

Chapter 86.12 RCW
FLOOD CONTROL BY COUNTIES

Sections

COUNTY FLOOD CONTROL

- 86.12.010 County tax for river improvement fund—Flood control maintenance account.
- 86.12.020 Authority to make improvements—Condemnation.
- 86.12.030 Eminent domain, how exercised.
- 86.12.033 Expenses to be paid out of river improvement fund.
- 86.12.034 County entitled to abandoned channels, beds, and banks.

IMMUNITY FROM LIABILITY

- 86.12.037 Liability of counties, cities, and other special purpose districts to others.

COMPREHENSIVE FLOOD CONTROL MANAGEMENT PLANS

- 86.12.200 Comprehensive flood control management plan—Elements.
- 86.12.210 Comprehensive flood control management plan—Participation of local officials—Arbitration of disputed issues.
- 86.12.220 Advisory committees.

COUNTY FLOOD CONTROL

RCW 86.12.010 County tax for river improvement fund—Flood control maintenance account. The county commissioners of any county may annually levy a tax, beginning with the year 1907, in such amount as, in their judgment they may deem necessary or advisable, but not to exceed twenty-five cents per thousand dollars of assessed value upon all taxable property in such county, for the purpose of creating a fund to be known as "river improvement fund." There is hereby created in each such river improvement fund an account to be known as the "flood control maintenance account." [1973 1st ex.s. c 195 § 129; 1941 c 204 § 8; 1907 c 66 § 1; Rem. Supp. 1941 § 9625. FORMER PART OF SECTION: 1907 c 66 § 4, now codified as RCW 86.12.033.]

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

Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55 and 59); chapter 84.52 RCW.

RCW 86.12.020 Authority to make improvements—Condemnation. Said fund shall be expended for the purposes in this chapter provided. Any county, for the control of waters subject to flood conditions from streams, tidal or other bodies of water affecting such county, may inside or outside the boundaries of such county, construct, operate and maintain dams and impounding basins and dikes, levees, revetments, bulkheads, rip-rap or other protection; may remove bars, logs, snags and debris from and clear, deepen, widen, straighten, change, relocate or otherwise improve and maintain stream channels, main or overflow; may acquire any real or personal property or rights and interest

therein for the prosecution of such works or to preserve any floodplain or regular or intermittent stream channels from any interference to the free or natural flow of flood or stormwater; and may construct, operate and maintain any and all other works, structures and improvements necessary for such control; and for any such purpose may purchase, condemn or otherwise acquire land, property or rights, including beds of nonnavigable waters and state, county and school lands and property and may damage any land or other property for any such purpose, and may condemn land and other property and rights and interests therein and damage the same for any other public use after just compensation having been first made or paid into court for the owner in the manner prescribed in this chapter. The purposes in this chapter specified are hereby declared to be county purposes. [1970 ex.s. c 30 § 10; 1941 c 204 § 9; 1935 c 162 § 1; 1919 c 109 § 1; 1907 c 66 § 2; Rem. Supp. 1941 § 9626.]

Authority and power of counties are supplemental: RCW 36.89.062.

Stormwater control facilities, county powers and authority: Chapter 36.89 RCW.

RCW 86.12.030 Eminent domain, how exercised. The taking and damaging of land, property or rights therein or thereto by any county, either inside or outside of such county, for flood control purposes of the county is hereby declared to be for a public use. Such eminent domain proceedings shall be in the name of the county, shall be had in the county where the property is situated, and may unite in a single action proceedings to condemn for county use property held by separate owners, the jury to return separate verdicts for the several lots, tracts or parcels of land, or interest therein, so taken or damaged. The proceedings may conform to the provisions of *sections 921 to 926, inclusive, of Remington's Revised Statutes, or to any general law now or hereafter enacted governing eminent domain proceedings by counties. The title so acquired by the county shall be the fee simple title or such lesser estate as shall be designated in the decree of appropriation. The awards in and costs of such proceedings shall be payable out of the river improvement fund. [1941 c 204 § 10; 1907 c 66 § 3; Rem. Supp. 1941 § 9627.]

***Reviser's note:** "Sections 921 to 926, inclusive, of Remington's Revised Statutes" (except for section 923) are codified as RCW 8.20.010 through 8.20.080. Section 923 was repealed by 1935 c 115 § 1 but compare the first paragraph of RCW 8.28.010 relating to the same subject matter as the repealed section.

RCW 86.12.033 Expenses to be paid out of river improvement fund. All expenses to be incurred in accomplishing the objects authorized by this act shall be paid out of said river improvement fund and which fund shall be used for no other purpose than the purposes contemplated by this chapter. [1907 c 66 § 4; RRS § 9628. Formerly RCW 86.12.010, part.]

RCW 86.12.034 County entitled to abandoned channels, beds, and banks. Whenever a county of this state, acting pursuant to RCW

86.12.010 through 86.12.033, shall make an improvement in connection with the course, channel or flow of a navigable river, thereby causing it to abandon its existing channel, bed, bank or banks for the entire distance covered by said improvement, or for any part or portion thereof, or by said improvement shall prevent a river from resuming at a future time an ancient or abandoned channel or bed, or shall construct improvements intended so to do, all the right, title and interest of the state of Washington in and to said abandoned channel or channels, bed or beds, bank or banks, up to and including the line of ordinary high water, shall be and the same is hereby given, granted and conveyed to the county making such improvement: PROVIDED, HOWEVER, That any such gift, grant or conveyance shall be subject to any right, easement or interest heretofore given, granted or conveyed to any agency of the state. [1963 c 90 § 1.]

IMMUNITY FROM LIABILITY

RCW 86.12.037 Liability of counties, cities, and other special purpose districts to others. No action shall be brought or maintained against any county, city, diking district, or flood control zone district when acting alone or when acting jointly with any other county, city, or flood control zone district under any law, or any of its or their agents, officers, or employees, for any noncontractual acts or omissions of such county or counties, city or cities, diking district or districts, flood control zone district or districts, or any of its or their agents, officers, or employees, relating to the improvement, protection, regulation, and control for flood prevention and navigation purposes of any river or its tributaries and the beds, banks, and waters thereof: PROVIDED, That nothing contained in this section shall apply to or affect any action now pending or begun prior to the passage of this section. [2010 c 46 § 1; 1921 c 185 § 1; RRS § 9663. Formerly RCW 87.12.180.]

COMPREHENSIVE FLOOD CONTROL MANAGEMENT PLANS

RCW 86.12.200 Comprehensive flood control management plan—
Elements. The county legislative authority of any county may adopt a comprehensive flood control management plan for any drainage basin that is located wholly or partially within the county.

A comprehensive flood control management plan shall include the following elements:

- (1) Designation of areas that are susceptible to periodic flooding, from inundation by bodies of water or surface water runoff, or both, including the river's meander belt or floodway;
- (2) Establishment of a comprehensive scheme of flood control protection and improvements for the areas that are subject to such periodic flooding, that includes: (a) Determining the need for, and desirable location of, flood control improvements to protect or preclude flood damage to structures, works, and improvements, based upon a cost/benefit ratio between the expense of providing and maintaining these improvements and the benefits arising from these improvements; (b) establishing the level of flood protection that each

portion of the system of flood control improvements will be permitted; (c) identifying alternatives to in-stream flood control work; (d) identifying areas where flood waters could be directed during a flood to avoid damage to buildings and other structures; and (e) identifying sources of revenue that will be sufficient to finance the comprehensive scheme of flood control protection and improvements;

(3) Establishing land use regulations that preclude the location of structures, works, or improvements in critical portions of such areas subject to periodic flooding, including a river's meander belt or floodway, and permitting only flood-compatible land uses in such areas;

(4) Establishing restrictions on construction activities in areas subject to periodic floods that require the flood proofing of those structures that are permitted to be constructed or remodeled;

(5) Establishing restrictions on land clearing activities and development practices that exacerbate flood problems by increasing the flow or accumulation of flood waters, or the intensity of drainage, on low-lying areas. Land clearing activities do not include forest practices as defined in chapter 76.09 RCW; and

(6) Consideration of climate change impacts, including the impact of sea level rise and increased storm severity on people, property, natural resources, and the environment.

A comprehensive flood control management plan shall be subject to the minimum requirements for participation in the national flood insurance program, requirements exceeding the minimum national flood insurance program that have been adopted by the department of ecology for a specific floodplain pursuant to RCW 86.16.031, and rules adopted by the department of ecology pursuant to RCW 86.26.050 relating to floodplain management activities. When a county plans under chapter 36.70A RCW, it may incorporate the portion of its comprehensive flood control management plan relating to land use restrictions in its comprehensive plan and development regulations adopted pursuant to chapter 36.70A RCW. [2023 c 228 § 12; 1991 c 322 § 3.]

Findings—Intent—1991 c 322: "(1) The legislature finds that:

(a) Floods pose threats to public health and safety including loss or endangerment to human life; damage to homes; damage to public roads, highways, bridges, and utilities; interruption of travel, communication, and commerce; damage to private and public property; degradation of water quality; damage to fisheries, fish hatcheries, and fish habitat; harm to livestock; destruction or degradation of environmentally sensitive areas; erosion of soil, stream banks, and beds; and harmful accumulation of soil and debris in the beds of streams or other bodies of water and on public and private lands;

(b) Alleviation of flood damage to property and to public health and safety is a matter of public concern;

(c) Many land uses alter the pattern of runoff by decreasing the ability of upstream lands to store waters, thus increasing the rate of runoff and attendant downstream impacts; and

(d) Prevention of flood damage requires a comprehensive approach, incorporating stormwater management and basin-wide flood damage protection planning.

(2) County legislative authorities are encouraged to use and coordinate all the regulatory, planning, and financing mechanisms available to those jurisdictions to address the problems of flooding in an equitable and comprehensive manner.

(3) It is the intent of the legislature to develop a coordinated and comprehensive state policy to address the problems of flooding and the minimization of flood damage." [1991 c 322 § 1.]

Purpose—1991 c 322: "The purpose of sections 3 through 13 of this act is to permit counties in cooperation and consultation with cities and towns to adopt a comprehensive system of flood control management and protection within drainage basins and to coordinate the flood control activities of the state, counties, cities, towns, and special districts within such drainage basins." [1991 c 322 § 2.]

RCW 86.12.210 Comprehensive flood control management plan—Participation of local officials—Arbitration of disputed issues. A comprehensive flood control management plan that includes an area within which a city or town, or a special district subject to chapter 85.38 RCW, is located shall be developed by the county with the full participation of officials from the city, town, or special district, including conservation districts, and appropriate state and federal agencies. Where a comprehensive flood control management plan is being prepared for a river basin that is part of the common boundary between two counties, the county legislative authority of the county preparing the plan may allow participation by officials of the adjacently located county.

Following adoption by the county, city, or town, a comprehensive flood control management plan shall be binding on each jurisdiction and special district that is located within an area included in the plan. If within one hundred twenty days of the county's adoption, a city or town does not adopt the comprehensive flood control management plan, the city or county shall request arbitration on the issue or issues in dispute. If parties cannot agree to the selection of an arbitrator, the arbitrator shall be selected according to the process described in *RCW 7.04.050. The cost of the arbitrator shall be shared equally by the participating parties and the arbitrator's decision shall be binding. Any land use regulations and restrictions on construction activities contained in a comprehensive flood control management plan applicable to a city or town shall be minimum standards that the city or town may exceed. A city or town undertaking flood or stormwater control activities consistent with the comprehensive flood control management plan shall retain authority over such activities. [1991 c 322 § 4.]

***Reviser's note:** RCW 7.04.050 was repealed by 2005 c 433 § 50, effective January 1, 2006.

Findings—Intent—Purpose—1991 c 322: See notes following RCW 86.12.200.

RCW 86.12.220 Advisory committees. A county may create one or more advisory committees to assist in the development of proposed comprehensive flood control management plans and to provide general advice on flood problems. The advisory committees may include city and town officials, officials of special districts subject to chapter 85.38 RCW, conservation districts, appropriate state and federal officials, and officials of other counties and other interested persons. [1991 c 322 § 5.]

~~Findings—Intent—Purpose—1991 c 322:~~ See notes following RCW 86.12.200.