
SENATE BILL 5665

State of Washington

58th Legislature

2003 Regular Session

By Senators Rasmussen and Swecker

Read first time 02/05/2003. Referred to Committee on Agriculture.

1 AN ACT Relating to administration of irrigation districts; and
2 amending RCW 87.03.138, 87.03.443, 87.06.030, 87.06.060, 87.06.110,
3 60.80.005, 60.80.010, and 60.80.020.

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

5 **Sec. 1.** RCW 87.03.138 and 1983 1st ex.s. c 48 s 3 are each amended
6 to read as follows:

7 Directors ((and)), officers, employees, or agents of irrigation
8 districts shall be immune from civil liability for any cause of action
9 or claim for damages for any mistakes and errors of judgment in the
10 good faith performance of acts within the scope of their official
11 duties involving the exercise ((of)) or failure to exercise judgment
12 and discretion which relate solely to their responsibilities for
13 electrical utilities, hydroelectric facilities, or irrigation works.
14 This grant of immunity shall not be construed as modifying the
15 liability of the irrigation district.

16 **Sec. 2.** RCW 87.03.443 and 1979 ex.s. c 263 s 4 are each amended to
17 read as follows:

18 There may be created for each irrigation district a fund to be

1 known as the upgrading and improvement fund. ((At least)) Not more
2 than five percent of the annual revenue of each irrigation district may
3 ((annually)) be placed into its upgrading and improvement fund, except
4 that all or any part of the funds received by a district from the sale,
5 delivery, and distribution of electrical energy may be deposited into
6 the upgrading and improvement fund. Moneys from the upgrading and
7 improvement fund may only be used to modernize, improve, or upgrade the
8 irrigation facilities of the irrigation district or to respond to an
9 emergency affecting such facilities.

10 **Sec. 3.** RCW 87.06.030 and 1988 c 134 s 3 are each amended to read
11 as follows:

12 Upon receiving the certificates of delinquency prepared by the
13 treasurer, if the board of directors, after reviewing the amount of
14 delinquent assessment compared to the costs of foreclosure, including
15 but not limited to title search, court filing fees, costs of service,
16 and attorney fees, determines that any of the delinquent assessments
17 should in the best interest of the district be foreclosed upon, the
18 treasurer shall order a title search of the property for which a
19 certificate of delinquency has been prepared to determine or verify the
20 legal description of the property to be sold and parties in interest.
21 The treasurer, in the name of the irrigation district, shall commence
22 legal action to foreclose the delinquent assessment liens designated by
23 the board of directors.

24 **Sec. 4.** RCW 87.06.060 and 1988 c 134 s 6 are each amended to read
25 as follows:

26 (1) The proceedings to foreclose the liens against all properties
27 on a general certificate of delinquency or on more than one individual
28 certificate may be brought in one action.

29 (2) No assessment, costs, or interest may be considered illegal
30 because of any irregularity in the assessment roll or because the
31 assessment roll has not been made, completed, or returned within the
32 time required by law, or because the property has been charged or
33 listed in the assessment roll without name, or in any other name than
34 that of the owner, and no error or informality in the proceedings of
35 any of the officers connected with the assessment may invalidate or in
36 any other manner affect the assessment thereof. Any irregularities or

1 informality in the assessment roll or in any of the proceedings
2 connected with the assessment or any omission or defective act of any
3 officer or officers connected with the assessment may be, at the
4 discretion of the court corrected, supplied, and made to conform to the
5 law by the court. This (~~section~~) subsection does not apply if the
6 court finds that the failure to conform to the law unfairly (~~affects~~
7 ~~parties in~~) prejudices a party with an interest in the property.

8 (3) A party with an interest in real property subject to
9 foreclosure within the district may file a written answer within the
10 time permitted by RCW 87.06.040(1)(d) asserting an objection or defense
11 to the entry of a foreclosure judgment against the property. However,
12 defenses or objections shall be limited to: (a) The form of pleading;
13 (b) manner of service; (c) invalidity of the assessments claimed
14 delinquent; (d) payment of the assessments claimed delinquent; or (e)
15 that the real property against which foreclosure is sought is not
16 subject to district assessment. No counterclaim shall be permitted.
17 The court shall liberally permit amendment or supplementation of the
18 district's challenged pleading or procedure to cure the claimed defect.

19 (4) The court shall determine timely objections or defenses to the
20 district's foreclosure in a summary proceeding based only on the
21 district's pleading and the interested party's answer and shall
22 promptly pronounce judgment granting or denying the foreclosure; or the
23 court may, in its discretion, to provide substantial justice to the
24 parties, continue the case to a later time to hear evidence on the
25 issues raised by the answer. Hearings under this section shall be
26 limited to affidavits or declarations, shall be expedited, and shall
27 take precedence over all other pending civil cases.

28 **Sec. 5.** RCW 87.06.110 and 1988 c 134 s 11 are each amended to read
29 as follows:

30 The board of directors of the irrigation district and the county
31 treasurer may through the interlocal cooperation agreement act, chapter
32 39.34 RCW, choose to have one of the treasurers proceed with a combined
33 foreclosure for all property taxes, irrigation assessments, and all
34 costs and interest owing to both entities. Any such agreement shall
35 include a specific statement as to which entity shall assume title if
36 no bids are received equal to or greater than the amount listed on the

1 minimum bid sheet. The agreement shall also clearly specify how any
2 unclaimed excess funds from the sale will be divided between the county
3 and the irrigation district.

4 With a combined foreclosure for all property taxes, all irrigation
5 district assessments, and all costs and interest owing to both
6 entities, the county treasurer may use the foreclosure procedure under
7 chapter 84.64 RCW or the irrigation district treasurer may use the
8 foreclosure procedure under this chapter. When acting as the treasurer
9 for the irrigation district, the county treasurer may use the
10 foreclosure procedure under chapter 84.64 RCW.

11 **Sec. 6.** RCW 60.80.005 and 1996 c 43 s 1 are each amended to read
12 as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter:

15 (1) Except as otherwise provided in this subsection (1), "charges"
16 include: (a) All lawful charges assessed by a utility operated under
17 chapter 35.21, 35.67, 36.36, 36.89, 36.94, (~~(56.167)~~) or 57.08(~~(7-08~~
18 ~~87.03)~~) RCW, but not evidenced by a recorded lien, recorded covenant,
19 recorded agreement, or special assessment roll filed with the city or
20 county treasurer or assessor, and not billed and collected with
21 property taxes; and (b) penalties and interest, and reasonable
22 attorneys' fees and other costs of foreclosure if foreclosure
23 proceedings have been commenced.

24 (2) "Closing agent" means an escrow agent as defined in RCW
25 (~~(18.44.010(4))~~) 18.44.011(6) or a person exempt from licensing (~~and~~
26 ~~registration~~) requirements under RCW (~~(18.44.020)~~) 18.44.021, handling
27 the escrow on the sale of the real property.

28 (3) "Real estate agent" means a real estate broker, real estate
29 salesperson, associate real estate broker, or person as defined in RCW
30 18.85.010 (1) through (4).

31 (4) "Business day" means a day the offices of the county or
32 counties in which the utility in question provides service are open for
33 business.

34 **Sec. 7.** RCW 60.80.010 and 1996 c 43 s 2 are each amended to read
35 as follows:

36 (1) Unless otherwise stated and acknowledged in writing by the

1 purchaser, the seller of a fee interest in real property is responsible
2 for satisfying, upon closing, any lien provided for by RCW 35.21.290,
3 35.67.200, 36.36.045, 36.89.090, or 36.94.150(~~(, 56.16.100, 57.08.080,~~
4 ~~or 87.03.445)~~)).

5 (2) No closing agent may refuse a written request by the seller or
6 purchaser of a fee interest in real property to administer the
7 disbursement of closing funds necessary to satisfy unpaid charges as
8 charges are defined in RCW 60.80.005. Except as otherwise provided in
9 this subsection (2), a closing agent who refuses such a written request
10 is liable to the purchaser for unpaid charges for utility services
11 covered by the request. A closing agent is not liable if the closing
12 agent's refusal is based on the seller's inaccurate or incomplete
13 identification of utilities providing service to the property, or if a
14 utility fails to provide an estimated or actual final billing, or
15 written extension of the per diem rate, as required by RCW 60.80.020,
16 or if disbursement of closing funds necessary to satisfy the unpaid
17 charges would violate RCW (~~18.44.070~~) 18.44.400.

18 (3) A closing agent may charge a fee for performing the services
19 required of the closing agent by this chapter, which fee may be in
20 addition to other fees or settlement charges collected in the course of
21 ordinary settlement practices.

22 **Sec. 8.** RCW 60.80.020 and 1996 c 43 s 3 are each amended to read
23 as follows:

24 (1) Unless the seller and purchaser waive, in writing, the services
25 of a closing agent in administering the disbursement of closing funds
26 necessary to satisfy unpaid charges as charges are defined in RCW
27 60.80.005, the seller shall, as a provision in a written agreement for
28 the purchase and sale of real estate, inform the closing agent for the
29 sale of the names and addresses of all utilities, including special
30 districts, providing service to the property under chapter 35.21,
31 35.67, 36.36, 36.89, 36.94, (~~56.16~~) or 57.08(~~(, or 87.03)~~) RCW. The
32 provision of the information in a written agreement for the purchase
33 and sale of real estate constitutes a written request to the closing
34 agent to administer disbursement of closing funds necessary to satisfy
35 unpaid charges.

36 Unless the seller and purchaser have waived the services of a
37 closing agent as provided in this subsection, the closing agent shall

1 submit a written request for a final billing to each utility identified
2 by the seller as providing service to the property under chapter 35.21,
3 35.67, 36.36, 36.89, 36.94, (~~56.167~~) or 57.08(~~7-or-87.03~~) RCW.
4 Either the seller or purchaser may submit a written request for a final
5 billing to each utility identified by the seller as providing service
6 to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94,
7 (~~56.167~~) or 57.08(~~7-or-87.03~~) RCW.

8 The written request must identify the property by both legal
9 description and address. The closing agent, seller, or purchaser may
10 submit a written request to a utility by facsimile. In requesting
11 final billings for utility services, the closing agent may rely upon
12 information provided by the seller, and a closing agent or a real
13 estate agent who is not the seller is not liable for inaccurate or
14 incomplete information.

15 (2) After receiving a written request for a final billing for
16 utility services to real property to be sold, a utility operated under
17 chapter 35.21, 35.67, 36.36, 36.89, 36.94, (~~56.167~~) or 57.08(~~7-or-
18 87.03~~) RCW shall provide the requesting party with a written estimated
19 or actual final billing as provided in this section. If the utility is
20 unable to provide a written estimated or actual final billing or
21 written extension of the per diem rate, due to insufficient information
22 to identify the account, the utility shall notify the requesting party
23 in writing that the information is insufficient to identify the
24 account.

25 The utility shall provide the written estimated or actual final
26 billing, or statement that the information in the request is
27 insufficient to identify the account, to the requesting party within
28 seven business days of receipt of the written request if the request
29 was mailed to the utility, or within three business days if the request
30 was sent to the utility by facsimile or delivered to the utility by
31 messenger. A utility may provide a written estimated or actual final
32 billing to the requesting party by facsimile.

33 (a) The final billing must include all outstanding charges and, in
34 addition to the estimated or actual final amount owing as of the stated
35 closing date, must state the average per diem rate for the utility or
36 utilities involved, including taxes and other charges, which shall
37 apply for up to thirty days beyond the stated closing date if the
38 closing date is delayed.

1 (b) If closing is delayed beyond thirty days, a new estimated or
2 actual final billing must be requested in writing. In lieu of
3 furnishing a written revised final billing, the utility may extend, in
4 writing, the number of days for which the per diem charge applies. The
5 utility shall respond within seven business days of receipt of the
6 written request for a new estimated or actual final billing if the
7 request was mailed to the utility, or within three business days if the
8 request was sent to the utility by facsimile or delivered to the
9 utility by messenger.

10 (c) If a utility fails to provide a written estimated or actual
11 final billing, written extension of the per diem rate, or statement
12 that the information in the request is insufficient to identify the
13 account, within seven business days of receipt of a written request if
14 the request was mailed to the utility, or within three business days if
15 the request was sent to the utility by facsimile or delivered to the
16 utility by messenger, an unrecorded lien provided for by RCW 35.21.290,
17 35.67.200, 36.36.045, 36.89.090, or 36.94.150(~~(, 56.16.100, 57.08.080,~~
18 ~~or 87.03.445))~~) for charges incurred prior to the closing date is
19 extinguished, and the utility may not recover the charges from the
20 purchaser of the property.

21 (d) A closing agent shall inform the seller and purchaser of all
22 applicable estimated and actual final billings furnished by utilities.

23 In performing his or her duties under this chapter, a closing agent
24 may rely upon information provided by utilities and is not liable if
25 information provided by utilities is inaccurate or incomplete.

26 (3) If closing occurs no later than the last date for which per
27 diem charges may be applied, full payment of the estimated or actual
28 final billing plus per diem charges extinguishes a lien of the utility
29 provided for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090, or
30 36.94.150(~~(, 56.16.100, 57.08.080, or 87.03.445))~~) for charges incurred
31 prior to the closing date.

32 (4)(a) Except as otherwise provided in this subsection (4)(a), this
33 section does not limit the right of a utility to recover from the
34 purchaser of the property unpaid utility charges incurred prior to
35 closing, if the utility did not receive a written request for a final
36 billing or if the utility complied with subsection (2) of this section.

37 A utility may not recover from a purchaser unpaid utility charges
38 incurred prior to closing in excess of an estimated final billing.

1 (b) This section does not limit the right of a utility to recover
2 unpaid utility charges incurred prior to closing, including unpaid
3 utility charges in excess of an estimated final billing, from the
4 seller of the property, or from the person or persons who incurred the
5 charges.

6 (c) If an estimated final billing is in excess of the actual final
7 billing, unless otherwise directed in writing by the seller and
8 purchaser, a utility shall refund any overcharge to the seller of the
9 property by sending the refund in the seller's name to the last address
10 provided by the seller. A utility shall refund the overcharge within
11 fourteen business days of the date the utility receives payment for the
12 final billing, unless a county treasurer acts in an ex officio capacity
13 as the treasurer of a utility, in which case the utility shall refund
14 the overcharge within thirty business days of the date the utility
15 receives payment for the final billing.

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