

**Chapter 85.28 RCW
PRIVATE DITCHES AND DRAINS**

Sections

- 85.28.010 Private parties authorized to establish ditches and drains.
- 85.28.020 Petition to appropriate—Contents.
- 85.28.030 Cost bond by petitioner.
- 85.28.040 Viewers to be appointed—Duties.
- 85.28.050 Report of viewers and plat to be filed.
- 85.28.060 Summons to landowners—Contents and form.
- 85.28.080 Service by publication.
- 85.28.090 Trial—Findings or verdict—Decree—Time for payment of award.
- 85.28.100 Appeal.
- 85.28.110 Compensation of viewers—Costs.
- 85.28.120 New viewers may be appointed if report not adopted.
- 85.28.130 Drainage of tide or marsh lands—Division of cost between contiguous tracts.
- 85.28.140 Dike or ditch as common boundary—Division of costs.
- 85.28.150 Dike, dam, or causeway at Bachelor Slough.

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

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

RCW 85.28.030 Cost bond by petitioner. The petitioner, or someone in his or her behalf, shall enter into a bond in the penal sum of one hundred dollars, with two or more sureties, to be approved by the clerk of said court, payable to the state of Washington,

conditioned that the petitioner or petitioners will pay all costs and expenses incurred in the proceeding; which said bond shall be filed with the petition. [2013 c 23 § 440; 1899 c 125 § 3; RRS § 4396. Prior: 1883 p 77 § 2, part.]

RCW 85.28.040 Viewers to be appointed—Duties. Upon the filing of said petition the court shall appoint three viewers, two of whom shall be resident freeholders of said county, and not interested in the result of the proceeding, and the other the *county surveyor of the county in which the lands are situated (unless said *county surveyor shall be a party in interest, in which case some other competent surveyor shall be appointed in his or her place who shall receive the same compensation as is allowed by law to *county surveyors) who shall, upon a day to be fixed by the court, in the order appointing them, view the lands of the petitioner and the lands which said proposed ditch or drain is to cross, for the purpose of determining: First, whether there is a necessity for the establishment of a ditch; and, second, the most practicable route for said ditch to run, if the same be necessary. The clerk of said court shall furnish to said viewers a certified copy of the order appointing them, which shall warrant them entering upon the lands described in the petition for the purpose of viewing the same. [2013 c 23 § 441; 1899 c 125 § 4; RRS § 4397. Prior: 1883 p 78 § 4; Code 1881 § 2504; 1877 p 314 § 2; 1875 p 93 § 3; 1863 p 485 § 1; 1858 p 31 § 1.]

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

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

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

RCW 85.28.060 Summons to landowners—Contents and form. Upon the filing of the report of the viewers aforesaid, a summons shall be issued in the same manner as summons are issued in civil actions, and served upon each person owning or interested in any lands over which

the proposed ditch or drain will pass. Said summons must inform the person to whom it is directed of the appointment and report of the viewers; a description of the land over which said ditch will pass of which such person is the owner, or in which he or she has an interest; the width and depth of said proposed ditch, and the distance which it traverses said land, also an accurate description of the course thereof. It must also show the amount of damages to said land as estimated by said viewers; and that unless the person so summoned appears and files objections to the report of the viewers, within twenty days after the service of said summons upon him or her, exclusive of the day of service, the same will be approved by the court, which summons may be in the following form:

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

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

The state of Washington to

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

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

.....

Plaintiff's Attorney.

P.O. Address

[2016 c 202 § 50; 2013 c 23 § 442; 1899 c 125 § 6; RRS § 4399. Formerly RCW 85.28.060 and 85.28.070.]

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

RCW 85.28.080 Service by publication. In case any person interested in any of the lands to be crossed by such ditch, as aforesaid, does not reside in the county, or cannot be found therein, or conceals himself or herself so that personal service cannot be had upon him or her, upon proof thereof being made satisfactorily to appear to said court, said summons may be served by publication, in

the same manner and with like effect as is done in civil actions: PROVIDED, That no other or different form of summons shall be required for publication than is required for personal service. [2013 c 23 § 443; 1899 c 125 § 7; RRS § 4400.]

RCW 85.28.090 Trial—Findings or verdict—Decree—Time for payment of award. Upon the expiration of the time within which exceptions may be filed to the report of the viewers aforesaid, the court shall set a day upon which the petition and the report of the viewers shall be heard and considered by the court. In case exceptions have been filed by any party or parties, which exceptions must have been served upon the petitioner or petitioners prior to the hearing, the court shall hear evidence in regard thereto, and without a jury, pass upon the questions of the necessity for said ditch and the location thereof. If the court finds that such ditch is necessary, and the route selected is the best and most practicable, and that the compensation allowed by the viewers is just and reasonable, then the court shall file his or her findings to this effect and cause an order to be entered approving the petition and report of the viewers. If, within twenty days from the filing of the findings of facts aforesaid, the petitioner or petitioners shall pay into court all the costs and sums awarded to the owner or owners of the land over which said ditch shall pass, a decree shall be entered establishing the same: PROVIDED, If any party shall except to the amount of damages found by the viewers, then the amount of such damages shall be tried by jury, unless a jury trial be waived by the parties, in which case trial thereof may be had by the court. Such trial shall be at a regular term of said court, at which a jury shall be present, and shall be conducted and verdict rendered in the same manner as in civil actions: PROVIDED FURTHER, That it shall not be incumbent on the petitioner to pay into court the amount of the award or awards of said jury, until within twenty days after said verdict shall have been rendered and entered. [2013 c 23 § 444; 1899 c 125 § 8; RRS § 4401.]

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

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

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

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

RCW 85.28.130 Drainage of tide or marsh lands—Division of cost between contiguous tracts. Persons owning or desiring to improve contiguous tracts of tide marsh or swampy lands exposed to the overflow of the tide and capable of being made dry, may separate their respective tracts by a dike or ditch, which shall make and designate their common boundary. In all such cases said dike or ditch shall be constructed at the equal cost and expense of the respective parties, and either party failing to pay his or her contributive share of such expense shall be liable to the party constructing the dike or ditch for such contributive share, or so much thereof as may remain due and unpaid, to be recovered in a civil action in a court of competent jurisdiction and the party constructing such dike shall also be entitled to a lien upon the tract of the party failing to pay his or her contributive share for the construction of said dike, or so much thereof as shall be due, which lien shall be secured and enforced as liens of material suppliers and mechanics are now by law enforced. [2007 c 218 § 95; Code 1881 § 2517; No RRS. Prior: 1877 p 258 § 1.]

Intent—Finding—2007 c 218: See note following RCW 41.08.020.

RCW 85.28.140 Dike or ditch as common boundary—Division of costs. Any person or persons who may hereafter take a tract of tide land or marsh and shall desire to adopt as his or her boundary line any dike or ditch heretofore constructed upon and entirely within the boundary line of a neighboring contiguous tract he or she may join on to said tract and adopt said dike as his or her boundary by paying to the owner of the tract upon which said dike is constructed one-half of the cost and expense of the construction thereof, and any person so adopting the dike or ditch of another without contributing his or her half share of the cost or expense thereof shall be liable for his or her said half share, which may be recovered in a civil action in any court of competent jurisdiction, or the owner of the dike or ditch so used may secure a lien upon the tract of land bounded by said dike for the amount due for the use of said dike in accordance with the provisions of the law securing a lien to material suppliers and mechanics: PROVIDED ALWAYS, That when such dike has become the common boundary of two adjacent tracts, it shall be and remain the common boundary and the persons owning the said tracts shall be mutually liable for the expense of keeping it in repair, share and share alike. [2007 c 218 § 96; Code 1881 § 2518; No RRS. Prior: 1877 p 258 § 2.]

Intent—Finding—2007 c 218: See note following RCW 41.08.020.

RCW 85.28.150 Dike, dam, or causeway at Bachelor Slough. It shall be lawful for any adjacent or abutting owner or owners, to construct a dike, dam, or causeway over or in the waters of the state

of Washington described as: That certain body of water lying between Bachelor Island and the mainland, appearing on the state survey map made by Edw. C. Dohm, state field engineer, as Columbia Slough and designated on the map as compiled by the U.S. Coast and Geodetic Survey of September, 1937, Number "U.S.C.&G.S. 6154" as Bachelor Island Slough from its point of confluence with Lake River South to the Columbia River, in sections 13, 23, 24, 26 and 35, township 4 north, range 1 west of the Willamette Meridian, in Clark county, Washington: PROVIDED, That the location and plans thereto are submitted to and approved by the chief of engineers of the United States and the secretary of war of the United States, before construction is commenced subject to the terms of section 9 of the River & Harbor Act, approved March 3, 1899 (30 Stat. 1151; 33 U.S.C. 401) and: PROVIDED FURTHER, That all such dikes, dams, causeways, or other structures, shall be constructed at the expense of the owners. [1947 c 276 § 1; No RRS.]