

Chapter 85.05 RCW

DIKING DISTRICTS

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NOTES:

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

Validation—1915 c 163: "Section 1. Whenever a petition for the formation of a diking district, under the provisions of section 4092 of Rem. & Bal. Code, shall have been filed with the board of county commissioners of any county, and such petition shall have conformed to the requirements of said section, except that the description of the proposed system of diking, the route over which the same is to be constructed, and the proposed spurs or branches, and the termini thereof, shall not have been definitely set forth in said petition, or said petition shall have been defective in any particular, and whenever said petition shall have been published, as required in section 4093 of Rem. & Bal. Code and a hearing shall have been held thereon, and supplemental petitions shall have been filed, and the board of county commissioners shall have, at the final hearing, entered findings and an order granting the prayer of the petitioners, in whole or in part, as provided in said section 4093, and said board of county commissioners shall have given notice of an election to be held in such proposed diking district, and shall have appointed officers of election in the manner prescribed in section 4094 of Rem. & Bal. Code, and such election shall have been held, and the board of county commissioners shall have counted and canvassed the votes cast thereat, and it shall have appeared that a majority of the votes cast were for "Dike Districts Yes," and the board shall have entered an order upon its records declaring the proposed territory duly organized as a diking district, and given such district a proper number, followed by the name of the county and state, and declared the three persons receiving respectively the highest number of votes the duly elected dike commissioners of such diking district, and caused a copy of the order entered of record, to be duly certified and filed in the office of the secretary of state, in the manner prescribed in section 4095 of Rem. & Bal. Code, the organization of said diking district so attempted to be organized shall be deemed complete, and the organization of any such diking district so attempted to be organized in the manner hereinabove set forth, is hereby validated, and said diking district is hereby declared to be a duly organized and established diking district." [1915 c 163 § 1.]

Special district creation and operation: Chapter 85.38 RCW.

85.05.010

Districts authorized—Powers—Management.

Any portion of a county requiring diking may be organized into a diking district, and when so organized, such district, and the board of commissioners hereinafter provided for, shall have and possess the power herein conferred or that may hereafter be conferred by law upon such district and board of commissioners, and said district shall be known and designated as diking district No. . . . (here insert number) of the county of (here insert the name of county) of the state of Washington, and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession, and shall adopt and use a seal. The commissioners

hereinafter provided for, and their successors in office, shall, from the time of the organization of such diking district, have the power, and it shall be their duty, to manage and conduct the business and affairs of the district; make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties, and perform such other acts as hereinafter provided, or that may hereafter be provided by law.

[**1921 c 146 § 1**; **1895 c 117 § 1**; RRS § 4236. Cf. **1888 p 90 § 1**; Code 1881 § 2519. Formerly RCW **85.04.005**, part.]

85.05.065

Certain powers and rights governed by chapter 85.38 RCW.

Diking districts shall possess the authority and shall be created, district voting rights shall be determined, and district elections shall be held as provided in chapter **85.38** RCW.

[**1985 c 396 § 31**.]

NOTES:

85.05.070

Eminent domain—Powers of district.

All diking districts organized under the provisions of this act shall have the right of eminent domain with the power by and through its board of commissioners to cause to be condemned and appropriated private property for the use of said organization, in the construction and maintenance of a system of dikes and make just compensation therefor; that the property of private corporations may be subjected to the same rights of eminent domain as private individuals, and said board of commissioners shall have the power to acquire by purchase all of the real property necessary to make the improvements provided for by this act. All diking districts and the commissioners thereof now organized and existing, and all diking districts hereafter to be organized, and the commissioners thereof shall have in addition to the rights, powers and authority now conferred by any law of this state:

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

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

(3) In the accomplishment of the foregoing objects, the commissioners of such diking districts are hereby given, in addition to the right and power of eminent domain now conferred by law upon the commissioners of any diking district, the right, power and authority by purchase, or the exercise of the power and authority of eminent domain, or otherwise, to acquire all necessary or needed rights-of-way in the straightening, deepening or widening of such rivers, watercourses or streams, and such auxiliary drains, ditches or canals hereinabove mentioned, and when so acquired shall have and are hereby given

the right, power and authority, by and with the consent and approval of the United States government, in cases where such consent is necessary, to divert, alter or change the bed or course of any such river, watercourse or stream aforesaid, or to deepen or widen the same.

All diking districts and the commissioners thereof are further given the right, power and authority to join and contract with any other diking district or districts for the joint construction of any of the foregoing works, appliances, or improvements, whether such works, appliances or improvements are located within the boundaries of any or all of the contracting districts.

[1939 c 117 § 1; 1915 c 153 § 1; 1907 c 95 § 1; 1895 c 117 § 7; RRS § 4243. Prior: 1883 p 30 § 1; Code 1881 § 2523. Formerly RCW 85.04.410.]

85.05.071

Resolution to construct drainage system.

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

[1915 c 153 § 2; RRS § 4244. Formerly RCW 85.04.450.]

85.05.072

Resolution to construct drainage system—Notice of hearing.

Notice of the hearing shall be given by posting in three public places within the district a true copy of the resolution signed by the commissioners of the diking district and attested with the seal thereof, which notice shall be posted for at least ten days prior to the day fixed in the resolution for the hearing. Notice shall also be published at least once in a newspaper of general circulation in the district at least ten days before the date of the hearing.

[1985 c 469 § 67; 1915 c 153 § 3; RRS § 4245. Formerly RCW 85.04.455.]

85.05.073

Resolution to construct drainage system—Procedure in absence of objections.

At the time fixed, the commissioners shall meet and if no objections have been made to the proposed improvement or to the proposed method of paying the costs thereof, they shall adopt an order reciting that fact and shall thereupon proceed to construct such system of drainage and pay the costs thereof in accordance with the terms specified in the resolution.

[1915 c 153 § 4; RRS § 4246. Formerly RCW 85.04.460, part.]

85.05.074

Resolution to construct drainage system—Objections to improvement.

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

Commissioners shall likewise hear and consider all objections that may be filed to the proposed method of paying the cost of such improvement.

[1915 c 153 § 5; RRS § 4247. Formerly RCW 85.04.460, part.]

NOTES:

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

85.05.075

Resolution to construct drainage system—Assessment of benefits.

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

[1915 c 153 § 6; RRS § 4248. Formerly RCW 85.04.465.]

85.05.076

Resolution to construct drainage system—Appeal to supreme court—Trial de novo.

Any person deeming himself or herself aggrieved by the assessment for benefits made against any lot or parcel of land owned by him or her, may appeal therefrom to the superior court for the county in which the diking district is situated; such appeal shall be taken within the time and substantially in the manner prescribed by the laws of this state for appeals from justices' courts and all notices of appeal

shall be filed with the said board, and the board of diking commissioners shall at the appellant's expense certify to the superior court so much of the record as appellant may request, and the hearing in said superior court shall be de novo, and the superior court shall have power and authority to reverse or modify the determination of the commissioners and to certify the result of its determination to the county auditor and shall have full power and authority to do anything in the premises necessary to adjust the assessment upon the lots or parcels of land involved in the appeal in accordance with the benefits.

[[2013 c 23 § 382](#); [1915 c 153 § 7](#); RRS § 4249. Formerly RCW [85.04.475](#), part.]

85.05.077

Resolution to construct drainage system—Assessments for drains and dikes to be segregated.

In all cases wherein it is finally determined that the assessments for the system of drainage differ from the assessment theretofore made, as to any tract or parcel of land within said diking district, the diking commissioners in making their annual estimate shall segregate the amount necessary to be raised for the construction, repair and maintenance of the system of drainage or for the payment of the principal or interest of any bonds issued for drainage purposes from the amount necessary to be raised for all other diking purposes and the county auditor in apportioning said estimate for drainage purposes to the lands in such district shall base such apportionment upon the assessment fixed for drainage purposes and shall apportion the remainder of such estimate upon the basis fixed in the original or any subsequent proceeding for all other diking purposes. But in all other cases, the estimate and apportionment shall be made in accordance with existing laws.

[[1915 c 153 § 8](#); RRS § 4250. Formerly RCW [85.04.470](#).]

85.05.078

Resolution to construct drainage system—Bonds to construct drainage system.

Authority is hereby given to any diking district heretofore organized, or that may be hereafter organized, to issue bonds of such diking district for the purpose of procuring funds with which to construct a drainage system, such bonds to be issued in accordance with the terms of *RCW [85.05.480](#).

[[1915 c 153 § 9](#); RRS § 4251. Formerly RCW [85.04.480](#).]

NOTES:

***Reviser's note:** RCW [85.05.480](#) was repealed by [1986 c 278 § 46](#).

85.05.079

Resolution to construct drainage system—Appellate review.

Either the dike commissioners or any landowner who has appealed to the superior court in accordance with the provisions of *this act may seek appellate review within the time and in the manner

prescribed by existing law.

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

NOTES:

***Reviser's note:** "this act," see note following RCW [85.05.074](#).

Severability—1988 c 202: See note following RCW [2.24.050](#).

85.05.080

Rights-of-way on public land.

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

[[1907 c 95 § 2](#); RRS § 4253. Formerly RCW [85.04.415](#).]

85.05.081

Organization—Matters to be set in notices, petitions or proceedings.

In all proceedings hereafter had to organize diking districts, all notices, petitions or proceedings shall contain and set forth all matters and things required by existing law, and in addition thereto shall contain and set forth, so far as is necessary or applicable, all matters and things required by the provisions of this act, and all diking districts now existing, which may exercise any of the rights, powers or authority conferred by the provisions of this act, the proceedings to obtain the benefits hereof, must contain such allegations, and such steps and proceedings must be taken, as is rendered necessary by the provisions of this act; and the commissioners of existing diking districts are hereby given the right, power and authority to institute all proceedings and to take all necessary steps to secure the benefits of the provisions of this act, and all proceedings to secure the benefits thereof and all judgments to be rendered in such proceedings, including the filing of transcripts and the making of levies, and all other

proceedings, shall be in addition to proceedings, assessments or levies, theretofore made in any prior proceedings.

[[1907 c 95 § 3](#); RRS § 4254.]

85.05.082

Beds and shores of streams granted to district.

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

[[1907 c 95 § 4](#); RRS § 4255. Formerly RCW [85.04.445](#).]

85.05.083

Auditor to sign petition for his county, when.

Whenever the county owns any land situated within the boundaries of a proposed diking district, the county auditor, when so directed by the board of county commissioners of the county in which such lands are situated, is hereby authorized to sign the petition praying for the formation of such diking district for and on behalf and as the act and deed of such county, and when so signed the same shall be considered in determining the question of a majority signature in acreage to the petition for the formation of such district.

[[1907 c 95 § 5](#); RRS § 4256. Formerly RCW [85.04.430](#).]

85.05.085

Commissioners, duty of.

The board of dike commissioners shall consist of three elected commissioners. The initial commissioners shall be appointed, and the elected commissioners elected, as provided in chapter [85.38](#)

RCW. The board of dike commissioners shall have the exclusive charge of the construction and maintenance of all dikes or dike systems which may be constructed within the district, and shall be the executive officers thereof, with full power to bind the district by their acts in the performance of their duties, as provided by law.

[1985 c 396 § 37; 1921 c 146 § 5; 1895 c 117 § 8; RRS § 4257. Cf. 1883 p 31 § 2; Code 1881 § 2527. Formerly RCW 85.04.045, part.]

NOTES:

85.05.090

Petition for improvement—Contents.

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

[1895 c 117 § 9; RRS § 4258. Formerly RCW 85.04.050, part.]

85.05.100

Petition for improvement—Employment of assistants—Compensation as costs in

suits.

In the preparation of the facts and data to be inserted in said petition and filed therewith for the purpose of presenting the matter to the said superior court, the board of commissioners of said diking district may employ one or more good and competent surveyors and 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 § 383; 1895 c 117 § 10; RRS § 4259. Formerly RCW 85.04.055, part.]

85.05.110

Summons—Contents—Service.

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

the superior court, or the judge thereof, may direct: PROVIDED, That personal service upon any party outside of this state shall be of like effect as service by publication.

[1985 c 469 § 68; 1971 ex.s. c 292 § 56; 1895 c 117 § 11; RRS § 4260. Formerly RCW 85.04.060, part.]

NOTES:

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

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

85.05.120

Appearance of defendants—Jury—Verdict—Decree.

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

be appropriated, and directing the commissioners of said diking district to draw their warrant on the county treasurer for the amount awarded by the jury to each person, for damages sustained by reason of the establishment of said improvement, payable out of the funds of said diking district.

[2013 c 23 § 384; 1895 c 117 § 12; RRS § 4261. Formerly RCW 85.04.065, part.]

85.05.130

Assessment of benefited lands formerly omitted—Procedure—Appeals.

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

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

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

In case the owner of any such new lands sought to be assessed in said proceedings shall be maintaining a private dike against salt or freshwater for the benefit of said lands, and shall believe that the maintenance of such private dike is benefiting any lands within or without the district instituting the proceedings, or in case any such new lands sought to be assessed are included within the boundaries of some other diking district and are being assessed for the maintenance of the dikes of such other district, and the owner of such lands believes that the maintenance of the dike or dikes of such other district is benefiting lands included within the district instituting said proceedings, such owner or owners may by answer and cross-petition set forth the facts and pray that at the hearing upon said petition and cross-petition the benefits accruing from the maintenance of the respective dikes may be considered, to the

end that a fair and equitable adjustment of the benefits being received by any lands from the maintenance of the various dikes benefiting the same, may be determined for the purpose of fixing the assessments for the future maintenance of such dikes, and may interplead in said proceeding such other diking district in which his or her lands sought to be assessed in said proceeding are being assessed for the maintenance of the dike or dikes of such other district.

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

Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons, the court shall impanel a jury to hear and determine the matters in issue, and the jury shall determine and assess the benefits, if any, which the respective tracts of land are receiving or will receive from the maintenance of the dike or dikes to be maintained, taking into consideration any and all matters relating to the benefits, if any, received or to be received from any dike, structure, or improvement, and to credit, or charge, as the case may be, to each tract so situated as to affect any other tract or tracts, or having improvements or structures thereon or easements granted in connection therewith affecting any other tract or tracts included in such proceedings and shall specify in their verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. Upon the return of the verdict of the jury, the court shall enter its judgment in accordance therewith, as supplemental to the original decree, or in case a petition in intervention be filed by the diking commissioners of some other district than that instituting the proceeding, such judgment to be supplemental to all such original decrees, and thereafter, all assessments and levies for the future maintenance of any dike or dikes described in said judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in said judgment. Every person or corporation feeling himself or 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 allowed on such appeals. Nothing in this section contained shall be construed as affecting the right of diking districts to consolidation in any manner provided by law.

[2013 c 23 § 385; 1971 c 81 § 157; 1913 c 89 § 1; 1901 c 111 § 1; 1895 c 117 § 13; RRS § 4262.]

NOTES:

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

Reviser's note: This section was declared unconstitutional in **Malim v. Benthien**, 114 Wash. 533, 196 P. 7 (1921). Prior enactments are set forth below:

1901 c 111 § 1. "If the board of diking commissioners shall, at any time, discover that any lands within said district are being benefited by the diking system and the same were by mistake, inadvertence or other cause omitted from the assessment of benefits as provided for in *the last preceding section, or which were omitted for the reason that they were not at the time of assessing the benefits as provided for in said preceding section, for any cause, subject to a legal assessment, said commissioners shall file a petition in the Superior Court in the original cause setting forth the fact of such benefits, describing the lands omitted, the reason the same were omitted in said original proceedings and giving the name of the owners or reputed owners thereof and praying that said original cause, as to such lands, be opened up for further proceedings for the assessment of the alleged benefits, and upon the filing of said petition summons shall issue thereon and be served on the defendants named in said

petition the same as summons is served and issued in original proceedings, as near as may be, except the court may, to avoid costs, and in its discretion, call a jury of not less than three jurors, and the jury, in assessing the benefits, shall take into consideration the length of time said lands are to receive the benefits from said improvement and its future maintenance, estimating said time from the date when said lands first became legally assessable, which date must be found by the jury in their verdict as to each tract or parcel found to be benefited: AND PROVIDED FURTHER, That in case the expense and costs of the improvement have been paid for by assessments levied against the lands assessed in the original proceeding before the lands provided for in this section are assessed, as provided for herein, then, in such case, the assessments levied from time to time on said last mentioned land shall be paid into the maintenance fund of said district. Every person or corporation feeling himself or itself aggrieved by any judgment for damages or any assessment of benefits provided in this act, may appeal to the Supreme Court of the state within thirty days after the entry of the judgment, and such appeal shall bring before the Supreme Court the propriety and justness of the amount of damage or assessment of benefit in respect to the parties to the appeal. Upon such appeal no bond shall be required and no stay shall be allowed."

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

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

85.05.135

Special assessments—Budgets—Alternative methods.

RCW **85.38.140** through **85.38.170** constitute a mutually exclusive alternative method by which diking districts in existence as of July 28, 1985, may measure and impose special assessments and adopt budgets. RCW **85.38.150** through **85.38.170** constitute the exclusive method by which diking districts created after July 28, 1985, may measure and impose special assessments and adopt budgets.

[**1985 c 396 § 24.**]

NOTES:

85.05.140

Proceedings may be dismissed when.

In case the damages or amount of compensation for such right-of-way, together with the estimated cost of the improvement, amount to more than the maximum amount of benefits which will be derived from said improvement, or if said improvement is not practicable, or will not be conducive to the public health, welfare and convenience, or will not increase the public revenue, the court shall dismiss such proceedings, and in such case a judgment shall be rendered for the costs of said proceedings

against said district, and no further proceedings shall be had or done therein; and upon the payment of the costs, said organization shall be dissolved by decree of said court.

[**1895 c 117 § 14**; RRS § 4263. Formerly RCW **85.04.070**, part.]

85.05.150

Procedure to claim awards.

Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this act, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he 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 § 386**; **1895 c 117 § 15**; RRS § 4264. Formerly RCW **85.04.210**, part.]

85.05.160

Transcript of benefits to auditor—Assessments—Collection.

Upon the entry of the judgment upon the verdict of the jury, the clerk of said court shall immediately prepare a transcript, which shall contain a list of the names of all the persons and corporations benefited by said improvement and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by said improvement belonging to each person or corporation, and shall file the same with the auditor of the county, who shall immediately enter the same upon the tax rolls of his 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 in the sale of lands for general taxes: PROVIDED, That said assessment shall not become due and payable except at such time or times and in such amount as may be designated by the board of commissioners of said dike district, which designation shall be made to the county auditor by said board of commissioners of said diking district, by serving a written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to benefits, to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons, or corporations, according to said notice, upon the assessment rolls in his or her said office, and collected therewith: AND PROVIDED FURTHER, That no one call for assessments by said commissioners shall be in an amount to exceed twenty-five percent of the actual amount necessary to pay the costs of the proceedings, and the establishment of said district and system of dikes and the cost of construction of said work.

[**2013 c 23 § 387**; **1895 c 117 § 16**; RRS § 4265. Formerly RCW **85.04.080**, part.]

85.05.170**Tax to pay cost on dismissal.**

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

[**1895 c 117 § 17**; RRS § 4266. Formerly RCW **85.04.075**, part.]

85.05.180**Construction—Contractors—Performance bonds.**

After the filing of said certificate said commissioners of such diking district shall proceed at once in the construction of said improvements, and in carrying on said construction or any extension thereof they shall have full charge and management thereof, and shall have the power to employ such assistance as they may deem necessary, and purchase all material that may be necessary in the construction and carrying on of the work of said improvement, and shall have power to let the whole or any portion of said work to any responsible contractor, and shall in such case enter into all necessary agreements with such contractor that may be necessary in the premises: PROVIDED, That in case the whole or any portion of said improvement is let to any contractor, said commissioners shall require such contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by such contract, with two or more good and sufficient sureties to be approved by the board of commissioners of said diking district and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his 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 and additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said diking district in the name of said district as obligee therein, conditioned that said contractor, his or her executors, administrators, or assigns, or subcontractor, his or her executors, administrators, or assigns, shall perform the whole or any portion of said work under contract of said original contractor; shall pay or cause to be paid all just claims of all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise, or provisions of any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvement: PROVIDED FURTHER, That no sureties on said last mentioned bond shall be liable thereon unless the persons or corporations performing said labor and furnishing said materials, goods, wares, merchandise, and provisions, shall, within ninety days after the completion of such improvement, file their claim, duly verified, that the amount is just and due and remains unpaid, with the commissioners of said diking district.

[**2013 c 23 § 388**; **1895 c 117 § 18**; RRS § 4267. Formerly RCW **85.04.095**, part.]

85.05.190

Substantial changes in plans—Procedure.

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

[**1895 c 117 § 19**; RRS § 4268. Formerly RCW **85.04.100**, part.]

85.05.200

Payments on contracts—Retained percentage.

During the construction of said improvement said commissioners shall have the right to allow payment thereof, in installments as the work progresses, in proportion to the amount of work completed: PROVIDED, That no allowance or payment shall be made for said work to any contractor or subcontractor to exceed seventy-five percent of the proportionate amount of the work completed by such contractor or subcontractor, and twenty-five percent of the contract price shall be reserved at all times by said board of commissioners until such work is wholly completed, and shall not be paid upon the completion of said work until ninety days have expired for the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvement; and upon the completion of said work and the payment of all claims

hereinbefore provided for, according to the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor.

[**1895 c 117 § 20**; RRS § 4269. Formerly RCW **85.04.105**, part.]

85.05.210

Private dikes, how connected—Additional plans—Costs.

In case any diking district organized under the provisions of this act desires to connect its system of dikes with the system of dikes of any other district theretofore organized or constructed, said last mentioned diking district shall be made a party defendant in the proceedings in the superior court for the establishment of the improvement proposed to be constructed by such first mentioned diking district, and the petition to be filed in said court, in addition to the facts to be set forth therein as hereinbefore provided for, shall set forth the further fact that said district is desirous of connecting its said system of dikes with the system of such other diking district, and shall set forth an estimate of the additional cost per annum, if any, for the future maintenance of the diking system so sought to be connected with, and also an estimate of the cost of any additional improvement in said system so sought to be connected with, if any, by reason of such connection, and shall also set forth the amount of compensation which should be made by said diking district for the privilege of connecting with the said system of dikes; and in case it shall be deemed necessary to enlarge or strengthen the system of dikes to be connected with by reason of such connection, there shall be filed with said petition, in addition to the plans, specifications and data hereinbefore provided to be filed, plans and specifications and the estimated cost of the proposed improvement to be made in the system sought to be connected with by reason of such connection, and the proceedings thereon shall be the same as in other cases for the establishment of diking districts under the provisions of this act: PROVIDED, That the jury shall, in addition to the other findings provided for in other cases under the provisions of this act, find the amount of compensation to be paid said district with whose system connection is sought to be made, for any additional cost, if any, which may be thrown upon said district by reason of the increased cost of maintenance by reason of such connection, and shall estimate the amount of such increased cost of maintenance per annum, and also the amount of compensation to be made to said district for the privilege of joining on to its system of dikes; the compensation to be made for the increased cost of maintenance shall be paid per annum out of the revenue derived from the assessments to be levied as in other cases, and the compensation to be made as may be found by the jury to said district whose system is sought to be connected with for the privilege thereof, shall be paid such district as damages are paid in other cases under the provisions of this act; and all amounts so paid to said district sought to be connected with, as compensation for the cost of maintenance, shall be used as an additional fund for the maintenance of said diking system of such district, and the amount of compensation paid for the privilege of connecting with the system of such district shall also be added to the general fund of said district, to be used for the payment of the cost of maintenance of the system of such district sought to be connected with.

[**1895 c 117 § 21**; RRS § 4270. Formerly RCW **85.04.435**, part.]

85.05.220

Connecting with other diking systems.

In case it shall be found necessary to enlarge or strengthen the system of dikes sought to be connected with, by reason of such connection, the jury shall determine the cost of such enlarging or strengthening, and said petitioner district shall have the right, by and through its representatives,

assistants and employees, to make such improvement on the system of such other district as may have been found necessary upon the hearing of said petition, and the costs thereof shall be assessed against the landowners of said petitioner district to be benefited by the construction of said entire system, and no additional cost or burden, by reason of such improvement, shall be thrown upon the landowners of said district sought to be connected with.

[1895 c 117 § 22; RRS § 4271. Formerly RCW 85.04.435, part and 85.04.440.]

85.05.230

Action by district to prevent washing away of stream banks.

Where any diking system is sought to be constructed by any district organized under the provisions of this act along any river or watercourse to prevent overflow therefrom, and it shall become necessary to provide against the washing away of the banks of said river or watercourse so as to prevent injury to such proposed diking system, or any system which may have already been completed, such district, by and through its board of commissioners, may make such portions of lands lying along said dikes which are threatened to be washed away by said river or watercourse part of the right-of-way of said dike system, and may construct along the banks of said river or watercourse, as a part of said diking system, such protection as may be necessary to protect said dike, and in such cases such tract or parcel of land may be condemned and appropriated under the law of eminent domain as provided herein as a part of the right-of-way of such dike system; and when not condemned or appropriated at the time said system is established and constructed, said diking district, by and through its board of commissioners, may, at any time thereafter, when any portion of said system is threatened to be washed away by such river or watercourse, file their petition with the court condemning and appropriating for the use of said district so much of the land lying along said river or watercourse as may be necessary to be used for the protection of said diking system, and the proceedings therein for the making of compensation therefor and the payment of damages by reason of such appropriation shall be the same, or as near as may be applicable, as other proceedings for the condemnation of right-of-way provided for in this act.

[1895 c 117 § 23; RRS § 4272. Formerly RCW 85.04.420, part.]

85.05.240

Action by district to prevent washing away of stream banks—Expenses for appropriation of land.

Whenever any land is appropriated along the bank of any river or watercourse, as provided for in the last preceding section, the expenses of such appropriation, including the costs and damages to be paid therefor—when such appropriation is taken subsequently to the construction of any system of dikes under the provisions of this act—shall be added to the annual cost of the maintenance of said system and be paid as such, as provided herein.

[1895 c 117 § 24; RRS § 4273. Formerly RCW 85.04.420, part.]

85.05.250

Dikes along public road.

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

[**1895 c 117 § 25**; RRS § 4274. Formerly RCW **85.04.425**.]

85.05.260

Incorporated town may act as or be included in diking district.

Any town or city already incorporated, or which may hereafter be incorporated, may exercise the functions of a diking district under the provisions of this act, or the whole or any portion of any such town or city may be included with other territory in a common district under the provisions for the establishment thereof as provided for herein.

[**1895 c 117 § 26**; RRS § 4275. Formerly RCW **85.04.115**, part.]

85.05.270

Estimate for maintenance and repair—Emergency expenditures.

On or before the first day of November of each year the diking commissioners shall, and on or before the first Monday in October of each year the drainage commissioners shall, make and certify to the county auditor an estimate of the cost of maintenance and repair of the improvement for the ensuing year. The amount thereof shall be levied against the land in the district in proportion to the maximum benefits assessed, and shall be added to the general taxes and collected therewith. If such estimate of the cost of maintenance and repair against any tract or contiguous tracts owned by one person or corporation is less than two dollars, then the county auditor shall levy such a minimum amount of two dollars against such tract or contiguous tracts, and upon the collection thereof as herein provided shall pay all sums collected into the maintenance and/or repair fund of the district. In case of an emergency the commissioners may incur additional obligations and issue warrants therefor in excess of the estimate.

[**1959 c 209 § 10**. Prior: (i) **1913 c 89 § 2**; **1905 c 7 § 2**; **1895 c 117 § 27**; RRS § 4276. (ii) **1917 c 133 § 2**; **1907 c 120 § 1**; **1905 c 173 § 3**; **1895 c 115 § 24**; RRS § 4324. Formerly RCW **85.04.120**.]

85.05.280

Organization of board—Warrants, how issued.

The board of commissioners of such district shall elect one of their number chair and shall either elect one of their number, or appoint a voter of the district, as secretary, who shall keep minutes of all the district's proceedings. The board of commissioners may issue warrants of such district in payment of all claims of indebtedness against such district. Such warrants shall be in form and substance the same as county warrants and shall draw the legal rate of interest from the date of their presentation to the

treasurer for payment, as hereinafter provided, and shall be signed by the chair and attested by the secretary of the board: PROVIDED, That no warrants shall be issued by the board of commissioners in payment of any indebtedness of such district for less than the face or par value.

[[1991 c 245 § 35](#); [1985 c 396 § 38](#); [1895 c 117 § 28](#); RRS § 4277. Formerly RCW [85.04.040](#), part and RCW [85.04.165](#), part.]

NOTES:

85.05.355

Special assessment bonds.

Special assessment bonds and notes shall be issued and sold in accordance with chapter [85.38](#) RCW.

[[1986 c 278 § 23](#).]

NOTES:

Severability—1986 c 278: See note following RCW [36.01.010](#).

85.05.360

Warrants—When and how paid.

All warrants issued under the provisions of this chapter shall be presented by the owners thereof to the county treasurer in accordance with chapter [36.29](#) RCW.

[[1991 c 245 § 36](#); [1986 c 278 § 29](#); [1895 c 117 § 36](#); RRS § 4286. Formerly RCW [85.04.170](#), part.]

NOTES:

Severability—1986 c 278: See note following RCW [36.01.010](#).

85.05.365

Certificates of delinquency—Foreclosure—Sale—Use of proceeds.

Whenever any diking district assessments levied under this act shall remain unpaid for a period of four years from the date when such assessment becomes due and payable, the diking district, which levied said assessment or assessments is hereby empowered and authorized, through its board of commissioners, to make application to the county treasurer of the county in which said diking district is located, for a certificate of delinquency to be issued to it for said delinquent assessments and delinquent

interest thereon. And the county treasurer shall issue to said diking district a certificate of delinquency in the same manner and form as to an individual: PROVIDED, HOWEVER, That it shall not be necessary or required for said diking district to pay to said county treasurer any part or portion of said delinquent assessments or interest thereon, but payment of general taxes and interest due upon said general taxes, upon said diked lands will be sufficient payment by said diking district to entitle it to have said certificate of delinquency issued to it. Said diking district shall be empowered to foreclose said certificate or certificates and take title in said district the same as delinquent tax certificates are foreclosed by individuals. After acquiring title to any such lands through such foreclosure proceedings, the diking district, through its commissioners, may offer for sale and sell all, or any part, of such lands, in the same manner as counties are authorized to offer for sale and sell lands acquired by counties through delinquent tax foreclosure sales; and to issue a deed of conveyance therefor to the purchaser, executed by the commissioners of the diking district in behalf of the district, and attested by the clerk of the district. All revenue derived by the diking district from the sale of any such lands shall be first used for the redemption of any bonds and interest outstanding against said diking district which is due and payable, and the remainder thereof, if any, shall be applied to the payment of maintenance warrants, or other indebtedness, of the district, which is due and owing, in the priority deemed best by the board of diking commissioners.

[1931 c 55 § 1; 1929 c 111 § 1; RRS § 4286-1. Formerly RCW 85.04.510, part.]

85.05.366

Funds to purchase delinquent certificates.

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

[1929 c 111 § 2; RRS § 4286-2. Formerly RCW 85.04.515.]

85.05.367

Lands owned by district exempt from taxation.

Any and all lands purchased and acquired by the diking district through foreclosure of delinquent assessment certificates shall, so long as owned by, or until sold by, such diking district, be exempt from general state and county taxes.

[1929 c 111 § 3; RRS § 4286-3. Formerly RCW 85.04.510, part.]

85.05.370

Trial—Findings and forms of verdict.

Upon the trial of any questions of issue by a jury under the provisions of this act, the trial court may, in its discretion, submit all questions to be found by the jury in the form of separate findings, or may submit to such jury separate forms of verdict on all such questions to be found by the jury therein.

[[1895 c 117 § 37](#); RRS § 4287. Formerly RCW [85.04.205](#), part.]

85.05.380

Public lands subject to assessment—Rights and liabilities of public corporations.

All state, county, school district or other lands belonging to other public corporations requiring to be diked as a protection from overflow shall be subjected to the provisions of this act, and such corporations, by and through the proper authorities, shall be made parties in all proceedings therein affecting said lands and shall have the same rights and liable to the same right of eminent domain as private persons, and their lands shall be subject to the right of eminent domain the same as the lands of private persons or corporations.

[[1895 c 117 § 38](#); RRS § 4288. Formerly RCW [85.04.110](#), part.]

85.05.390

Assessments on public lands—How paid.

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

[[1927 c 277 § 1](#); [1895 c 117 § 39](#); RRS § 4289. Formerly RCW [85.04.110](#), part.]

85.05.400

Fees for service of process.

Fees for service of all process necessary to be served under the provisions of this act shall be the same as for like services in other civil cases, or as is or may be provided by law.

[[1895 c 117 § 40](#); RRS § 4290. Formerly RCW [85.04.200](#), part.]

85.05.410

Commissioners—Compensation and expenses.

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

Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter **42.24** RCW.

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

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, 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.

[**2007 c 469 § 8; 1998 c 121 § 8; 1991 c 349 § 20; 1985 c 396 § 39; 1974 ex.s. c 39 § 1; 1951 c 30 § 1; 1909 c 171 § 1; 1895 c 117 § 41; RRS § 4291. Formerly RCW 85.04.400.**]

NOTES:

85.05.420

Powers of court—Injunctions.

The court may compel the performance of the duties imposed by this act and may, in its discretion, on proper application therefor, issue its mandatory injunction for such purpose.

[**1895 c 117 § 42; RRS § 4292.**]

85.05.430**Sale of unneeded property—Authorized.**

Whenever, in the judgment of a board of commissioners of any diking district heretofore or hereafter organized, real or personal property, or any part thereof, owned by said district, is no longer of use to or needed by such district, or if personal property has become obsolete, the same may be sold by the board of commissioners of said district at public or private sale.

[1955 c 342 § 2. Formerly RCW 85.04.550.]

85.05.440**Sale of unneeded property—Resolution of intention—Notice of hearing—Publication and posting.**

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

[1955 c 342 § 3. Formerly RCW 85.04.551.]

85.05.450**Sale of unneeded property—Protests—Resolution of final action—Conveyance.**

At the time set for hearing, or at any time to which said hearing may be adjourned, any district elector within such district may appear and file a written protest against the proposed action of the board, which protest shall state clearly the basis thereof. At such hearing, which shall be public, the board shall give full consideration to the proposed sale and all protests filed, either written or oral and on said date or at any adjourned date, take final action thereon by resolution of the board. This resolution shall provide that upon payment of the purchase price involved, conveyance of the property shall be made by a majority of the board of said district, by deed if the property be real property; by bill of sale if the property be personal property, conveying the property sold to the purchaser thereof, and such conveyance shall pass to the purchaser such title as the district has to the property.

[1955 c 342 § 4. Formerly RCW 85.04.552.]

85.05.460

Sale of unneeded property—Conveyance delayed if protests filed—Appeal.

If protests be filed against such sale, such conveyance shall not be executed or delivered until more than ten days elapse from the date of the hearing at which the resolution directing the sale, was passed. If appeal be taken by a protestant from the action of the board, such conveyance shall not be executed until termination of proceedings on appeal is had, and then only if the result of such appeal does not prevent such sale.

[[1955 c 342 § 5](#). Formerly RCW [85.04.553](#).]

85.05.470

Sale of unneeded property—Direct action in superior court by protestant on final order.

Any protestant who filed a protest prior to the final order of the board, may appeal from such final order, but to do so must within ten days from the date said order was entered, bring direct action in the superior court in the county wherein such district or portion thereof is situated, against such board of commissioners in their official capacity, which action shall be prosecuted under the procedure of civil actions, with appellate review as provided in civil actions. In any such action so brought, the order of the board shall be conclusive of the regularity and propriety of the proceedings, and all other matters, except it shall be open to attack upon the ground of fraud, unfair dealing, arbitrary or unreasonable action of the board.

[[1988 c 202 § 73](#); [1971 c 81 § 158](#); [1955 c 342 § 6](#). Formerly RCW [85.04.554](#).]

NOTES:

Severability—1988 c 202: See note following RCW [2.24.050](#).

85.05.490

Levy for preliminary expenses.

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

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

85.05.500

Levy for preliminary expenses—Preliminary expenses defined.

Preliminary expenses shall mean all of the expenses incurred in the proceedings for the organization of said district and in other ways to be incurred prior to the beginning of actual construction of the improvement and shall be paid from the fund hereby created from time to time upon call of the treasurer.

[**1933 c 39 § 2**; RRS § 4247-2. Formerly RCW **85.04.405**, part.]

85.05.540

Plat of reclaimed land—Benefits to be determined and paid.

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

[**1925 ex.s. c 69 § 4**; RRS § 4292-4. Formerly RCW **85.04.505**.]

85.05.550

Plat of reclaimed land—Construction, application of RCW 85.05.510 through 85.05.550.

Nothing in RCW **85.05.510** through **85.05.550** shall be construed as repealing or modifying any act or statute now in force pertaining to diking districts, but the rights and remedies hereby granted shall be deemed cumulative as to the districts to which RCW **85.05.510** through **85.05.550** is limited. RCW **85.05.510** through **85.05.550** shall apply to districts heretofore or hereafter organized and to property owners' petitions heretofore or hereafter filed; provided that the decision of the board of dike commissioners of a district to which RCW **85.05.510** through **85.05.550** applies to issue bonds of a district under existing law or under RCW **85.05.510** through **85.05.550**, shall be conclusive of such election.

[1925 ex.s. c 69 § 5; RRS § 4292-5. Formerly RCW 85.04.490, part.]

85.05.605

Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation.

Diking districts may annex territory, consolidate with other special districts, and have their operations suspended and be reactivated, in accordance with chapter 85.38 RCW.

[1986 c 278 § 11.]

NOTES:

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

85.05.610

Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress.

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

[1967 c 184 § 19.]

NOTES:

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

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

85.05.620

Authority to annex and assume diking and drainage systems erected and operated

by United States upon permissive legislation by congress—Indian trust lands and restricted lands may be included, when.

Any district organized pursuant to RCW **85.05.610** or pursuant to any other provisions of chapter **85.05** RCW as now or hereafter amended may include any Indian trust lands and restricted lands whenever the congress of the United States (1) authorizes the inclusion of such lands in such district and (2) provides authority for such district to assess and to tax such lands for necessary expenses in the maintenance, operations and capital improvements on such diking and drainage system.

[**1967 c 184 § 20.**]

85.05.630

Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress—Vesting of right, title and interest to dikes and land.

Whenever the congress of the United States provides for the transfer of all right, title and interest to any dikes and to the lands upon which they are situated to any state or local nonfederal agency, the title to such land and to the dikes shall pass to the county wherein the dikes are situated for the use and benefit of any district which may be organized pursuant to RCW **85.05.610** or pursuant to any other provisions of chapter **85.05** RCW as now or hereafter amended, until completion of organization of such district. In any case in which a district has been organized, all right, title and interest to such lands and dikes shall vest immediately in the diking and drainage district.

[**1967 c 184 § 21.**]

85.05.640

Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress—Definitions.

For purposes of RCW **85.05.610** through **85.05.650**:

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

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

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

[1967 c 184 § 22.]

85.05.650

Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress—Ratification and confirmation of prior acts.

The acts and resolutions of all boards of county commissioners heretofore authorizing the organization and operation of any diking and drainage districts, following any provisions of chapter **85.05** RCW, and the acts and resolutions of all diking and drainage districts heretofore organized following acts of congress permitting the taking over and operation and maintenance of existing diking and drainage systems by the state and local nonfederal governmental agencies, are ratified and confirmed.

[1967 c 184 § 23.]