

**RCW 90.28.010 Right to back and hold waters over roads, streets, and alleys—Procedure.** The department of transportation may, in its sole discretion, grant to any person or corporation the right, privilege, and authority to perpetually back and hold the waters of any lake, river, stream, slough, or other body of water, upon or over any state, county, or permanent highway or road, or any street or alley within the limits of any town, or any part thereof, and overflow and inundate the same whenever the director of ecology deems it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use and shall so certify to the department of transportation. The decision of the department of transportation, in the absence of bad faith, arbitrary, capricious, or fraudulent action, is conclusive. But the right shall not be granted until it has been heretofore or is hereafter determined in a condemnation suit instituted by the person or corporation desiring to obtain the right or rights in the county wherein is situated that part of the road, highway, street, or alley so to be affected that the use for which the grant is sought is a public use, nor until there is filed with the clerk of the court in which the order or decree of public use was entered a bond or undertaking signed by the person or corporation seeking the grant, executed by a surety company authorized to do business in this state, conditioned to pay all costs and expenses of every kind and description connected with and incident to the relocation and reconstruction of any such highway, road, street, or alley, the same to be of substantially the same type and grade of construction as that of the highway, road, street, or alley to be overflowed or inundated, including any such relocation, reconstruction, and maintenance costs and expenses as may arise within a period of eighteen months after the new highway, road, street, or alley has been opened in its entirety to public travel, and also including any and all damages for which the state, county, city, or town may be liable because of the vacation of any such highway, road, street, or alley and the relocation thereof in the manner provided herein and to save harmless the state, county, city, or town from the payment of the same or any part thereof. The bond shall be in a penal sum of double the estimated amount of the expenses, costs, and damages referred to above. In the case of a state highway the estimate shall be made by the department of transportation. In case of a county road or permanent highway the estimate shall be made by the county legislative authority, and in the case of a street or alley of a town the estimate shall be made by the city or town council. The bond shall be approved by the department of transportation when the road to be affected is a state highway, and in all other cases by a judge of the superior court in which the order or decree of public use was entered. In the condemnation suit the state of Washington shall be made a party defendant when the road affected is a state highway. If the road is a county road or permanent highway the county in which the road or permanent highway is situated shall be made a party defendant, and when any street or alley in any town is affected the city or town shall be made a party defendant. Any person or corporation may acquire the right to overflow as against the owner of the fee in any such highway, road, street, or alley by making the owner of the fee or of any part thereof a party defendant in the condemnation suit provided for herein or by instituting a separate condemnation suit against any such owner. The damages sustained by any

such owner as a result of the overflow of any such highway, road, street, or alley shall be determined as in other condemnation cases, separate and apart from any damage sustained by the state, county, city, or town. [1994 c 81 s 87; 1984 c 7 s 385; 1929 c 154 s 1; 1927 c 202 s 1; RRS s 7354-1.]

*Eminent domain by corporations: Chapter 8.20 RCW.*

*Private ways of necessity: Chapter 8.24 RCW.*