

Chapter 85.06 RCW
DRAINAGE DISTRICTS AND MISCELLANEOUS DRAINAGE PROVISIONS

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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

RCW 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.]

RCW 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.]

RCW 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.]

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

RCW 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.]

RCW 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 drafters 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. [2013 c 23 § 389; 1895 c 115 § 10; RRS § 4259. Formerly RCW 85.04.055, part.]

RCW 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 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 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, 286 P. 89 (1930) 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.

RCW 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 or her court; and if not he or she may, if satisfied that the public interests require the immediate construction of said improvement, direct the sheriff of his or her 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, incumbrancers, 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. [2013 c 23 § 390; 1909 c 143 § 2; 1895 c 115 § 12; RRS § 4310. Formerly RCW 85.04.065, part.]

RCW 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.]

RCW 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 receiving 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 or her 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 herself 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. [2013 c 23 § 391; 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.

RCW 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.]

RCW 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 or she 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 she 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. [2013 c 23 § 392; 1895 c 115 § 15; RRS § 4313. Formerly RCW 85.04.210, part.]

RCW 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 or her 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 or her 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. [2013 c 23 § 393; 1907 c 242 § 1; 1895 c 115 § 16; RRS § 4316. Formerly RCW 85.04.080, part.]

RCW 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 or her 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 or her executors, administrators, or assigns, or subcontractor, his or her 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. [2013 c 23 § 394; 1895 c 115 § 18; RRS § 4318. Formerly RCW 85.04.095, part.]

RCW 85.06.190 Substantial changes in plans—Procedure. The work on said improvement shall begin and shall be completed 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.]

RCW 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.]

RCW 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 or her private drainage with said system, and pray therein that said system be extended to such point as he or she 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. [2013 c 23 § 395; 1895 c 115 § 21; RRS § 4321. Formerly RCW 85.04.640.]

RCW 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.]

RCW 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.]

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

RCW 85.06.250 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, 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 chair 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. [2013 c 23 § 396; 1985 c 396 § 42; 1895 c 115 § 25; RRS § 4325. Formerly RCW 85.04.040, part and 85.04.165, part.]

RCW 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.

RCW 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 or she has sufficient funds in his or her hands for that purpose, to advertise in the newspaper doing the county printing for the presentation to him or her for payment of as many of the outstanding warrants as he or she 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. [2013 c 23 § 397; 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.

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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 ninety dollars per day or portion thereof spent in actual attendance at official meetings of the district, or in performance of other official services or duties on behalf of the district: PROVIDED, That such compensation shall not exceed eight thousand six hundred forty dollars in one calendar 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.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning January 1, 2024, 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, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. 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.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2020 c 83 § 9; 2007 c 469 § 9; 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.]

RCW 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.]

RCW 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

RCW 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.]

RCW 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.

RCW 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 drafters, or legal assistance as provided in RCW 85.06.100, and have incurred expenses for the compensation of such surveyors, drafters, and legal assistance, and have issued to such surveyors, drafters, 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. [2013 c 23 § 398; 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.

RCW 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 or her, at his or her 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 or her 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. [2013 c 23 § 399; 1903 c 67 § 2; RRS § 4493. Formerly RCW 85.04.715.]

RCW 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 or herself 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, drafters, 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. [2013 c 23 § 400; 1903 c 67 § 3; RRS § 4494. Formerly RCW 85.04.720.]

RCW 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.]

RCW 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 courthouse 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.]

RCW 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 or her in such proceeding, which shall be paid in the same manner as the said registered warrants, orders, vouchers, or other evidences of indebtedness. [2013 c 23 § 401; 1903 c 67 § 6; RRS § 4497. Formerly RCW 85.04.735.]

RCW 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.]

RCW 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.]

RCW 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 or herself aggrieved thereby may seek appellate review, as provided by the general appeal law of this state. [2013 c 23 § 402; 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.

RCW 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; and

(7) Implement the provisions of a drainage maintenance plan adopted by the district.

PROVIDED, That in carrying out such powers, said commissioners shall not be authorized under RCW 85.06.640 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. [2008 c 77 § 1; 1941 c 133 § 1; 1935 c 170 § 1; Rem. Supp. 1941 § 4342-1. Formerly RCW 85.04.610.]

RCW 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.]

RCW 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 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 § 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.

RCW 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.]

RCW 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.]

RCW 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.

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.

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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 herself 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 justness of the verdict of the jury in respect to the parties to the proceeding. [2013 c 23 § 403; 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.