

SENATE BILL REPORT

ESSB 5665

As Passed Senate, February 17, 2004

Title: An act relating to administration of irrigation districts.

Brief Description: Changing irrigation district administration provisions.

Sponsors: Senate Committee on Agriculture (originally sponsored by Senators Rasmussen and Swecker).

Brief History:

Committee Activity: Agriculture: 2/13/03, 2/27/03 [DP]; 1/22/04, 1/27/04 [DPS].
Passed Senate: 3/17/03, 49-0; 2/17/04, 48-0.

SENATE COMMITTEE ON AGRICULTURE

Majority Report: That Substitute Senate Bill No. 5665 be substituted therefor, and the substitute bill do pass.

Signed by Senators Swecker, Chair; Brandland, Vice Chair; Jacobsen, Rasmussen and Sheahan.

Staff: Evan Sheffels (786-7486)

Background: Irrigation districts may purchase, construct, operate, maintain, and repair water conduit systems and diversions in order to deliver irrigation water. An irrigation district may also perform a variety of other functions, including the purchase and sale of electric power for irrigation and domestic use, operation of a domestic water system for irrigated landowners, and operation of a drainage or sewage system.

Irrigation district directors and employees acting in good faith and within the scope of their official electric utility duties are granted statutory immunity from civil liability for mistakes and errors of judgment and discretion.

At least 5 percent of irrigation district revenues may be placed annually in a facilities upgrading and improvement fund.

Irrigation districts may impose rates and charges for district services through the collection or levy of assessments. Unpaid rates and charges constitute a lien "paramount and superior" to other liens until the rates and charges are paid in full. Under the "last faithful acre" doctrine, real property benefitted by an irrigation district may be assessed in subsequent years for delinquent or unpaid assessments from prior years.

After three years of delinquency, the irrigation district treasurer must prepare certificates of delinquency for unpaid assessments and costs. Through interlocal cooperation agreement, a district treasurer and a county treasurer may foreclose in a combined action for delinquent irrigation assessments and property taxes. A presumption of legality attaches to district documents unless a party in interest would be unfairly affected by defects.

Irrigation districts are included by reference in utility statutes that automatically extinguish liens if a utility fails to respond quickly to a closing agent's request for a final statement. Districts have conveyed concern that such extinguishment provisions could impair irrigation district access to favorable bonding terms that depend upon the strength of irrigation district lien provisions and the "last faithful acre" doctrine.

Summary of Bill: The coverage of civil liability immunity is extended to officers and agents, in addition to directors and employees, and to all legal claims or causes of action related to good faith activities within the scope of official hydroelectric, irrigation, or electric utility duties. The scope of immunity from civil liability is broadened to include failures to exercise judgment or discretion. These grants of immunity do not modify the liability for the irrigation district itself.

Credit cards may be used to pay district assessments.

The board of directors shall determine what portion of the district's annual revenue to place in the district's upgrade and improvement fund. All electric energy revenues may be deposited in the fund.

In districts with 200,000 acres or more, the board of directors is granted discretion to preclude a foreclosure action if it would not be in the best interest of the district given foreclosure costs and assessments owed.

Defenses or objections to foreclosure in a party's answer are limited to issues of pleading form, sufficiency of service, payments status, assessment validity, and district jurisdiction. Counterclaims are not permitted. Courts are to liberally allow districts to amend legal pleadings to cure claimed defects, and are to issue prompt foreclosure determinations that are limited to the record of a district's pleading and a party in interest's answer. To avoid injustice, the court may schedule expedited hearings limited to evidentiary affidavits and declarations. District documents are presumed valid unless a party with an interest in the property would be unfairly prejudiced.

County treasurers are authorized to utilize the county tax lien foreclosure statute when foreclosing for irrigation district assessments. When foreclosing on a combined action related to property taxes and irrigation district assessments, the county treasurer may use the county tax lien foreclosure statutes, or the irrigation district treasurer may use the irrigation district lien foreclosure statutes.

References to irrigation districts are removed from utility statutes that automatically extinguish district liens for failure to respond promptly to closing agent's final billing requests.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill, which was passed out of the Senate without opposition last year, makes irrigation district administrative processes more efficient. It will also help protect the district's strong bonding position. The immunity language in the bill will help reduce liability insurance costs. It just protects district personnel from personal liability by shifting potential

liability onto the district itself. It does not modify or grant any new immunity to districts themselves. Districts remain the liable party.

Testimony Against: None.

Testified: PRO: Mike Schwisow, Washington State Water Resources Association.

House Amendment(s): The language that specifically excuses civil liability for an irrigation district official who fails to exercise judgment when carrying out the duties of his or her position is removed and the language is replaced with civil liability immunity for any discretionary decision or failure to make a discretionary decision. Potable water facilities are added to the responsibilities to which the civil liability immunity attaches.