

CHAPTER 942
Surface Water Management District

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942.01 PURPOSE.

The Ohio Revised Code authorizes the County to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of a public enterprise, including structural and natural surface water facilities and/or improvements and drainage systems of all types, to furnish service to the County and its citizens and property owners.

The purpose of this Chapter is to establish guidelines and standards for the operation of a countywide Surface Water Management District as provided by Chapter 6117 of the Ohio Revised Code in those incorporated and unincorporated political subdivisions of the County that have adopted legislation authorizing participation under this Chapter.

942.02 DEFINITIONS.

For purposes of this Chapter, the following words, terms, and phrases shall have the meanings given to them in this section, except where the context clearly indicates a different meaning:

(a) "Conventionally Developed Residential Property" shall mean developed land occupied by a structure containing one-, two-, and or three-family residential dwellings Dwelling Units, provided each Dwelling Unit is not identified as a separate parcel as in the case of a condominium or planned community, and provided that the parcel contains no significant non-residential uses. Structures appurtenant to the Dwelling Units, such as detached garages and sheds, shall be disregarded in the ERU calculation of this type of property.

(b) "County Ditches" shall mean any ditch, drain or waterway established under Chapter 6131 of the Ohio Revised Code or Chapter 6133 of the Ohio Revised Code.

(c) "Developed Land" shall mean a Zoned Lot or Tract altered from its natural state to include impervious surface area.

(d) "Drainage System" shall mean natural and structural channels, swales, ditches, swamps, rivers, streams, creeks, wetlands, branches, reservoirs, ponds, drainage ways, inlets, catch basins, gutters, pipes, culverts, bridges, head walls, storm sewers, lakes, and other physical works, properties, and improvements that transfer, control, convey or otherwise influence the movement of surface water runoff.

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(e) "Dwelling Unit" means a detached building or portion of a building that is designed and intended for use and occupancy for residential purposes by a single household or family.

(e f) "Equivalent Rate Unit (ERU)" shall mean the measure of Impervious Surface Area on a Zoned Lot or Tract that is used by the County as the basis for calculating the Surface Water Management Service Charge and is equivalent to three thousand (3,000) square feet of Impervious Surface Area.

(f g) "ERU Credits" shall mean on-going reductions in the Surface Water Management Service Charge applicable to a given Zoned Lot or Tract in recognition of Private Runoff Control Measures that are implemented and maintained in addition to those Surface Water Facilities and/or Improvements required by local zoning ordinances, local surface water regulations, County subdivision regulations, Summit Soil & Water Conservation District requirements, and any other local surface water management regulations.

(g h) "Impervious Surface Area" shall mean developed areas of land that prevent or significantly impede the infiltration of Surface Water into the soil. Typical Impervious Surface Areas include, but are not limited to: roofs, sidewalks, walkways, patios, swimming pools, private driveways, parking lots, access extensions, alleys and other paved, engineered, compacted or gravel surfaces containing materials that prevent or significantly impede the natural infiltration of Surface Water into the soil.

(h i) "Natural State" shall describe existing land, water, soil, and vegetation characteristics that have not been substantially modified or disturbed by the construction or placement of Impervious Surfaces Areas on the land.

(i j) "Private Runoff Control Measures" shall mean Surface Water Facilities and/or Improvements that are constructed and/or maintained by a property owner that provide measurable benefit to Surface Water management and/or control.

(j k) "Service Area" shall mean all land within the corporate limits of the County that is also within the limits of an unincorporated or incorporated area wherein either the township trustees or municipal legislative authority have adopted legislation authorizing participation under this Chapter.

(k l) "Storm water" shall mean any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snow melt.

(l m) "Surface Water" shall mean any flow, including, but not limited to, Stormwater or other flow occurring in the Drainage System.

(m n) "Surface Water Facility and/or Improvement" shall mean projects that are designed to protect, restore, and/or manage Surface Water quality and/or quantity. Surface Water Facility and/or Improvement specifically does not include maintenance or repair of a Drainage System within a subdivision that is assessed for the purposes of the same.

(n o) "Surface Water Management Program" shall mean an identified set of measures and activities designed to protect, restore, and/or manage Surface Water quality by controlling and/or reducing pollutants; and to reduce and/or manage Surface Water quantity by controlling velocity, volume, and/or rate.

(o p) "Surface Water Management Service Charge" shall mean a service charge, applicable to a Zoned Lot or Tract, that generally reflects the impact on or demand for the Surface Water Management Program provided by the County under this Chapter to properly control and manage Surface Water runoff quantity and/or quality associated with the Zoned Lot or Tract. The Surface Water Management Service Charge will vary from one Zoned Lot or Tract to another, based on the Impervious Surface Area as calculated in ERUs, less any applicable ERU Credits.

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(p q) "Surface Water Management District", "SWMD" or "District" shall mean the organizational structure created by this Chapter that is responsible for funding, administering, and operating the County's Surface Water Management Program in the Service Areas established pursuant to this Chapter, and financially supported through the Surface Water Management Service Charge.

(q r) "Tract" shall mean a parcel of land not previously recorded as a Zoned Lot.

(r s) "Undeveloped Land" shall mean all land that is not altered from its Natural State.

(s-t) "Zoned Lot" shall mean a legally subdivided lot shown on a legally recorded plat or deed, or a combination of such legally subdivided and recorded adjacent lots.

942.03 JURISDICTION.

The Surface Water Management District shall have jurisdiction over the planning, programming, performance, construction and maintenance of all Surface Water Facilities and/or Improvements within the Service Areas, pursuant to and subject to the provisions of this Chapter, provided, however, that any Drainage System that is directly related to a subdivision that have been, or will be, dedicated to the County and are, or will be, assessed for the repair and maintenance of such Drainage System pursuant to Ohio Revised Code Chapter 6137 and Chapter 1109 of these Codified Ordinances shall continue to be performed by the County Engineer independent of the District. The activities and programs of the Surface Water Management District are confined to the planning, programming, performance, construction and maintenance of Surface Water Facilities and/or Improvements and the planning, programming, performance, construction, maintenance and improvement of County Ditches within the Service Areas. In the event that the District proposes a Surface Water Facility and/or Improvement that is also partly located outside of the Service Areas, the County maintains the right to advance the project through any means authorized by the Ohio Revised Code or other applicable law for that portion of the project outside of the Service Areas.

Service Areas may be established for any township, village, or city by the filing of a duly authorized resolution of the legislative authority of the township, village, or city with the Clerk of County Council. Said resolution shall request the establishment pursuant to this Chapter of a Service Area for the territory of such political subdivision and shall state the rate per ERU to be billed as the Surface Water Management Service Charge, if the political subdivision wishes it to be greater than the rate provided under Section 942.06(b). The resolution must be received by the first day of January for inclusion of the Service Area in the next billing cycle of that same year. Upon receipt of such a resolution, County Council shall consider the request and determine whether to establish the political subdivision as a Service Area. The Service Area shall be established by the passage of an ordinance by County Council.

942.04 GOVERNANCE.

(a) The County Engineer shall be responsible for the day-to-day administration of the District and the Surface Water Management Program, which shall include, but not be limited to:

(1) Overseeing, managing and administering the performance, construction and maintenance of all Surface Water Facilities and/or Improvements within the Service Areas.

(2) Overseeing, managing and administering all necessary service functions associated with the District.

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(3) Overseeing and performing the general administrative functions, including promulgating rules and regulations, necessary for the ongoing operation of the District and Surface Water Management Program.

(4) Hiring and assigning staff, as needed, to perform the administrative, engineering, project implementation and service functions of the District. Said staff shall be employees and/or appointees of the County Engineer's Office, and shall be governed by Part One of these Codified Ordinances.

(5) Procuring goods and services through contracts necessary for the performance, construction and maintenance of Surface Water Facilities and/or Improvements and the administration of the District, provided that the same shall be procured in compliance with Chapter 177 of these Codified Ordinances, and are subject to approval by County Council, where applicable, and execution by the Executive.

(6) Preparing a recommended annual operating and capital improvement budget for submittal to the County Executive.

(7) Performing all other actions specifically assigned to the County Engineer by Chapter 942 of these Codified Ordinances.

(b) The County Executive shall provide budgetary oversight to the District, including submittal of an annual operating budget and capital improvement budget to the County Council. County Council shall approve an annual operating budget and capital improvement budget in the same manner in which it approves the budget of other offices within the County.

(c) All contracts for the performance of any actions necessary to implement the Surface Water Management Program with any outside vendor shall be procured and executed in compliance with the requirements and procedures set forth in the County Charter and Part One of these Codified Ordinances. The County may enter into contracts with any public or private entities that are located within or outside of the Service Areas as are necessary to accomplish the objectives of Chapter 942 of these Codified Ordinances.

(d) The District, with the advice of the County Executive and the approval of County Council, may finance Surface Water Facilities and/or Improvements using any method authorized by law, including, but not limited to, any funding mechanism or source specified in Revised Code Chapters 6117 and 6131, and by the use of fees collected pursuant to this Chapter 942, or any combination, thereof.

942.05 IMPERVIOUS SURFACE AREA AND EQUIVALENT RATE UNIT.

(a) The amount of impervious surface area on a given Zoned Lot or Tract shall be the determining factor in calculating the distribution of the cost of services associated with the planning, programming, performance, construction and maintenance of all Surface Water Facilities and/or Improvements within a Service Area and the extent of a Zoned Lot or Tract owner's obligation to pay for a portion of the same through the Surface Water Management Service Charge because it (i) directly relates to the volume, rate and pollutant loading of Surface Water runoff discharged from that Zoned Lot or Tract to the County's Surface Water Drainage Systems and (ii) is voluntarily controllable by owners of Zoned Lots or Tracts in the development of the same and therefore provides an equitable and adequate system for determining estimated usage of Surface Water Facilities and/or Improvements.

(b) An impervious surface area of 3,000 square feet shall be designated as one (1) Equivalent Rate Unit (ERU) in order to maintain consistency with the prevailing unit adopted by

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communities within the County of Summit and northeast Ohio region for local surface water management.

(c) Each owner of a Zoned Lot or Tract of Developed Land within a Service Area shall pay a Surface Water Management Service Charge that is calculated by multiplying the Surface Water Management Service Charge set forth in Section 942.06 times the number of ERUs that have been assessed against that Zoned Lot or Tract.

(d) The County Engineer shall calculate the number of ERUs to be assessed against each Zoned Lot or Tract of Developed Land within a Service Area based on the amount of Impervious Surface Area on that Zoned Lot or Tract prior to the billing and collection of any Surface Water Management Service Charge as set forth in Sections 942.06 and 942.07, provided, however, that all Conventionally Developed Residential Property shall be assessed the equivalent of one (1) ERU ~~per housing unit located on the Zoned Lot or Tract.~~

(e) Prior to the first billing and collection of any Surface Water Management Service Charge for a Zoned Lot or Tract of Developed Land, the County Engineer shall publish in a newspaper of general circulation a notice that all owners of Developed Land within a specified Service Area shall be assessed a Surface Water Management Service Charge, the amount of that service charge per ERU, and that the Surface Water Management Service Charge shall be calculated based on one ERU ~~per housing unit of~~ for Conventionally Developed Residential Property, and one ERU for each 3,000 square feet of impervious surface area for Developed Land other than Conventionally Developed Residential Property. Other relevant details of the program may be included as deemed appropriate by the County Engineer.

(f) With respect to a Zoned Lot or Tract of Developed Land other than Conventionally Developed Residential Property, if, due to construction, demolition, destruction and removal, or some other cause, a substantial change in impervious surface occurs on the Zoned Lot or Tract, an owner may notify the County Engineer of such change and request that the County Engineer recalculate the number of ERUs to be assessed. The County Engineer shall notify the owner, in writing, of any change to the calculation of ERUs in the same manner and method as required for the notification of the calculation of ERUs to be assessed against the Zoned Lot or Tract. Any owner that receives a notice of the calculation of ERUs by the County Engineer under this paragraph may appeal the calculation in the manner and method set forth in Section 942.11 of these Codified Ordinances.

(g) Notwithstanding Section 942.11(e), with respect to Conventionally Developed Residential Property, if, due to demolition, destruction, or some other cause, the ~~dwelling is~~ Dwelling Units and appurtenant structures are removed such that the Zoned Lot or Tract no longer qualifies as Conventionally Developed Residential Property and instead qualifies as Undeveloped Land, an owner may notify the County Engineer of such change and request that the County Engineer recalculate the number of ERUs to be assessed. The County Engineer shall notify the owner, in writing of any change to the calculation of ERUs in the same manner and method as required for the notification of the calculation of ERUs to be assessed against the property. Any owner that receives a notice of the calculation of ERUs by the County Engineer under this paragraph may appeal the calculation in the manner and method set forth in Section 942.11 of these Codified Ordinances.

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942.06 SCHEDULE OF CHARGES AND FEES.

(a) County Council has the authority to establish and revise from time to time a schedule of surface water management service charges and associated fees (i.e. late fees, etc.) to be billed and collected from all owners of Zoned Lots or Tracts of Developed Land within a Service Area to fund the Surface Water Management Program and the operation of the Surface Water Management District. In establishing and revising the Surface Water Management Service Charge schedule, the County Council is not bound to establish a uniform charge for the entire County, and may establish a separate fee schedule for any Service Area, provided that any variance in charges shall be supported by and/or be the result of the specific Surface Water needs of the particular Service Area.

(b) All Zoned Lots and Tracts within a Service Area, unless specifically exempted as set forth in Section 942.10 of these Codified Ordinances, shall be annually billed a Surface Water Management Service Charge of \$4.00 per month, or at a rate otherwise set by County Council, for each ERU calculated by the County Engineer to be assessed against that Zoned Lot or Tract pursuant to Section 942.05 of these Codified Ordinances. The Surface Water Management Service Charge shall be used to fund and administer the District and Surface Water Management Program and to perform studies necessary for fulfilling these duties. County Council may establish and revise the Surface Water Management Service Charge as necessary to properly fund and administer the District and Surface Water Management Program, provided that any increase in the Surface Water Management Service Charge during the ten year period after which a Service Area is first established shall not exceed, on a cumulative basis, a rate of increase greater than the Consumer Price Index for Urban Consumers (CPI-U) for that same period. County Council shall be permitted to increase the Surface Water Management Service Charge in excess of the CPI-U if such increase is requested by a resolution of the legislative body of the political subdivision in the relevant Service Area.

(c) Developed Land receiving a Homestead Exemption will be granted a twenty-five percent (25%) reduction in the Surface Water Management Service Charge.

(d) Developed Land located in assessed subdivisions for which annual assessments pursuant to Revised Code Chapter 6137 are being charged will be granted a twenty-five percent (25%) reduction in the Surface Water Management Service Charge. This reduction may be combined with the reduction for Homestead Exemption for a total fifty percent (50%) reduction in the Surface Water Management Service Charge.

(e) In addition to the Surface Water Management Service Charge, a late penalty of ten percent (10%) shall be assessed upon all Surface Water Management Service Charges not paid within fifteen (15) days of the date due. When assessed, the late penalty shall be due and owing in the same manner and fashion as the Surface Water Management Service Charge and may be certified delinquent in the same manner as the Surface Water Management Service Charge.

942.07 BILLING AND COLLECTION.

(a) Billing and collection of the Surface Water Management Service Charge and any other fee set forth in Section 942.06 of these Codified Ordinances shall be administered by the County Engineer on behalf of the District. The County Engineer may perform the billing and collection of the Surface Water Management Service Charge and other fees as an internal function of that office, or may contract with any other County office, political subdivision or an external vendor, provided that any such contract is subject to the approval of the County Council and is effective upon execution by the County Executive.

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(b) Prior to the commencement of any billing and collection of the Surface Water Management Service Charge and any other fees, the County Engineer shall submit a plan setting forth the manner, method and other details for said billing and collection to the County Council. The County Engineer shall not begin the billing and collection of the Surface Water Management Service Charge or any other fee until said plan is reviewed and approved by the County Executive and County Council.

(c) The Surface Water Management Service Charge established in this Chapter shall be billed annually on a July to June cycle and shall be payable by the due date specified on the billing statement.

(d) Any Surface Water Management Service Charge or other fee billed pursuant to this Section that is delinquent as of the sixteenth day of August of each calendar year may be certified to the County Fiscal Officer and placed on the real property tax list and duplicate against the property served by the District. A charge shall be added for all checks returned from financial institutions for nonsufficient funds equal to the actual cost incurred by the County. All accounts certified to the County Fiscal Officer for collection shall be subject to a certification charge of ten percent (10%) of the delinquent amount which shall be added to the amount certified. The total charge shall be a lien on the property from the date it is placed on the real property tax list and duplicate by the County Fiscal Officer and shall be collected in the same manner as other taxes.

(e) No person, firm or corporation shall sell or transfer by deed, land contract or otherwise any premises within the County of Summit that is subject to the Surface Water Management Service Charge or other fee billed pursuant to this Section without furnishing the buyer or transferee prior to such sale or transfer, a statement from the County Engineer setting forth the current status of the Surface Water Management Service Charge account of the premises, and when an escrow account has been established, depositing in escrow prior to delivery of possession or transfer of title a statement from the buyer or transferee acknowledging the receipt of this document and accepting responsibility for all future Surface Water Management Charge bills in accordance with these Codified Ordinances. Upon the title transfer, the buyer or transferee will be responsible for the payment of the delinquent amount owed for the Surface Water Management Service Charge account of the premises and the County shall have the right to place a lien on the premises for the delinquent amount of the account.

(f) No person, firm or corporation acting in the capacity of an escrow agent in any real estate transaction involving the sale or transfer of any premises located in the County of Summit that is subject to the Surface Water Management Service Charge or other fee billed pursuant to this Section shall disburse any funds unless the provisions of this Section have been met.

942.08 DISPOSITION OF SERVICE CHARGES AND FEES.

All money received from Surface Water Management Service Charges and other fees under the provisions of this Chapter shall be credited to the Surface Water Management Fund. All Surface Water Management Service Charges and other fees collected under this Chapter from Zoned Lots or Tracts within a Service Area shall be used for: (i) administration of the District and (ii) County Ditches, Drainage Systems, Surface Water Management Facilities and/or Improvements and/or Surface Water Management Programs that benefit Developed Land or Undeveloped Land within that Service Area. A Service Area shall be considered to benefit under this provision where fees are used to improve or maintain a Drainage System, in whole or in part, that is within the Service Area or that conveys Surface Water flowing into or out of the Service

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Area. Interest earned on money held within the Surface Water Management Fund shall be credited to that fund.

942.09 CREDITS.

(a) Other than as provided in subsection (f), below, the number of ERUs assessed against a Zoned Lot or Tract may be reduced, through the allocation of an ERU Credit, as a result of, and in recognition of, Private Runoff Control Measures being implemented and maintained for the benefit of the Zoned Lot or Tract that are in addition to those Surface Water Management Facilities and/or Improvements required by local zoning ordinances, local surface water regulations, County subdivision regulations, Summit Soil & Water Conservation District requirements, and any other local surface water management regulations. For each Zoned Lot or Tract in a Service Area that benefits from a Private Runoff Control Measure, the County Engineer shall calculate the number of ERU Credits that should be allocated to that Zoned Lot or Tract. The number of ERU Credits that are allocated to a Zoned Lot or Tract shall reduce the number of ERUs assessed against that Zoned Lot or Tract under Section 942.05 of these Codified Ordinances, and the owner of the Zoned Lot or Tract shall only be billed, and shall only be obligated to pay, the difference between the number of ERUs assessed against the Zoned Lot or Tract and the ERU Credits allocated to the Zoned Lot or Tract.

(b) The County Engineer shall notify in writing the owner of any Zoned Lot or Tract of the calculation of ERU Credits in the same manner and method and at the same time as required for the notification of the calculation of ERUs to be assessed against the Zoned Lot or Tract, as set forth in Section 942.05 of these Codified Ordinances.

(c) At any time, the owner of any Zoned Lot or Tract that installs a new, or improves an existing, Private Runoff Control Measure that benefits that Zoned Lot or Tract may apply to the County Engineer for a calculation of ERU Credits to be allocated to that Zoned Lot or Tract. The County Engineer shall notify the owner in writing of his or her determination of the number of ERU Credits to be allocated to the Zoned Lot or Tract.

(d) In no event shall the number of ERU Credits allocated to a Zoned Lot or Tract reduce the total number of ERUs assessed against that Zoned Lot or Tract below one (1) ERU.

(e) Any ERU Credit may be revoked if any condition to the granting of the ERU Credit no longer exists or the Private Runoff Control Measure is not properly maintained and functioning.

(f) Conventionally Developed Residential Property is not eligible for ERU Credits.

(g) Any owner of a Zoned Lot or Tract that receives a notice of the calculation of ERU Credits by the County Engineer under this Section may appeal the calculation in the manner and method set forth in Section 942.11 of these Codified Ordinances.

942.10 EXEMPTIONS.

The following property shall be exempt from payment of the Surface Water Management Service Charge set forth in Section 942.06 and shall generally be exempt for any other provision of Chapter 942 of these Codified Ordinances.

(a) Public road rights-of-way that have been conveyed to and accepted for maintenance by the Ohio Department of Transportation, the Ohio Turnpike Authority or entities contracted by the State of Ohio for the operation of toll roads, and that are available for use by the general public for transportation purposes.

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(b) Public road rights-of-way that have been conveyed to and accepted for maintenance by municipal corporations or townships within the County, and that are available for use by the general public for transportation purposes.

(c) Public road rights-of-way that have been conveyed to and accepted for maintenance by the County of Summit, and that are available for use by the general public for transportation purposes.

(d) Railroad rights-of-way used for trackage and related appurtenances.

(e) Undeveloped land.

(f) Any property specifically exempted from fees and charges by the Ohio Constitution, Ohio Revised Code or Ohio Administrative Code.

(g) Any property specifically exempted from fees and charges by the Constitution of the United States, the United States Code or the Code of Federal Regulations.

942.11 APPEAL PROCEDURE; HEARING AND DECISION.

(a) Any person aggrieved or adversely affected by any action taken or determination made under this Chapter may request a hearing before the County Engineer. The request shall be in writing and shall set forth the action or determination appealed from and the grounds upon which the appeal is based. The request shall be filed with the County Engineer within thirty (30) days after receipt of the action or determination complained of.

(b) Upon receipt of any properly filed appeal, the County Engineer or his designee shall schedule a time and place at which the hearing will be held, and shall provide notice, in writing, at least five (5) days prior to the hearing. The County Engineer or his designee may postpone or continue any hearing upon his own motion or upon application of the appealing party.

(c) The filing of an appeal and a request for a hearing does not automatically suspend or stay execution of the order, determination, or billing appealed from, but upon application by the appealing party, the County Engineer or his designee may suspend or stay execution of the order, determination, or billing upon such terms as deemed appropriate, pending determination of the appeal.

(d) The appealing party, County employees and any other interested person who has been granted permission to appear may present evidence, as the County Engineer or his designee deems admissible. The County Engineer or his designee may require the attendance of witnesses and the production of books, records and papers that are relevant to the matter being decided.

(e) Upon completion of the hearing, the County Engineer or his designee shall issue a written decision containing the facts and conclusions upon which the decision is based. If the County Engineer or his designee finds that the action or determination appealed from was lawful and reasonable, the order shall be affirmed. If the County Engineer or his designee finds that the action or determination appealed from was unreasonable or unlawful, the order shall be vacated and a new action taken or determination made in compliance with the decision. A final decision and order made by a designee of the County Engineer shall be considered an order of the County Engineer for purposes of this Section 942.11. A copy of the decision shall be mailed to each party participating in the appeal.

(f) No owner of Conventionally Developed Residential Property shall have the right to appeal the County Engineer's calculation of ERU's unless more than one ERU was assessed against that Conventionally Developed Residential Property.

(g) Any person adversely affected by the decision of the County Engineer may appeal to the Court of Common Pleas as provided by Ohio Revised Code Chapter 2506.

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942.12 SEVERABILITY.

The determination that any part of this Chapter is invalid shall not invalidate or impair the force or effect of any other part hereof, except to the extent that such other part is wholly dependent for its operation upon the part declared invalid.