23 § 617; 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 chair 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 or her compensation for his or her services as costs of the proceeding. [2013 c 23 § 618; 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 or her interest in, and a description of, the lot or parcel of land or other property in respect to which he or she claims compensation. [2013 c 23 § 619; 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 dam-

ages 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 or her proceed as though he or she 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. [2013 c 23 § 620; 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 or she shall be deemed thereby to have waived conclusively appellate review and final judgment may be rendered in the superior court as in other cases. [2013 c 23 § 621; 1988 c 202 § 94; 1971 c 81 § 180; 1911 c 23 § 23; RRS § 9799.]

Rules of court: Cf. *RAP 2.5(b)*.

Appellate review: RCW 91.08.580.

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Civil procedure—Costs: Chapter 4.84 RCW.

Additional notes found at www.leg.wa.gov

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 or her filing in the proceeding a verified statement showing the number of days he or she 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. [2013 c 23 § 623; 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 or her 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 intro-

duce 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. [2013 c 23 § 624; 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 or she 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 be sufficient warrant to the county treasurer to collect the assessments therein specified in the man-

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ner hereinafter provided. [2013 c 23 § 625; 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. (year)

.....
Treasurer of
county, Washington."

[2016 c 202 § 53; 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 or her land, without interest, within the time fixed by the notice of the county treasurer for the payment thereof; or within said time he or she may pay a part of such assessment and allow the remainder to continue as an assessment upon his or her land to be collected and paid as hereinafter provided; or within said time he or she may pay the entire assessment per square foot upon any part of his or her land, providing that he or she shall when paying such partial assessment give to the treasurer a description of the tract paid for. [2013 c 23 § 626; 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 or her notice, the treasurer shall note the fact of such payment opposite the assessment. [2013 c 23 § 627; 1911 c 23 § 38; RRS § 9814.]

91.08.410 Payment of assessment—Installments—Collection. Immediately after the expiration of the time fixed by his or her 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. [2013 c 23 § 628; 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 or her 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 or she 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 or her lands may have the proportionate assessment segregated on the roll and charged to such part upon his or her producing to the treasurer his or her recorded deed to such part. [2013 c 23 § 629; 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 or she shall report to the board in writing the sum collected by him or her and in his or her 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 or she shall make written reports to said board of the sums collected by him or her 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 or her under authority of the board, and the balance in his or her hands to the credit of the roll. [2013 c 23 § 630; 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.]

Additional notes found at www.leg.wa.gov

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.]

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

Additional notes found at www.leg.wa.gov

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.]

Additional notes found at www.leg.wa.gov

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.]

Additional notes found at www.leg.wa.gov

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 or her 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. [2013 c 23 § 631; 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 or her 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. [2013 c 23 § 632; 1983 c 167 § 269; 1911 c 23 § 50; RRS § 9826.]

Additional notes found at www.leg.wa.gov

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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 chair 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. [2013 c 23 § 633; 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 or she has sufficient funds in his or her 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. [2013 c 23 § 634; 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.*

Additional notes found at www.leg.wa.gov

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 or her assessments in full, if they be less than his or her condemnation judgment, at or before the time fixed by the treasurer for the payment of assessments without interest, by satisfying his or her 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 or her assessments be greater than his or her condemnation judgments he or she may, within the same time, pay his or her assessment to the extent of his or her 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. [2013 c 23 § 635; 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 or her 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. [2013 c 23 § 636; 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 or her 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 she or his or her legal representatives shall make application for the payment thereof shall not expire until one year after his or her death or the removal of his or her disabilities. [2013 c 23 § 637; 1911 c 23 § 62; RRS § 9838.]

applicable to individuals in state registered domestic partnerships. [2009 c 521 § 199.]

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.]

91.08.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and

