
SENATE BILL 6838

State of Washington 61st Legislature 2010 Regular Session

By Senators McAuliffe, Fraser, Tom, and Prentice

Read first time 02/04/10. Referred to Committee on Ways & Means.

1 AN ACT Relating to condemnation and compensation for state-owned
2 lands and other property; amending RCW 8.08.010, 8.12.030, 8.16.010,
3 8.20.010, 8.24.010, 8.28.050, 14.07.020, 17.28.160, 22.16.010,
4 28A.335.220, 43.52.300, 53.08.010, 53.08.020, 53.34.170, 54.16.020,
5 57.08.005, 81.36.010, 85.06.070, 86.09.202, 87.03.018, and 89.30.130;
6 and creating a new section.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** The legislature finds and declares that
9 numerous state statutes authorize local governments and private land
10 owners to condemn state lands, including state lands granted by the
11 federal government for the benefit of common schools, institutions of
12 higher education, and other beneficiaries. The majority of these
13 statutes were enacted more than seventy-five years ago when the state
14 population was less than one quarter of its current size. With
15 increasing population density and environmental pressures, the state
16 must manage state trust lands for the long-term benefit of the trust
17 beneficiaries specified in the state's enabling act. The legislature
18 intends to fulfill this responsibility by prohibiting condemnation of

1 state trust lands. This will facilitate land use decisions that
2 consider the values of the broader landscape and return the maximum
3 value to the citizens of the state and beneficiaries of granted lands.

4 **Sec. 2.** RCW 8.08.010 and 1949 c 79 s 1 are each amended to read as
5 follows:

6 Every county is hereby authorized and empowered to condemn land and
7 property within the county for public use; whenever the board of county
8 commissioners deems it necessary for county purposes to acquire such
9 land, real estate, premises or other property, and is unable to agree
10 with the owner or owners thereof for its purchase, it shall be the duty
11 of the prosecuting attorney to present to the superior court of the
12 county in which said land, real estate, premises, or other property so
13 sought to be acquired or appropriated shall be situated, a petition in
14 which the land, real estate, premises, or other property sought to be
15 appropriated shall be described with reasonable certainty, and setting
16 forth the name of each and every owner, encumbrancer, or other person
17 or party interested in the same, or any part thereof, so far as the
18 same can be ascertained from the public records, the object for which
19 the land is sought to be appropriated, and praying that a jury be
20 impaneled to ascertain and determine the compensation to be made in
21 money to such owner or owners respectively, and to all tenants,
22 encumbrancers, or others interested, for taking such lands, real
23 estate, premises, or other property, or in case a jury be waived, as in
24 other civil cases in courts of record, in the manner prescribed by law,
25 then that the compensation to be made as aforesaid be ascertained or
26 determined by the court or the judge thereof. Property held in trust
27 by the state is not subject to condemnation by a political subdivision
28 of the state under this section.

29 **Sec. 3.** RCW 8.12.030 and 1915 c 154 s 1 are each amended to read
30 as follows:

31 Every city and town and each unclassified city and town within the
32 state of Washington, is hereby authorized and empowered to condemn land
33 and property, including state, county and school lands and property for
34 streets, avenues, alleys, highways, bridges, approaches, culverts,
35 drains, ditches, public squares, public markets, city and town halls,
36 jails and other public buildings, and for the opening and widening,

1 widening and extending, altering and straightening of any street,
2 avenue, alley or highway, and to damage any land or other property for
3 any such purpose or for the purpose of making changes in the grade of
4 any street, avenue, alley or highway, or for the construction of slopes
5 or retaining walls for cuts and fills upon real property abutting on
6 any street, avenue, alley or highway now ordered to be, or such as
7 shall hereafter be ordered to be opened, extended, altered,
8 straightened or graded, or for the purpose of draining swamps, marshes,
9 tidelands, tide flats or ponds, or filling the same, within the limits
10 of such city, and to condemn land or property, or to damage the same,
11 either within or without the limits of such city for public parks,
12 drives and boulevards, hospitals, pesthouses, drains and sewers,
13 garbage crematories and destructors and dumping grounds for the
14 destruction, deposit or burial of dead animals, manure, dung, rubbish,
15 and other offal, and for aqueducts, reservoirs, pumping stations and
16 other structures for conveying into and through such city a supply of
17 fresh water, and for the purpose of protecting such supply of fresh
18 water from pollution, and to condemn land and other property and damage
19 the same for such and for any other public use after just compensation
20 having been first made or paid into court for the owner in the manner
21 prescribed by this chapter. Property held in trust by the state is not
22 subject to condemnation by a political subdivision of the state under
23 this section.

24 **Sec. 4.** RCW 8.16.010 and 1909 p 372 s 1 are each amended to read
25 as follows:

26 Whenever any school district shall select any real estate as a site
27 for a schoolhouse, or as additional grounds to an existing schoolhouse
28 site, within the district, and the board of school directors of such
29 district and the owner or owners of the site or any part thereof, or
30 addition thereto selected, shall be unable to agree upon the
31 compensation to be paid by such school district to the owner or owners
32 thereof, such school district shall have the right to take and acquire
33 title to such real estate for use as a schoolhouse site or additional
34 site, upon first paying to the owner or owners thereof therefor the
35 value thereof, to be ascertained in the manner hereinafter provided.
36 Property held in trust by the state is not subject to condemnation
37 under this section.

1 **Sec. 5.** RCW 8.20.010 and 1890 p 294 s 1 are each amended to read
2 as follows:

3 Any corporation authorized by law to appropriate land, real estate,
4 premises or other property for right-of-way or any other corporate
5 purposes, may present to the superior court of the county in which any
6 land, real estate, premises or other property sought to be appropriated
7 shall be situated, or to the judge of such superior court in any county
8 where he has jurisdiction or is holding court, a petition in which the
9 land, real estate, premises or other property sought to be appropriated
10 shall be described with reasonable certainty, and setting forth the
11 name of each and every owner, encumbrancer or other person or party
12 interested in the same, or any part thereof, so far as the same can be
13 ascertained from the public records, the object for which the land is
14 sought to be appropriated, and praying that a jury be impaneled to
15 ascertain and determine the compensation to be made in money,
16 irrespective of any benefit from any improvement proposed by such
17 corporation, to such owner or owners, respectively, and to all tenants,
18 encumbrancers and others interested, for the taking or injuriously
19 affecting such lands, real estate, premises or other property, or in
20 case a jury be waived as in other civil cases in courts of record in
21 the manner prescribed by law, then that the compensation to be made, as
22 aforesaid, be ascertained and determined by the court, or judge
23 thereof. Property held in trust by the state is not subject to
24 condemnation under this section.

25 **Sec. 6.** RCW 8.24.010 and 1913 c 133 s 1 are each amended to read
26 as follows:

27 An owner, or one entitled to the beneficial use, of land which is
28 so situate with respect to the land of another that it is necessary for
29 its proper use and enjoyment to have and maintain a private way of
30 necessity or to construct and maintain any drain, flume or ditch, on,
31 across, over or through the land of such other, for agricultural,
32 domestic or sanitary purposes, may condemn and take lands of such other
33 sufficient in area for the construction and maintenance of such private
34 way of necessity, or for the construction and maintenance of such
35 drain, flume or ditch, as the case may be. The term "private way of
36 necessity," as used in this chapter, shall mean and include a right-of-
37 way on, across, over or through the land of another for means of

1 ingress and egress, and the construction and maintenance thereon of
2 roads, logging roads, flumes, canals, ditches, tunnels, tramways and
3 other structures upon, over and through which timber, stone, minerals
4 or other valuable materials and products may be transported and
5 carried. Property held in trust by the state is not subject to
6 condemnation under this section.

7 **Sec. 7.** RCW 8.28.050 and 1909 c 16 s 1 are each amended to read as
8 follows:

9 That any municipal corporation of any state adjoining the state of
10 Washington may acquire title to any land or water right within the
11 state of Washington, by purchase or condemnation, which lies within any
12 watershed from which said municipal corporation obtains or desires to
13 obtain its water supply. Property held in trust by the state is not
14 subject to condemnation under this section.

15 **Sec. 8.** RCW 14.07.020 and 1941 c 21 s 2 are each amended to read
16 as follows:

17 Such municipalities may also acquire by purchase, condemnation or
18 lease, lands and other property for said purpose and dispose of such
19 lands and other property, including property acquired by tax
20 foreclosure proceedings, by sale or gift for public use to any city,
21 town, port district, county, the state of Washington or the United
22 States of America. Any city, town, port district and county is hereby
23 empowered to acquire lands and other property for said purpose by the
24 exercise of the power of eminent domain under the procedure that is or
25 shall be provided by law for the condemnation and appropriation of
26 private property for any of their respective corporate uses, and no
27 property shall be exempt from such condemnation, appropriation or
28 disposition by reason of the same having been or being dedicated,
29 appropriated, or otherwise held to public use: PROVIDED, HOWEVER, That
30 nothing in this chapter shall authorize or entitle any city, town, port
31 district or county to acquire by eminent domain any site or other
32 facilities for landings, terminals, housing, repair and care of
33 dirigibles, airplanes, and seaplanes for aerial transportation of
34 persons, property, mail or military or naval aircraft, now or hereafter
35 owned by any other city, town, port district or county. Property held

1 in trust by the state is not subject to condemnation by a political
2 subdivision of the state under this section.

3 **Sec. 9.** RCW 17.28.160 and 1981 c 156 s 1 are each amended to read
4 as follows:

5 A mosquito control district organized under this chapter may:

6 (1) Take all necessary or proper steps for the extermination of
7 mosquitoes.

8 (2) Subject to the paramount control of the county or city in which
9 they exist, abate as nuisances all stagnant pools of water and other
10 breeding places for mosquitoes.

11 (3) If necessary or proper, in the furtherance of the objects of
12 this chapter, build, construct, repair, and maintain necessary dikes,
13 levees, cuts, canals, or ditches upon any land, and acquire by
14 purchase, condemnation, or by other lawful means, in the name of the
15 district, any lands, rights-of-way, easements, property, or material
16 necessary for any of those purposes.

17 (4) Make contracts to indemnify or compensate any owner of land or
18 other property for any injury or damage necessarily caused by the use
19 or taking of property for dikes, levees, cuts, canals, or ditches.

20 (5) Enter upon without hindrance any lands within the district for
21 the purpose of inspection to ascertain whether breeding places of
22 mosquitoes exist upon such lands; or to abate public nuisances in
23 accordance with this chapter; or to ascertain if notices to abate the
24 breeding of mosquitoes upon such lands have been complied with; or to
25 treat with oil or other larvicidal material any breeding places of
26 mosquitoes upon such lands.

27 (6) Sell or lease any land, rights-of-way, easements, property or
28 material acquired by the district.

29 (7) Issue warrants payable at the time stated therein to evidence
30 the obligation to repay money borrowed or any other obligation incurred
31 by the district, warrants so issued to draw interest at a rate fixed by
32 the board payable annually or semiannually as the board may prescribe.

33 (8) Make contracts with the United States, or any state,
34 municipality, or any department of those entities for carrying out the
35 general purpose for which the district is formed.

36 (9) Acquire by gift, devise, bequest, lease, or purchase, real and
37 personal property necessary or convenient for its purposes.

1 (10) Make contracts, employ engineers, health officers,
2 sanitarians, physicians, laboratory personnel, attorneys, and other
3 technical or professional assistants; and publish information or
4 literature and do any and all other things necessary or incident to the
5 powers granted by, and to carry out the projects specified in this
6 chapter. Property held in trust by the state is not subject to
7 condemnation by a political subdivision of the state under this
8 section.

9 **Sec. 10.** RCW 22.16.010 and 1919 c 98 s 1 are each amended to read
10 as follows:

11 The right of eminent domain is hereby extended to corporations
12 incorporated or that may hereafter be incorporated under the laws of
13 this state, or of any other state or territory and qualified to
14 transact business in this state for the purpose of acquiring, owning or
15 operating public warehouses or elevators for storing and handling
16 grain, produce and other agricultural commodities which may desire to
17 secure warehouse or elevator sites or rights-of-way for roadways
18 leading to and from the same or for wharves or boat landings on
19 navigable waters and all other purposes incident to and connected with
20 the business conducted by such warehouse or elevator. Property held in
21 trust by the state is not subject to condemnation under this section.

22 **Sec. 11.** RCW 28A.335.220 and 1969 ex.s. c 223 s 28A.58.070 are
23 each amended to read as follows:

24 The board of directors of any school district may proceed to
25 condemn and appropriate not more than fifteen acres of land for any
26 elementary school purpose; not more than twenty-five acres for any
27 junior high school purpose; not more than forty acres for any senior
28 high school purpose; except as otherwise provided by law, not more than
29 seventy-five acres for any vocational technical school purpose; and not
30 more than fifteen acres for any other school district purpose. Such
31 condemnation proceedings shall be in accordance with chapters 8.16 and
32 8.25 RCW and such other laws of this state providing for appropriating
33 private property for public use by school districts. Property held in
34 trust by the state is not subject to condemnation under this section.

1 **Sec. 12.** RCW 43.52.300 and 1977 ex.s. c 184 s 4 are each amended
2 to read as follows:

3 An operating agency formed under RCW 43.52.360 shall have
4 authority:

5 (1) To generate, produce, transmit, deliver, exchange, purchase or
6 sell electric energy and to enter into contracts for any or all such
7 purposes.

8 (2) To construct, condemn, purchase, lease, acquire, add to,
9 extend, maintain, improve, operate, develop and regulate plants, works
10 and facilities for the generation and/or transmission of electric
11 energy, either within or without the state of Washington, and to take,
12 condemn, purchase, lease and acquire any real or personal, public or
13 private property, franchise and property rights, including but not
14 limited to (~~state,~~) county and school lands and properties, for any
15 of the purposes herein set forth and for any facilities or works
16 necessary or convenient for use in the construction, maintenance or
17 operation of any such works, plants and facilities; provided that an
18 operating agency shall not be authorized to acquire by condemnation any
19 plants, works and facilities owned and operated by any city or
20 district, or by a privately owned public utility. An operating agency
21 shall be authorized to contract for and to acquire by lease or purchase
22 from the United States or any of its agencies, any plants, works or
23 facilities for the generation and transmission of electricity and any
24 real or personal property necessary or convenient for use in connection
25 therewith. Property held in trust by the state is not subject to
26 condemnation under this section.

27 (3) To negotiate and enter into contracts with the United States or
28 any of its agencies, with any state or its agencies, with Canada or its
29 agencies or with any district or city of this state, for the lease,
30 purchase, construction, extension, betterment, acquisition, operation
31 and maintenance of all or any part of any electric generating and
32 transmission plants and reservoirs, works and facilities or rights
33 necessary thereto, either within or without the state of Washington,
34 and for the marketing of the energy produced therefrom. Such
35 negotiations or contracts shall be carried on and concluded with due
36 regard to the position and laws of the United States in respect to
37 international agreements.

1 (4) To negotiate and enter into contracts for the purchase, sale,
2 exchange, transmission or use of electric energy or falling water with
3 any person, firm or corporation, including political subdivisions and
4 agencies of any state of Canada, or of the United States, at fair and
5 nondiscriminating rates.

6 (5) To apply to the appropriate agencies of the state of
7 Washington, the United States or any thereof, and to Canada and/or to
8 any other proper agency for such permits, licenses or approvals as may
9 be necessary, and to construct, maintain and operate works, plants and
10 facilities in accordance with such licenses or permits, and to obtain,
11 hold and use such licenses and permits in the same manner as any other
12 person or operating unit.

13 (6) To establish rates for electric energy sold or transmitted by
14 the operating agency. When any revenue bonds or warrants are
15 outstanding the operating agency shall have the power and shall be
16 required to establish and maintain and collect rates or charges for
17 electric energy, falling water and other services sold, furnished or
18 supplied by the operating agency which shall be fair and
19 nondiscriminatory and adequate to provide revenues sufficient for the
20 payment of the principal and interest on such bonds or warrants and all
21 payments which the operating agency is obligated to set aside in any
22 special fund or funds created for such purposes, and for the proper
23 operation and maintenance of the public utility owned by the operating
24 agency and all necessary repairs, replacements and renewals thereof.

25 (7) To act as agent for the purchase and sale at wholesale of
26 electricity for any city or district whenever requested so to do by
27 such city or district.

28 (8) To contract for and to construct, operate and maintain
29 fishways, fish protective devices and facilities and hatcheries as
30 necessary to preserve or compensate for projects operated by the
31 operating agency.

32 (9) To construct, operate and maintain channels, locks, canals and
33 other navigational, reclamation, flood control and fisheries facilities
34 as may be necessary or incidental to the construction of any electric
35 generating project, and to enter into agreements and contracts with any
36 person, firm or corporation, including political subdivisions of any
37 state, of Canada or the United States for such construction, operation

1 and maintenance, and for the distribution and payment of the costs
2 thereof.

3 (10) To employ legal, engineering and other professional services
4 and fix the compensation of a managing director and such other
5 employees as the operating agency may deem necessary to carry on its
6 business, and to delegate to such manager or other employees such
7 authority as the operating agency shall determine. Such manager and
8 employees shall be appointed for an indefinite time and be removable at
9 the will of the operating agency.

10 (11) To study, analyze and make reports concerning the development,
11 utilization and integration of electric generating facilities and
12 requirements within the state and without the state in that region
13 which affects the electric resources of the state.

14 (12) To acquire any land bearing coal, uranium, geothermal, or
15 other energy resources, within or without the state, or any rights
16 therein, for the purpose of assuring a long-term, adequate supply of
17 coal, uranium, geothermal, or other energy resources to supply its
18 needs, both actual and prospective, for the generation of power and may
19 make such contracts with respect to the extraction, sale, or disposal
20 of such energy resources that it deems proper.

21 **Sec. 13.** RCW 53.08.010 and 1983 c 24 s 1 are each amended to read
22 as follows:

23 A port district may acquire by purchase, for cash or on deferred
24 payments for a period not exceeding twenty years, or by condemnation,
25 or both, all lands, property, property rights, leases, or easements
26 necessary for its purposes and may exercise the right of eminent domain
27 in the acquirement or damaging of all such lands, property, and
28 property rights, and may levy and collect assessments upon property for
29 the payment of all damages and compensation in carrying out its
30 purposes, and such right shall be exercised in the same manner and by
31 the same procedure as provided for cities of the first class insofar as
32 consistent with this title, and in connection therewith the county
33 treasurer shall perform the duties of the treasurers of such cities.
34 Property held in trust by the state is not subject to condemnation
35 under this section.

1 **Sec. 14.** RCW 53.08.020 and 1963 c 147 s 3 are each amended to read
2 as follows:

3 A port district may construct, condemn, purchase, acquire, add to,
4 maintain, conduct, and operate sea walls, jetties, piers, wharves,
5 docks, boat landings, and other harbor improvements, warehouses,
6 storehouses, elevators, grain-bins, cold storage plants, terminal icing
7 plants, bunkers, oil tanks, ferries, canals, locks, tidal basins,
8 bridges, subways, tramways, cableways, conveyors, administration
9 buildings, fishing terminals, together with modern appliances and
10 buildings for the economical handling, packaging, storing, and
11 transporting of freight and handling of passenger traffic, rail and
12 motor vehicle transfer and terminal facilities, water transfer and
13 terminal facilities, air transfer and terminal facilities, and any
14 combination of such transfer and terminal facilities, commercial
15 transportation, transfer, handling, storage and terminal facilities,
16 and improvements relating to industrial and manufacturing activities
17 within the district, and in connection with the operation of the
18 facilities and improvements of the district, it may perform all
19 customary services including the handling, weighing, measuring and
20 reconditioning of all commodities received. A port district may also
21 construct, condemn, purchase, acquire, add to and maintain facilities
22 for the freezing or processing of goods, agricultural products, meats
23 or perishable commodities. A port district may also construct,
24 purchase and operate belt line railways, but shall not acquire the same
25 by condemnation. Property held in trust by the state is not subject to
26 condemnation under this section.

27 **Sec. 15.** RCW 53.34.170 and 1959 c 236 s 17 are each amended to
28 read as follows:

29 In the acquisition, construction, reconstruction, improvement,
30 extension, or betterment of any project or projects authorized under
31 the provisions of this chapter any port district creating and
32 establishing any such project or projects may have and exercise all of
33 the powers heretofore or hereafter granted to port districts for
34 corporate purposes and, in addition thereto, may acquire by gift or
35 grant, lease, purchase, or condemnation any public and private
36 property, franchises and property rights, including (~~state~~)
37 county(~~7~~) and school lands and property, and littoral and water

1 rights whether or not any such property is then devoted to public or
2 quasi public proprietary or governmental use: PROVIDED, That the court
3 shall find that the proposed condemnation of any property already
4 devoted to a public use is for a higher public use, and may by
5 appropriate contracts with any city, county, or other political
6 subdivision of the state, with the state and any department of the
7 government of the state (hereinafter referred to collectively as public
8 agencies), or with any department, instrumentality or agency of the
9 United States, acquire title to or the use of existing roads, streets,
10 parkways, avenues, or highways or the closing of any roads, streets,
11 parkways, avenues, or highways as may be necessary or convenient to the
12 acquisition, construction, or operation of any such project or projects
13 under such terms and conditions as may be mutually agreed upon. All
14 public agencies are authorized to enter into contracts with port
15 districts for the aforesaid purposes. Property held in trust by the
16 state is not subject to condemnation under this section.

17 **Sec. 16.** RCW 54.16.020 and 1955 c 390 s 3 are each amended to read
18 as follows:

19 A district may construct, condemn and purchase, purchase, acquire,
20 lease, add to, maintain, operate, develop, and regulate all lands,
21 property, property rights, water, water rights, dams, ditches, flumes,
22 aqueducts, pipes and pipe lines, water power, leases, easements,
23 rights-of-way, franchises, plants, plant facilities, and systems for
24 generating electric energy by water power, steam, or other methods;
25 plants, plant facilities, and systems for developing, conserving, and
26 distributing water for domestic use and irrigation; buildings,
27 structures, poles and pole lines, and cables and conduits and any and
28 all other facilities; and may exercise the right of eminent domain to
29 effectuate the foregoing purposes or for the acquisition and damaging
30 of such property and rights, or property of any kind appurtenant
31 thereto, and for the purpose of acquiring the right to make physical
32 connection with plants and plant facilities of all persons and
33 municipalities. The right of eminent domain shall be exercised
34 pursuant to resolution of the commission and conducted in the same
35 manner and by the same procedure as is provided for the exercise of
36 that power by cities and towns of the state in the acquisition of like
37 property and property rights. It shall be no defense to a condemnation

1 proceeding that a portion of the electric current generated or sold by
2 the district will be applied to private purposes, if the principal uses
3 intended are public: PROVIDED, That no public utility owned by a city
4 or town shall be condemned, and none shall be purchased without
5 submission of the question to the voters of the utility district. In
6 a condemnation proceeding, the court shall submit to the jury the
7 values placed upon the property by the taxing authority for taxation
8 purposes, and in respect to property, plants, and facilities of persons
9 using public highways for furnishing public service without franchises,
10 shall consider in determining the value thereof the fact that the
11 property, plants, and facilities are subject to be removed from the
12 highways by reason of being so operated without a franchise. Property
13 held in trust by the state is not subject to condemnation under this
14 section.

15 **Sec. 17.** RCW 57.08.005 and 2009 c 253 s 1 are each amended to read
16 as follows:

17 A district shall have the following powers:

18 (1) To acquire by purchase or condemnation, or both, all lands,
19 property and property rights, and all water and water rights, both
20 within and without the district, necessary for its purposes. The right
21 of eminent domain shall be exercised in the same manner and by the same
22 procedure as provided for cities and towns, insofar as consistent with
23 this title, except that all assessment or reassessment rolls to be
24 prepared and filed by eminent domain commissioners or commissioners
25 appointed by the court shall be prepared and filed by the district, and
26 the duties devolving upon the city treasurer are imposed upon the
27 county treasurer. Property held in trust by the state is not subject
28 to condemnation under this section;

29 (2) To lease real or personal property necessary for its purposes
30 for a term of years for which that leased property may reasonably be
31 needed;

32 (3) To construct, condemn and purchase, add to, maintain, and
33 supply waterworks to furnish the district and inhabitants thereof and
34 any other persons, both within and without the district, with an ample
35 supply of water for all uses and purposes public and private with full
36 authority to regulate and control the use, content, distribution, and
37 price thereof in such a manner as is not in conflict with general law

1 and may construct, acquire, or own buildings and other necessary
2 district facilities. Where a customer connected to the district's
3 system uses the water on an intermittent or transient basis, a district
4 may charge for providing water service to such a customer, regardless
5 of the amount of water, if any, used by the customer. District
6 waterworks may include facilities which result in combined water supply
7 and electric generation, if the electricity generated thereby is a
8 by-product of the water supply system. That electricity may be used by
9 the district or sold to any entity authorized by law to use or
10 distribute electricity. Electricity is deemed a by-product when the
11 electrical generation is subordinate to the primary purpose of water
12 supply. For such purposes, a district may take, condemn and purchase,
13 acquire, and retain water from any public or navigable lake, river or
14 watercourse, or any underflowing water, and by means of aqueducts or
15 pipeline conduct the same throughout the district and any city or town
16 therein and carry it along and upon public highways, roads, and
17 streets, within and without such district. For the purpose of
18 constructing or laying aqueducts or pipelines, dams, or waterworks or
19 other necessary structures in storing and retaining water or for any
20 other lawful purpose such district may occupy the beds and shores up to
21 the high water mark of any such lake, river, or other watercourse, and
22 may acquire by purchase or condemnation such property or property
23 rights or privileges as may be necessary to protect its water supply
24 from pollution. For the purposes of waterworks which include
25 facilities for the generation of electricity as a by-product, nothing
26 in this section may be construed to authorize a district to condemn
27 electric generating, transmission, or distribution rights or facilities
28 of entities authorized by law to distribute electricity, or to acquire
29 such rights or facilities without the consent of the owner;

30 (4) To purchase and take water from any municipal corporation,
31 private person, or entity. A district contiguous to Canada may
32 contract with a Canadian corporation for the purchase of water and for
33 the construction, purchase, maintenance, and supply of waterworks to
34 furnish the district and inhabitants thereof and residents of Canada
35 with an ample supply of water under the terms approved by the board of
36 commissioners;

37 (5) To construct, condemn and purchase, add to, maintain, and
38 operate systems of sewers for the purpose of furnishing the district,

1 the inhabitants thereof, and persons outside the district with an
2 adequate system of sewers for all uses and purposes, public and
3 private, including but not limited to on-site sewage disposal
4 facilities, approved septic tanks or approved septic tank systems, on-
5 site sanitary sewerage systems, inspection services and maintenance
6 services for private and public on-site systems, point and nonpoint
7 water pollution monitoring programs that are directly related to the
8 sewerage facilities and programs operated by a district, other
9 facilities, programs, and systems for the collection, interception,
10 treatment, and disposal of wastewater, and for the control of pollution
11 from wastewater with full authority to regulate the use and operation
12 thereof and the service rates to be charged. Under this chapter, after
13 July 1, 1998, any requirements for pumping the septic tank of an on-
14 site sewage system should be based, among other things, on actual
15 measurement of accumulation of sludge and scum by a trained inspector,
16 trained owner's agent, or trained owner. Training must occur in a
17 program approved by the state board of health or by a local health
18 officer. Sewage facilities may include facilities which result in
19 combined sewage disposal or treatment and electric or methane gas
20 generation, except that the electricity or methane gas generated
21 thereby is a by-product of the system of sewers. Such electricity or
22 methane gas may be used by the district or sold to any entity
23 authorized by law to distribute electricity or methane gas.
24 Electricity and methane gas are deemed by-products when the electrical
25 or methane gas generation is subordinate to the primary purpose of
26 sewage disposal or treatment. The district may also sell surplus
27 methane gas, which may be produced as a by-product. For such purposes
28 a district may conduct sewage throughout the district and throughout
29 other political subdivisions within the district, and construct and lay
30 sewer pipe along and upon public highways, roads, and streets, within
31 and without the district, and condemn and purchase or acquire land and
32 rights-of-way necessary for such sewer pipe. A district may erect
33 sewage treatment plants within or without the district, and may
34 acquire, by purchase or condemnation, properties or privileges
35 necessary to be had to protect any lakes, rivers, or watercourses and
36 also other areas of land from pollution from its sewers or its sewage
37 treatment plant. For the purposes of sewage facilities which include
38 facilities that result in combined sewage disposal or treatment and

1 electric generation where the electric generation is a by-product,
2 nothing in this section may be construed to authorize a district to
3 condemn electric generating, transmission, or distribution rights or
4 facilities of entities authorized by law to distribute electricity, or
5 to acquire such rights or facilities without the consent of the owners;

6 (6) The authority to construct, condemn and purchase, add to,
7 maintain, and operate systems of reclaimed water as authorized by
8 chapter 90.46 RCW for the purpose of furnishing the district and the
9 inhabitants thereof with reclaimed water for all authorized uses and
10 purposes, public and private, including with full authority to regulate
11 the use and operation thereof and the service rates to be charged. In
12 compliance with other sections of this chapter, a district may also
13 provide reclaimed water services to persons outside the district;

14 (7)(a) To construct, condemn and purchase, add to, maintain, and
15 operate systems of drainage for the benefit and use of the district,
16 the inhabitants thereof, and persons outside the district with an
17 adequate system of drainage, including but not limited to facilities
18 and systems for the collection, interception, treatment, and disposal
19 of storm or surface waters, and for the protection, preservation, and
20 rehabilitation of surface and underground waters, and drainage
21 facilities for public highways, streets, and roads, with full authority
22 to regulate the use and operation thereof and, except as provided in
23 (b) of this subsection, the service rates to be charged.

24 (b) The rate a district may charge under this section for storm or
25 surface water sewer systems or the portion of the rate allocable to the
26 storm or surface water sewer system of combined sanitary sewage and
27 storm or surface water sewer systems shall be reduced by a minimum of
28 ten percent for any new or remodeled commercial building that utilizes
29 a permissive rainwater harvesting system. Rainwater harvesting systems
30 shall be properly sized to utilize the available roof surface of the
31 building. The jurisdiction shall consider rate reductions in excess of
32 ten percent dependent upon the amount of rainwater harvested.

33 (c) Drainage facilities may include natural systems. Drainage
34 facilities may include facilities which result in combined drainage
35 facilities and electric generation, except that the electricity
36 generated thereby is a by-product of the drainage system. Such
37 electricity may be used by the district or sold to any entity
38 authorized by law to distribute electricity. Electricity is deemed a

1 by-product when the electrical generation is subordinate to the primary
2 purpose of drainage collection, disposal, and treatment. For such
3 purposes, a district may conduct storm or surface water throughout the
4 district and throughout other political subdivisions within the
5 district, construct and lay drainage pipe and culverts along and upon
6 public highways, roads, and streets, within and without the district,
7 and condemn and purchase or acquire land and rights-of-way necessary
8 for such drainage systems. A district may provide or erect facilities
9 and improvements for the treatment and disposal of storm or surface
10 water within or without the district, and may acquire, by purchase or
11 condemnation, properties or privileges necessary to be had to protect
12 any lakes, rivers, or watercourses and also other areas of land from
13 pollution from storm or surface waters. For the purposes of drainage
14 facilities which include facilities that also generate electricity as
15 a by-product, nothing in this section may be construed to authorize a
16 district to condemn electric generating, transmission, or distribution
17 rights or facilities of entities authorized by law to distribute
18 electricity, or to acquire such rights or facilities without the
19 consent of the owners;

20 (8) To construct, condemn, acquire, and own buildings and other
21 necessary district facilities;

22 (9) To compel all property owners within the district located
23 within an area served by the district's system of sewers to connect
24 their private drain and sewer systems with the district's system under
25 such penalty as the commissioners shall prescribe by resolution. The
26 district may for such purpose enter upon private property and connect
27 the private drains or sewers with the district system and the cost
28 thereof shall be charged against the property owner and shall be a lien
29 upon property served;

30 (10) Where a district contains within its borders, abuts, or is
31 located adjacent to any lake, stream, groundwater as defined by RCW
32 90.44.035, or other waterway within the state of Washington, to provide
33 for the reduction, minimization, or elimination of pollutants from
34 those waters in accordance with the district's comprehensive plan, and
35 to issue general obligation bonds, revenue bonds, local improvement
36 district bonds, or utility local improvement bonds for the purpose of
37 paying all or any part of the cost of reducing, minimizing, or
38 eliminating the pollutants from these waters;

1 (11) Subject to subsection (7) of this section, to fix rates and
2 charges for water, sewer, reclaimed water, and drain service supplied
3 and to charge property owners seeking to connect to the district's
4 systems, as a condition to granting the right to so connect, in
5 addition to the cost of the connection, such reasonable connection
6 charge as the board of commissioners shall determine to be proper in
7 order that those property owners shall bear their equitable share of
8 the cost of the system. For the purposes of calculating a connection
9 charge, the board of commissioners shall determine the pro rata share
10 of the cost of existing facilities and facilities planned for
11 construction within the next ten years and contained in an adopted
12 comprehensive plan and other costs borne by the district which are
13 directly attributable to the improvements required by property owners
14 seeking to connect to the system. The cost of existing facilities
15 shall not include those portions of the system which have been donated
16 or which have been paid for by grants. The connection charge may
17 include interest charges applied from the date of construction of the
18 system until the connection, or for a period not to exceed ten years,
19 whichever is shorter, at a rate commensurate with the rate of interest
20 applicable to the district at the time of construction or major
21 rehabilitation of the system, or at the time of installation of the
22 lines to which the property owner is seeking to connect. In lieu of
23 requiring the installation of permanent local facilities not planned
24 for construction by the district, a district may permit connection to
25 the water and/or sewer systems through temporary facilities installed
26 at the property owner's expense, provided the property owner pays a
27 connection charge consistent with the provisions of this chapter and
28 agrees, in the future, to connect to permanent facilities when they are
29 installed; or a district may permit connection to the water and/or
30 sewer systems through temporary facilities and collect from property
31 owners so connecting a proportionate share of the estimated cost of
32 future local facilities needed to serve the property, as determined by
33 the district. The amount collected, including interest at a rate
34 commensurate with the rate of interest applicable to the district at
35 the time of construction of the temporary facilities, shall be held for
36 contribution to the construction of the permanent local facilities by
37 other developers or the district. The amount collected shall be deemed
38 full satisfaction of the proportionate share of the actual cost of

1 construction of the permanent local facilities. If the permanent local
2 facilities are not constructed within fifteen years of the date of
3 payment, the amount collected, including any accrued interest, shall be
4 returned to the property owner, according to the records of the county
5 auditor on the date of return. If the amount collected is returned to
6 the property owner, and permanent local facilities capable of serving
7 the property are constructed thereafter, the property owner at the time
8 of construction of such permanent local facilities shall pay a
9 proportionate share of the cost of such permanent local facilities, in
10 addition to reasonable connection charges and other charges authorized
11 by this section. A district may permit payment of the cost of
12 connection and the reasonable connection charge to be paid with
13 interest in installments over a period not exceeding fifteen years.
14 The county treasurer may charge and collect a fee of three dollars for
15 each year for the treasurer's services. Those fees shall be a charge
16 to be included as part of each annual installment, and shall be
17 credited to the county current expense fund by the county treasurer.
18 Revenues from connection charges excluding permit fees are to be
19 considered payments in aid of construction as defined by department of
20 revenue rule. Rates or charges for on-site inspection and maintenance
21 services may not be imposed under this chapter on the development,
22 construction, or reconstruction of property.

23 Before adopting on-site inspection and maintenance utility
24 services, or incorporating residences into an on-site inspection and
25 maintenance or sewer utility under this chapter, notification must be
26 provided, prior to the applicable public hearing, to all residences
27 within the proposed service area that have on-site systems permitted by
28 the local health officer. The notice must clearly state that the
29 residence is within the proposed service area and must provide
30 information on estimated rates or charges that may be imposed for the
31 service.

32 A water-sewer district shall not provide on-site sewage system
33 inspection, pumping services, or other maintenance or repair services
34 under this section using water-sewer district employees unless the on-
35 site system is connected by a publicly owned collection system to the
36 water-sewer district's sewerage system, and the on-site system
37 represents the first step in the sewage disposal process.

1 Except as otherwise provided in RCW 90.03.525, any public entity
2 and public property, including the state of Washington and state
3 property, shall be subject to rates and charges for sewer, water, storm
4 water control, drainage, and street lighting facilities to the same
5 extent private persons and private property are subject to those rates
6 and charges that are imposed by districts. In setting those rates and
7 charges, consideration may be made of in-kind services, such as stream
8 improvements or donation of property;

9 (12) To contract with individuals, associations and corporations,
10 the state of Washington, and the United States;

11 (13) To employ such persons as are needed to carry out the
12 district's purposes and fix salaries and any bond requirements for
13 those employees;

14 (14) To contract for the provision of engineering, legal, and other
15 professional services as in the board of commissioner's discretion is
16 necessary in carrying out their duties;

17 (15) To sue and be sued;

18 (16) To loan and borrow funds and to issue bonds and instruments
19 evidencing indebtedness under chapter 57.20 RCW and other applicable
20 laws;

21 (17) To transfer funds, real or personal property, property
22 interests, or services subject to RCW 57.08.015;

23 (18) To levy taxes in accordance with this chapter and chapters
24 57.04 and 57.20 RCW;

25 (19) To provide for making local improvements and to levy and
26 collect special assessments on property benefitted thereby, and for
27 paying for the same or any portion thereof in accordance with chapter
28 57.16 RCW;

29 (20) To establish street lighting systems under RCW 57.08.060;

30 (21) To exercise such other powers as are granted to water-sewer
31 districts by this title or other applicable laws; and

32 (22) To exercise any of the powers granted to cities and counties
33 with respect to the acquisition, construction, maintenance, operation
34 of, and fixing rates and charges for waterworks and systems of sewerage
35 and drainage.

36 **Sec. 18.** RCW 81.36.010 and 1961 c 14 s 81.36.010 are each amended
37 to read as follows:

1 Every corporation organized for the construction of any railway,
2 macadamized road, plank road, clay road, canal or bridge, is hereby
3 authorized and empowered to appropriate, by condemnation, land and any
4 interest in land or contract right relating thereto, including any
5 leasehold interest therein and any rights-of-way for tunnels beneath
6 the surface of the land, and any elevated rights-of-way above the
7 surface thereof(~~(, including lands granted to the state for university,~~
8 ~~school or other purposes, and also tide and shore lands belonging to~~
9 ~~the state (but not including harbor areas),)~~) which may be necessary
10 for the line of such road, railway or canal, or site of such bridge,
11 not exceeding two hundred feet in width, besides a sufficient quantity
12 thereof for toll houses, workshops, materials for construction,
13 excavations and embankments and a right-of-way over adjacent lands or
14 property, to enable such corporation to construct and prepare its road,
15 railway, canal or bridge, and to make proper drains; and in case of a
16 canal, whenever the court shall deem it necessary, to appropriate a
17 sufficient quantity of land, (~~(including lands granted to the state for~~
18 ~~university, school or other purposes,)~~) in addition to that before
19 specified in this section, for the construction and excavation of such
20 canal and of the slopes and bermes thereof, not exceeding one thousand
21 feet in total width; and in case of a railway to appropriate a
22 sufficient quantity of any such land, (~~(including lands granted to the~~
23 ~~state for university, schools and other purposes and also tide and~~
24 ~~shore lands belonging to the state (but not including harbor areas))~~)
25 in addition to that before specified in this section, for the necessary
26 side tracks, depots and water stations, and the right to conduct water
27 thereto by aqueduct, and for yards, terminal, transfer and switching
28 grounds, docks and warehouses required for receiving, delivering,
29 storage and handling of freight, and such land, or any interest
30 therein, as may be necessary for the security and safety of the public
31 in the construction, maintenance and operation of its railways;
32 compensation therefor to be made to the owner thereof irrespective of
33 any benefit from any improvement proposed by such corporation, in the
34 manner provided by law: AND PROVIDED FURTHER, That if such corporation
35 locate the bed of such railway or canal upon any part of the track now
36 occupied by any established state or county road, said corporation
37 shall be responsible to the state or county in which such state or
38 county road so appropriated is located, for all expenses incurred by

1 the state or county in relocating and opening the part of such road so
2 appropriated. The term land as herein used includes tide and shore
3 lands but not harbor areas; it also includes any interest in land or
4 contract right relating thereto, including any leasehold interest
5 therein. Property held in trust by the state is not subject to
6 condemnation under this section.

7 **Sec. 19.** RCW 85.06.070 and 1919 c 179 s 2 are each amended to read
8 as follows:

9 All drainage districts organized or that may hereafter be organized
10 under the provisions of this chapter or the acts amendatory thereof
11 shall have the right of eminent domain, with the power by and through
12 its board of commissioners, to cause to be condemned and appropriated
13 private property for the use of said corporation in the construction
14 and maintenance of a system or systems of drainage, and make just
15 compensation therefor, and such right of eminent domain may be
16 exercised either within or without the boundaries of such districts,
17 and may be exercised with respect to rights-of-way for ditches, drains,
18 dams, outlets or any other necessary appliances or structures and
19 whether for the original system or any additions, enlargements or
20 extensions thereof or for additional outlets or systems of drainage:
21 PROVIDED, That the property of private corporations may be subjected to
22 the same rights of eminent domain as that of private individuals:
23 PROVIDED, FURTHER, That the said board of commissioners shall have the
24 power to acquire by purchase all the real property necessary to make
25 the improvements herein provided for. Property held in trust by the
26 state is not subject to condemnation under this title.

27 **Sec. 20.** RCW 86.09.202 and 1937 c 72 s 68 are each amended to read
28 as follows:

29 The taking and damaging of property or rights therein or thereto by
30 a flood control district to construct an improvement or to fully carry
31 out the purposes of its organization are hereby declared to be for a
32 public use, and any district organized under the provisions of this
33 chapter, shall have and exercise the power of eminent domain to acquire
34 any property or rights therein or thereto either inside or outside the
35 operation of the district and outside the state of Washington, if

1 necessary, for the use of the district. Property held in trust by the
2 state is not subject to condemnation under this title.

3 **Sec. 21.** RCW 87.03.018 and 1984 c 168 s 5 are each amended to read
4 as follows:

5 Two or more irrigation districts may create a separate legal
6 authority to carry out any or all of the powers described in RCW
7 87.03.015. To enable such a legal authority to carry out its delegated
8 powers, the irrigation districts creating the authority may assign,
9 convey, or otherwise transfer to it any or all of their respective
10 property, rights, or obligations, including, without limitation, the
11 power to issue revenue obligations and the power of condemnation. Such
12 a legal authority shall be created and organized by contract in the
13 manner described in chapter 39.34 RCW and shall be a separate legal
14 entity. Property held in trust by the state is not subject to
15 condemnation under this section.

16 A separate legal authority shall only have power to incur
17 indebtedness that is repayable from rates, tolls, charges, or contract
18 payments for services or electricity provided by the authority and to
19 pledge such revenues for the payment and retirement of indebtedness
20 issued for the construction or acquisition of hydroelectric facilities.
21 An authority shall not have power to levy taxes or to impose
22 assessments for the payment of obligations of the authority. Every
23 bond or other evidence of indebtedness issued by an authority shall
24 provide (1) that repayment shall be limited solely to the revenues of
25 the authority; and (2) that no member of the authority shall be
26 obligated to repay directly or indirectly any obligation of the
27 authority except to the extent of fair value for services actually
28 received from the authority. No member may pledge its revenues to
29 support the issuance of revenue bonds or other indebtedness of an
30 authority.

31 **Sec. 22.** RCW 89.30.130 and 1927 c 254 s 44 are each amended to
32 read as follows:

33 Said reclamation districts shall have full authority to carry out
34 the objects of their creation and to that end are authorized to
35 acquire, purchase, hold, lease, manage, occupy, and sell real and
36 personal property or any interest therein, to enter into and perform

1 any and all necessary contracts, to appoint and employ the necessary
2 officers, agents and employees, to sue and be sued, to exercise the
3 right of eminent domain, to levy and enforce the collection of taxes
4 and special assessments in the manner herein provided against the lands
5 within the district, for district revenues, and to do any and all
6 lawful acts required and expedient to carry out the purpose of this
7 chapter. Property held in trust by the state is not subject to
8 condemnation under this section.

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