

HOUSE BILL REPORT

HB 3030

As Passed House:
February 13, 2010

Title: An act relating to the administration of irrigation districts.

Brief Description: Regarding the administration of irrigation districts.

Sponsors: Representatives Fagan and Hinkle.

Brief History:

Committee Activity:

Local Government & Housing: 1/28/10, 2/1/10 [DP].

Floor Activity:

Passed House: 2/13/10, 94-0.

Brief Summary of Bill

- Creates an expedited eminent domain process that may be used by an irrigation district following a court's determination that circumstances warrant the taking of the property prior to a trial on the merits.
- Increases the upper limit of the estimated cost of an irrigation district project eligible for the small works roster process from \$100,000 to \$300,000.
- Authorizes a legal entity created by a contract between two or more irrigation districts to establish an upgrading and improvement fund.
- Denies jurisdiction to boundary review boards with respect to irrigation district boundary changes involving lands falling within the boundaries of a federal reclamation project.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

Majority Report: Do pass. Signed by 10 members: Representatives Simpson, Chair; Nelson, Vice Chair; Angel, Ranking Minority Member; Fagan, Miloscia, Short, Springer, Upthegrove, White and Williams.

Staff: Thamas Osborn (786-7129).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Overview of Irrigation Districts.

Irrigation districts (districts), authorized by the first state Legislature in 1890, are among the oldest special purpose districts in Washington. Originally authorized to provide irrigation facilities and services, they have since been authorized to provide: (1) drainage systems; (2) domestic water; (3) electric energy generation, purchasing and distribution; (4) fire hydrants; (5) sewerage systems; (6) residential energy conservation program assistance; (7) heating systems; and (8) street lighting. Among special purpose districts only port districts possess a greater range of powers. Districts are governed by an elected board of directors.

Jointly Created Governmental Entity: Contract Between Two or More Irrigation Districts.

Two or more districts may jointly create a separate legal entity which may exercise the same powers and authority granted to districts generally. Such an entity must be created through a contract between or among the participating districts. The jointly created entity has only those powers, rights, and responsibilities that are conveyed to it through the contract.

Irrigation District Upgrading and Improvement Fund.

Districts are authorized to create an upgrading and improvement fund that is financed from the annual revenue of the district. The board determines what portion of a district's revenue will be placed in the fund, which may include revenue derived from the sale, delivery, or distribution of electrical energy. Moneys from the fund may be used for the following purposes:

- to modernize, improve, or upgrade the irrigation or facilities of the district; or
- to respond to an emergency affecting a district's irrigation facilities.

Eminent Domain: Condemnation Powers of Irrigation Districts.

The board of a district is broadly authorized to acquire property and water rights either through purchase, condemnation, or other legal means. This authorization includes the power to acquire property, water, or water rights necessary for the construction, use, supply, maintenance, repair, and improvement of canals, irrigation facilities, drainage works, and reservoirs. State law explicitly states that a district's use of irrigation water, rights-of-way, and other property for the purposes of the district constitutes a public use. In acquiring property rights for district use through condemnation, a district must do so in the same manner prescribed for private corporations in cases involving the appropriation of lands, real estate, and other property.

Eminent Domain Powers of Private Corporations.

Any private corporation authorized by law to appropriate land or other property for right-of-way, or any other corporate purpose, must adhere to specified procedures when exercising its power of eminent domain. These procedures include the submission of a petition to the appropriate superior court that:

- describes the property;
- identifies those who have ownership and other rights to the property;
- states the purpose for which the property is being sought for appropriation; and
- requests that a jury be impaneled to determine the compensation to be paid to the owners of rights to the property.

At the time of the hearing of the petition, a judge must determine the following before impaneling a jury:

- that all those with an interest in the property have been properly notified;
- that the contemplated use for the property is either a truly public use or a permissible private use for a necessary right-of-way;
- that either public interest requires that the corporation be granted rights to the property or, in the case of a right-of-way, that such private use is a necessity; and
- that the property sought to be appropriated is required and necessary for the purposes stated by the corporation.

If the court determines that the corporation has met its burden of proof with respect to these requirements and conditions, the court must then impanel a jury to determine the compensation to be awarded to the property owner.

Small Works Roster: Project Contracting by Irrigation Districts.

Generally, state agencies and certain local governments may use a small works roster process to award contracts for public works estimated to cost \$300,000 or less. A single roster may be created or different rosters for different specialties or categories of anticipated work. In addition, distinctions may be made between contractors based on geographic areas. The agency or local government may solicit bids from all appropriate contractors on the roster, but at a minimum five bids must be solicited. The contract, if awarded, is awarded to the lowest responsible bidder. An effort must be made to equitably distribute the opportunity among contractors on the appropriate roster if bids are solicited from less than all contractors on the roster.

With respect to districts, state law requires that the use by districts of the small works roster process is limited to projects estimated to cost \$100,000 or less.

Boundary Review Boards and Irrigation Districts.

Generally, the formation of a district and any alteration of a district's boundaries may be subject to review by a Boundary Review Board (BRB).

Boundary Review Boards are authorized in statute to guide and control the creation and growth of municipalities in metropolitan areas. While statute provides for the establishment of BRBs in counties with at least 210,000 residents, current law provides that a BRB may be created and established in any other county. Boundary Review Board members are appointed by the Governor and local government officials from within the applicable county. Some members are appointed by the BRBs themselves from nominees of special districts

within the applicable county. After initial appointments, all members serve four-year terms. Upon receiving a timely request for review that meets statutory requirements, and following an invocation of a BRB's jurisdiction, a BRB must review and approve, disapprove, or modify certain proposed actions, including actions pertaining to the creation, incorporation, or change in the boundary of any city, town, or special purpose district. In reaching decisions on proposed actions, BRBs must satisfy public hearing requirements and attempt to achieve objectives prescribed in statute, including the preservation of natural neighborhoods and communities, and the use of physical boundaries. Generally, decisions on proposed actions must be made within 120 days of the BRB receiving a valid request for review.

Federal Reclamation Projects and Irrigation Districts.

The U.S. Bureau of Reclamation (Bureau) is a federal agency engaged in water and electricity generating projects in 17 western states. The Bureau manages, develops, and protects water and related resources, and is the nation's largest wholesale water supplier. The Bureau is the second largest producer of hydroelectric power in the west, and has constructed more than 600 dams and reservoirs.

A district is authorized to enter into contracts with the federal government with respect to matters relating to federal reclamation projects. Such contracts must be consistent with pertinent federal reclamation laws.

Summary of Bill:

Limitations on BRB Review of Changes to District Boundaries.

Boundary Review Boards do not have jurisdiction to review additions to, or exclusions of, district lands if such lands fall within the boundaries of a federal reclamation project.

Eminent Domain: Expedited Condemnation Process for Irrigation Districts.

Under specified circumstances, a district may utilize an expedited condemnation process when it requires immediate possession of a property and a court has issued an "order of necessity" supporting the need for such process. At the outset, this expedited process involves the following procedural steps:

- court issuance of an "order of necessity" regarding the taking of the property;
- district offer to purchase the property from the owner for a specific sum in compensation for the taking of the property; and
- advance payment by the district to the court of the dollar amount offered to the property owners, which is then held by the court.

Upon the completion of these initial procedural steps, the court must enter an order granting the district immediate possession of the property, without further notice to the property owner. The preliminary court order granting immediate possession of the property to the district must specifically require that the district pay the full amount of the final judgment of compensation and damages to the property, as determined in subsequent legal proceedings.

The purchase amount initially paid to the court by the district prior to the district assuming possession of the property is presumed to be just compensation for the taking of such property. The property owner may challenge the sufficiency of the compensatory payment and request a trial for the purpose of determining the amount of compensation he or she should ultimately receive.

If the trial court awards the property owner a sum greater than that of the advance payment made by the district to the court, then the district must pay the difference to the property owner, as well as interest and costs incurred by the property owner during the litigation process. Should the trial court award a compensation amount equal to the district's advance payment, the costs of the proceedings must be borne by the district. If the court-ordered compensation amount is less than the district's advance payment, each party must pay its own court costs.

The act includes additional procedural requirements pertaining to a property owner's request for a trial for the purpose of determining the just compensation and damages he or she should be awarded as the result of the taking.

Small Works Roster Process: Project Contracting by Irrigation Districts.

The upper limit of the estimated cost of a district project eligible for the small works roster process is increased from \$100,000 to \$300,000.

Upgrading and Improvement Fund.

A legal entity created by a contract between two or more districts is authorized to establish an upgrading and improvement fund.

A district may use its upgrading and improvement fund for licensing hydroelectric power facilities and for payment of capital improvements.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This provisions of the bill are necessary for the efficient functioning of districts statewide. Districts are essential to the well-being of the state's agricultural economy and this bill will thus benefit agricultural activities. Districts already have eminent domain powers for the purpose of obtaining essential easements and rights-of-way, and the bill provides the same type of expedited condemnation powers currently exercised by the Department of Transportation. Districts need a faster means of condemnation in order to obtain the property rights needed to quickly complete needed projects in the short term. More traditional eminent domain processes are simply too slow. The oversight of BRB makes little sense

with respect to district activities. Accordingly, the bill eliminates BRB authority regarding lands within federal reclamation projects. The small works roster provision in the bill provides the same guidelines as those applied to most other state agencies and public entities.

(Opposed) none.

Persons Testifying: Representative Fagan, prime sponsor; and Mike Schwisow, Washington State Water Resources Association.

Persons Signed In To Testify But Not Testifying: None.