

HOUSE BILL REPORT

ESHB 1417

As Passed House:
January 27, 2014

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

Brief Description: Regarding irrigation district administration.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Manweller, Fagan and Warnick).

Brief History:

Committee Activity:

Local Government: 2/7/13, 2/12/13 [DPS].

Floor Activity:

Passed House: 1/27/14, 96-0.

Brief Summary of Engrossed Substitute Bill

- Modifies provisions relating to the administration of irrigation districts (districts) by increasing dollar thresholds, increasing the number of days within which hearings must be held, and altering procedures for reviewing delinquent assessments and initiating foreclosure.
- Authorizes districts to approve and condition placement of hydroelectric generation facilities under certain circumstances.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Takko, Chair; Kochmar, Assistant Ranking Minority Member; Buys, Fitzgibbon, Springer, Taylor, Crouse and Upthegrove.

Minority Report: Without recommendation. Signed by 1 member: Representative Liias.

Staff: Michaela Murdock (786-7289).

Background:

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.

Irrigation districts (districts) provide construction, improvement, maintenance, and operation of irrigation systems. Districts may also provide drainage, domestic water supply, and electric power facilities. Districts are governed by an irrigation district elected board of directors (board).

Powers of the Irrigation District.

All districts that are operating and maintaining an irrigation system have numerous statutorily enumerated powers, which include the powers to:

- purchase and sell electricity to residents of the district;
- acquire and operate dams, canals, plants, transmission lines, and other power equipment, and to generate and transmit electricity;
- acquire and operate hydroelectric facilities for the generation of electricity, and to sell electricity generated at any such facility;
- acquire and maintain a system of drains, sanitary sewers, and sewage disposal or treatment plants;
- assume indebtedness to the United States under the federal reclamation laws;
- acquire, install, and maintain water mains and fire hydrants for firefighting purposes;
- contract with other entities to jointly acquire and maintain irrigation water, domestic water, drainage, and sewerage works, and electrical power works; and
- acquire and operate a water-sewer district's water system that is wholly within the irrigation district's boundaries to provide water for domestic use of district residents.

Sale or Lease of Irrigation District Personal Property.

Districts have the power to sell or lease personal property owned by the district. Such personal property may be sold or leased when the board determines that the property is not needed by the district and authorizes the sale or lease.

For property valued at less than \$500, notice of the sale or lease must be published in a newspaper of general circulation once a week for three consecutive weeks at least 20 days prior to the date of the sale or lease. The notice must state: (1) the intention of the board to sell or lease the property; (2) the time and place at which proposals for the sale or lease will be considered; and (3) the time and place at which the sale or lease will occur. Any property so sold or leased must go to the highest and best bidder.

Adding Lands to Irrigation Districts of 200,000 or More Acres.

Five or a majority of title holders of an area of land may petition a district, comprising 200,000 or more acres, for inclusion in the district. To bring the petition, the land proposed to be included must be susceptible of irrigation from the water supply and system of works of the district.

The board must schedule a hearing on the petition to be held not less than 30 days, but not more than 45 days from the date the petition was filed. Notice of the hearing must be published prior to the hearing date. The hearing must be held at the time and place specified in the notice, and any adjournment may not exceed 30 days in all. At the hearing, the board may determine all matters pertaining to the petition, including denying the petition, granting it, or denying or granting any portion of it. In granting any petition, the board must find that all or part of the land proposed to be added is susceptible of irrigation from the district and

will benefit from such irrigation, and not more than 50 percent of holders of title to the land have filed timely, written objections.

Irrigation Districts that May Designate a Treasurer.

In general, the treasurer of the county in which a district office is located is, by virtue of his or her office, treasurer of the district. However, a district may designate a treasurer under certain circumstances. To be able to designate a treasurer, a district must:

- lie in more than one county and have had assessments in each of two of the preceding three years of \$500,000 or more;
- lie in more than one county and be governed by a board of joint control created under applicable statute;
- lie in only one county and have had assessments, tolls, and miscellaneous collections in each of two of the preceding three years of \$2 million or more; or
- lie in only one county and the district board must have the approval of the county treasurer to designate a treasurer.

Delinquent Irrigation District Assessments.

The district treasurer (treasurer) must prepare certificates of delinquency (certificate) on properties for unpaid irrigation district assessments, costs, and interest, which initiates the district's foreclosure proceedings. The certificate must be prepared 36 calendar months after the date when the assessment first became delinquent. Certificates may be made for individual properties or issued in one general certificate for all delinquent properties.

For each property that the treasurer has prepared a certificate, the treasurer must order a title search. The treasurer must then determine or verify the legal description of the property and the parties of interest.

For districts with 200,000 or more acres, the board, upon receiving a certificate from the treasurer, compares the amount of the delinquent assessment to the cost of foreclosure. Such costs may include title search costs, court filing fees, costs of service, attorneys' fees, etc. In reviewing the certificate, the board may determine that it is not in the best interest of the district to foreclose the delinquent assessment.

Competitive Bidding for Irrigation District Contracts.

Unless otherwise exempted by statute, purchases of any materials, supplies, or equipment by the district must be based on competitive bids. As standard procedure, the district must solicit formal sealed bids. The board may, however, adopt a policy waiving formal sealed bidding procedures for purchases of materials, supplies, or equipment for an amount set by the board, but not exceeding \$40,000, for each purchase.

For purchases up to \$50,000, exclusive of sales tax, the board may adopt a policy to use the purchase contract process authorized in statute for municipalities. Under such a policy, the board may compile vendor lists, obtain telephone or written quotes from at least three vendors for a purchase, and award the purchase contract to the lowest responsible bidder. The estimated cost of the purchases must be within a range of amounts established by the board, up to \$50,000.

Federal Reclamation Projects and Irrigation Districts.

The United States 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.

Summary of Engrossed Substitute Bill:

Powers of the Irrigation District.

Districts are granted authority to approve and condition placement of hydroelectric generation facilities on water conveyance facilities operated or maintained by the district, when placement of the hydroelectric generation facilities is made by entities other than the district.

Notice of Sale or Lease of Irrigation District Personal Property.

The dollar threshold above which notice of a sale or lease of district personal property must be published in accordance with statute is increased from \$500 to \$10,000. In other words, no publication of notice is required for the sale or lease of property under \$10,000.

Hearings on Petitions to Add Lands to Irrigation Districts.

For petitions to add lands to a district of 200,000 or more acres, the amount of time within which the board must schedule a hearing is increased. A hearing must be held not less than 30 days, but not more than 180 days (increased from 45 days) from the date the petition was filed. Also, any adjournment of the hearing may not exceed a total of 180 days (increased from 30 days).

Certificates of Delinquency.

Prior to preparing a certificate of delinquency, treasurers of districts that have designated their own treasurer must prepare a list of properties that may be subject to foreclosure for delinquent assessments. The board must review the list of properties prepared by the designated treasurer of the district and compare the amount of the delinquent assessment to the costs of foreclosure. Such costs may include title search costs, court filing fees, costs of service, attorneys' fees, etc. In reviewing the list, the board may determine that it is not in the best interest of the district to foreclose the delinquent assessment. A treasurer is not precluded, however, from proceeding with foreclosure and collecting delinquent assessments.

Competitive Bidding for Irrigation District Contracts.

When a board waives formal sealed bidding procedures for purchases of materials, supplies, or equipment, the maximum amount that the board may set for each purchase is increased from \$40,000 to \$50,000.

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 bill is an omnibus bill that makes many technical fixes to statutes that have been identified by districts in recent years as containing problems. The irrigation statutes are old statutes, and they need updating. These are fairly common sense technical requests.

Section 1 of the bill, which exempts sales or leases of district personal property valued at less than \$10,000 from publication requirements, is needed in order to make it consistent with other special purpose district statutes.

Sections 2 and 3 address a problem related to petitions to add lands to a district that include a federal reclamation project. For such petitions, both the Bureau and the district must complete an administrative process after the petition has been filed. The current timeframe does not allow sufficient time to complete these administrative processes. Sections 2 and 3 add additional time.

Section 4 authorizes boards to decide whether to foreclose delinquent assessments. This is needed because, for example, districts may not want to foreclose undesirable properties that could ultimately sit on the district's books and create liability. Also, an amendment to section 4, which has been agreed upon, will be forthcoming. The amendment will indicate that only treasurers of districts that designate their treasurers will have authority to handle these foreclosure issues.

Section 5 identifies an inconsistency in districts' methods of purchasing supplies and equipment. It unifies the statutory dollar thresholds at \$50,000.

Section 6 concerns federal reclamation projects. The federal government owns all of the works of a federal reclamation project; however, districts, organized under state law, are contractually obligated to operate and maintain certain works. In entering into these contracts, the districts take on a lot of liability. This section addresses situations in which a third party wishes to construct a project on a federal reclamation project that is operated and maintained by a district. Districts need to be involved in the siting and construction of such third-party projects, because they are liable for the works and they are knowledgeable about the day-to-day operations and particularities of the project site.

Section 7 deals with districts' relationship with the federal government. The federal government wants districts to indemnify it against negligence for projects it built. Districts do not think that this is fair, but they have little bargaining power when it comes to the federal government. Section 7 will place districts in a better position when negotiating issues of liability with the federal government.

(Opposed) None.

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

Persons Signed In To Testify But Not Testifying: None.