

HOUSE BILL REPORT

SB 5824

As Reported by House Committee On:
Local Government
Finance

Title: An act relating to the financing of irrigation district improvements.

Brief Description: Regarding the financing of irrigation district improvements.

Sponsors: Senators Honeyford, Hatfield, Schoesler and Shin.

Brief History:

Committee Activity:

Local Government: 3/21/13, 3/26/13 [DPA];

Finance: 4/1/13, 4/8/13 [DPA(LG)].

**Brief Summary of Bill
(As Amended by Committee)**

- Makes numerous changes to provisions governing local improvement districts (LIDs) created by irrigation districts, including: (1) specifying that LID bonds do not constitute a general indebtedness against the issuing irrigation district; (2) authorizing LIDs to be comprised of noncontiguous territory and formed in a neighboring irrigation district; (3) establishing provisions governing what "improvement costs" in a LID must include; and (4) removing an exemption allowing farm, agricultural, and timber lands to be exempt from special benefit assessments of LIDs within irrigation districts.
- Provides that contracts to indemnify against liability for damages caused by the federal government are not enforceable absent express authorization in state law.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended. Signed by 8 members: Representatives Takko, Chair; Fitzgibbon, Vice Chair; Taylor, Ranking Minority Member; Kochmar, Assistant Ranking Minority Member; Buys, Liias, Springer and Upthegrove.

Staff: Ethan Moreno (786-7386).

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:

Irrigation Districts – Function and Management.

Irrigation districts provide for the construction, improvement, maintenance, and operation of irrigation systems. Irrigation districts also may provide drainage, domestic water supply, and electric power facilities. Irrigation districts are established through a landowner petition process and subsequent voter approval. A board of three, five, or seven elected directors (Board) is responsible for the management of each district. Irrigation districts may finance their operations and actions through fees, charges, and assessments, but irrigation districts do not have the authority to impose property taxes.

Local Improvement Districts, Financing, and Bond Provisions.

Irrigation districts may form local improvement districts (LIDs) within their jurisdictional boundaries. A LID is a special assessment district that is created by a sponsoring government for the purpose of funding capital improvements in a designated geographic area. The cost of the improvement, including its operation and maintenance, must be assessed through special benefit assessments against the lands within the LID in proportion to the accrued benefits, although exemptions to the special benefit assessments exist for farm, agricultural, and timber lands that are classified and taxed according to lower rate 'current use' provisions.

In irrigation districts, LIDs may be formed through a director-initiated process or through a petition-based process requiring the satisfaction of public hearing and surety bond requirements. The LIDs may also be formed to qualify under the Washington State Reclamation Act, an act that provides for the reclamation of suitable lands for reclamation and development as agricultural lands.

In financing improvements for LIDs, irrigation districts may issue bonds or enter into a contract with the federal government, the state, or both to repay the cost of the improvement. If bonds are issued or if a contract is formed, the issued bonds or the contract is a primary obligation of the LID and a general obligation of the irrigation district.

General administrative provisions govern the issuing of the bonds, including: a prohibition on issuing the bonds for less than par; a requirement to issue the bonds in a denomination that is a multiple of \$100; a requirement that the bonds be signed by the president and secretary of the irrigation district; and requirements governing the production of the bonds and criminal provisions for bond printers who intend to defraud persons with facsimile signatures of district officials.

Irrigation districts that have issued LID bonds for improvements may issue, in place of these bonds, general bonds of the district. The general bonds may not be issued in excess of the LID bonds, but the district may sell the general bonds or exchange them with the owners of previously issued LID bonds for the purpose of redeeming the LID bonds.

With limited exceptions, irrigation districts that furnish or may furnish certain water, power, or drainage or sewerage services for which rates or tolls and charges are imposed, or contract payments made, may issue and sell bonds that are payable from revenues derived from the rates, tolls and charges, or contract payments for the specified services. The directors of the irrigation district may issue revenue bonds with a 40-year maximum term without voter

approval, and may issue revenue bonds with longer terms with voter approval. Districts that are in debt to the state must have approval from the Director of the Department of Ecology prior to issuing revenue bonds.

Local Improvement Guarantee Fund.

Irrigation districts with LIDs have a Local Improvement Guarantee Fund (Fund). The purpose of the Fund is to guarantee that payment funds are available for LID bonds, warrants, and contracts. The balance of the Fund is derived from assessments against properties in the district. Sums annually assessed for the Fund may not exceed the amount that is sufficient to pay the outstanding warrants or contract indebtedness on the Fund. The annually assessed sums are also used to establish a Fund balance, but the assessed sums may not be used to create a balance that exceeds 5 percent of the guaranteed outstanding obligations.

Delinquencies.

If a delinquency occurs with respect to a debt owed to an irrigation district, the district's treasurer must, 36 months from the month of the date of the delinquency, prepare certificates of delinquency on the property for the unpaid irrigation district assessments and for costs and interests. Properties with unpaid assessments are subject to eventual foreclosure and sale.

Utility Local Improvement Districts.

Irrigation districts may establish utility local improvement districts (ULIDs) within their territory and may levy special assessments in the same manner as for LIDs. While largely similar to a LID, the difference between the improvement districts is that under ULID requirements, assessments and utility revenues are pledged to the repayment of the ULID debt on the benefitting properties.

If a ULID is proposed in an irrigation district, a petition calling for its establishment must specify that the sole purpose of the assessments levied against the real property within the ULID must be the payment of the proceeds of those assessments into a revenue bond fund for the payment of revenue bonds, that no warrants or bonds may be issued in any such ULID, and that the collection of interest and principal on all assessments in the ULID must be paid into the revenue bond fund.

Federal Reclamation Projects.

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.

An irrigation or reclamation district may enter into contracts with the federal government with respect to matters relating to federal reclamation projects. These contracts must be consistent with applicable federal reclamation laws. For contracts transferring operations and maintenance of federal reclamation project works to a district, the contract does not impute to the irrigation or reclamation district negligence for design or construction defects or deficiencies of the transferred works.

Summary of Amended Bill:

Numerous changes to provisions governing local improvement districts (LIDs) created by irrigation districts are established.

Bond Issuance and Administration

Any LID bonds and associated interest issued against the bond redemption fund of a LID established within an irrigation district is a valid claim of the owner only against the improvement guarantee fund, the LID redemption fund, and the assessments or revenues pledged to these funds. The bonds do not constitute a general indebtedness against the issuing irrigation district unless the district directors expressly provide by resolution for a pledge of general indebtedness.

Bonds must be issued in a denomination that is a multiple of \$1,000, and a provision specifying that no bond may be sold for less than par is deleted. A provision specifying that any contract entered into for the local improvement by the irrigation district with the United States or the State of Washington, or both, must be a general obligation of the irrigation district is deleted. Other general administrative provisions governing the issuance of bonds are also deleted, including requirements obligating the bonds to be signed by the president and secretary of the irrigation district, and requirements governing the production of the bonds and criminal provisions for bond printers who intend to defraud persons with facsimile signatures of district officials.

Irrigation districts that have issued LID bonds for improvements may issue, in place of these bonds, LID or revenue refunding bonds of the district in accordance with bond refunding requirements.

A requirement that districts that are in debt to the state must have approval from the Director of the Department of Ecology prior to issuing revenue bonds is deleted.

Formation Requirements, Extra-Territorial LIDs.

Requirements governing the petition process to form a LID in an irrigation district are modified, as follows: (1) surety bond requirements for persons petitioning the formation of a LID within an irrigation district are deleted; (2) the petition proposal to form a LID may be dismissed without cost to the petitioners if the irrigation district directors determine that its formation is not in the best interest of the district; and (3) a public hearing required during the formation process may be conducted by a hearing officer who will report recommendations on the establishment of the LID to a board of three, five, or seven elected directors (Board) for final action.

A LID may include adjoining, vicinal, or neighboring improvements even though the improvements and the properties benefited are not connected or continuous. Additionally, upon approval of the Board of an adjoining irrigation district, an irrigation district may form LIDs or utility local improvement districts (ULIDs) that are composed entirely or in part of territory within that adjoining district.

A LID established in an irrigation district is authorized to use the formation, levying, collection, and enforcement by foreclosure methods employed by cities and towns. A provision specifying that LIDs may also be formed to qualify under the Washington State Reclamation Act is deleted.

Delineated Costs of Improvements.

The costs of the improvement for a LID in an irrigation district must include, but not be limited to, several specified costs, including:

- the cost of all of the construction or improvement authorized for the district;
- the estimated cost and expense of ascertaining the ownership of the lots or parcels of land included in the assessment district; and
- the cost for legal, financial, and appraisal services and any other expenses incurred by the irrigation district for the LID or in the formation of the LID.

Subject to action by the Board, any of the delineated costs of improvements may be excluded from the cost and expense to be assessed against the property in the LID and may be paid from any other moneys available. Additionally, the Board is authorized to give credit for all or any portion of any property or other donation against an assessment, charge, or other required financial contribution for improvements within a LID. Provisions governing treasurer responsibilities are modified, and the Board is authorized to conduct a hearing on the assessment roll and to report recommendations on the roll to the Board for final action.

Local Improvement Guarantee Fund.

The annually assessed sums in an irrigation district's Local Improvement Guarantee Fund (Fund) may not exceed 10, rather than 5, percent of the guaranteed outstanding obligations. The balance of the Fund may also be established from the deposit of prepaid local improvement assessments or proceeds of LID bonds.

Removal of Current-Use Exemption.

'Current-use' and forest and timber land property tax provisions that exempt farm, agricultural, and timber lands from special benefit assessments of LIDs are modified to remove the exemptions and make the lands subject to special benefit assessments for a LID created by an irrigation district.

Delinquencies.

If a delinquency occurs with respect to a LID assessment, the district's treasurer has 24 months from the month of the date of delinquency to prepare certificates of delinquency on the property for the unpaid assessments and for costs and interests.

Utility Local Improvement Districts.

Provisions governing the petition-based process of forming ULIDs in irrigation districts are modified. The petition calling for the formation must specify that special assessments paid before issuance and sale of bonds may be deposited in a fund for the payment of costs of improvements in the ULID.

Federal Reclamation Projects.

With regard to contracts transferring operations and maintenance of federal reclamation project works to an irrigation or reclamation district, any contracts or promises to indemnify

against liability for damages caused by or resulting from the negligent acts or omissions of the federal government, its employees, or its agents are not enforceable unless expressly authorized in state law.

Amended Bill Compared to Original Bill:

The amended bill specifies that, with regard to contracts with the federal government for the transfer of operations and maintenance of the works of a federal reclamation project to an irrigation or reclamation district and associated nonimputable negligence provisions, any contract or other specified document purporting to indemnify against liability for damages caused by or resulting from negligent acts or omissions of the United States, its employees, or agents is not enforceable unless expressly authorized by state law.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The underlying bill is intended to 'tune up' local improvement district (LID) provisions for irrigation districts and to implement a solution to depletion of the Odessa aquifer. Revenue bonds backed by assessments are the tool for financing LIDs. The United States Bureau of Reclamation, in providing water to the East Columbia Basin Irrigation District, is asking the district to indemnify the federal government for future actions, but the district is unwilling to do so and similar indemnification provisions were rejected by the state. The language in the committee amendment was modeled after existing statutes.

(Opposed) None.

Persons Testifying: Mike Schwisow, Washington State Water Resources Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass as amended by Committee on Local Government. Signed by 13 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Fitzgibbon, Hansen, Lytton, Pollet, Reykdal, Springer, Vick and Wilcox.

Staff: Jeff Olsen (786-7175).

Summary of Recommendation of Committee On Finance Compared to Recommendation of Committee On Local Government:

No new changes recommended.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Irrigation district financing statutes have not been updated for many years. This bill would modernize the language. The changes in the bill support moving forward with the Odessa project. The amendments made by the policy committee address indemnification issues due to negligent acts by federal employees.

(Opposed) None.

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

Persons Signed In To Testify But Not Testifying: None.