CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5665

Chapter 215, Laws of 2004

58th Legislature
2004 Regular Session

IRRIGATION DISTRICT ADMINISTRATION

EFFECTIVE DATE: 6/10/04

Passed by the Senate March 8, 2004
YEAS 48  NAYS 0

BRAD OWEN
President of the Senate

Passed by the House March 3, 2004
YEAS 95  NAYS 0

FRANK CHOPP
Speaker of the House of Representatives


CERTIFICATE

I, Milton H. Doumit, Jr., Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE SENATE BILL 5665 as passed by the Senate and the House of Representatives on the dates hereon set forth.

MILTON H. DOUMIT JR.
Secretary

FILED
March 29, 2004 - 3:14 p.m.

GARY F. LOCKE
Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to administration of irrigation districts; and amending RCW 87.03.138, 87.03.277, 87.03.443, 87.06.030, 87.06.060, 87.06.110, 60.80.005, 60.80.010, and 60.80.020.

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

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

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

Sec. 2. RCW 87.03.277 and 2002 c 53 s 1 are each amended to read as follows:
Irrigation districts that have designated their own treasurers as provided in RCW 87.03.440 may accept credit cards, charge cards, debit cards, smart cards, stored value cards, federal wire, and automatic clearinghouse system transactions, or other electronic communication, for any payment of any kind including, but not limited to, assessments, fines, interest, penalties, special assessments, fees, rates, tolls and charges, or moneys due irrigation districts. A payer desiring to pay by a credit card, charge card, debit card, smart card, stored value card, federal wire, automatic clearinghouse system, or other electronic communication shall bear the cost of processing the transaction in an amount determined by the treasurer, unless the board of directors finds that it is in the best interests of the district to not charge transaction processing costs for all payment transactions made for a specific category of payments due the district, including, but not limited to, assessments, fines, interest, penalties, special assessments, fees, rates, tolls, and charges. The treasurer's cost determination shall be based upon costs incurred by the treasurer and may not, in any event, exceed the additional direct costs incurred by the district to accept the specific form of payment used by the payer.

Sec. 3. RCW 87.03.443 and 1979 ex.s. c 263 s 4 are each amended to read as follows:

There may be created for each irrigation district a fund to be known as the upgrading and improvement fund. The board of directors shall determine what portion of the annual revenue of the irrigation district will be placed into its upgrading and improvement fund, including all or any part of the funds received by a district from the sale, delivery, and distribution of electrical energy. Moneys from the upgrading and improvement fund may only be used to modernize, improve or upgrade the irrigation facilities of the irrigation district or to respond to an emergency affecting such facilities.

Sec. 4. RCW 87.06.030 and 1988 c 134 s 3 are each amended to read as follows:

The treasurer shall order a title search of the property for which
a certificate of delinquency has been prepared to determine or verify
the legal description of the property to be sold and parties in
interest. In districts with two hundred thousand acres or more, the
board of directors, upon receiving the certificates of delinquency may,
after reviewing the amount of delinquent assessment compared to the
costs of foreclosure, including but not limited to title search, court
filing fees, costs of service, and attorneys' fees, determine that it
is not in the best interest of the district to commence legal action to
foreclose the delinquent assessment liens.

Sec. 5. RCW 87.06.060 and 1988 c 134 s 6 are each amended to read
as follows:

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

(2) No assessment, costs, or interest may be considered illegal
because of any irregularity in the assessment roll or because the
assessment roll has not been made, completed, or returned within the
time required by law, or because the property has been charged or
listed in the assessment roll without name, or in any other name than
that of the owner, and no error or informality in the proceedings of
any of the officers connected with the assessment may invalidate or in
any other manner affect the assessment thereof. Any irregularities or
informality in the assessment roll or in any of the proceedings
connected with the assessment or any omission or defective act of any
officer or officers connected with the assessment may be, at the
discretion of the court corrected, supplied, and made to conform to the
law by the court. This subsection does not apply if the
court finds that the failure to conform to the law unfairly ((affects
parties in)) prejudices a party with an interest in the property.

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

(4) The court shall determine timely objections or defenses to the district's foreclosure in a summary proceeding based only on the district's pleading and the interested party's answer and shall promptly pronounce judgment granting or denying the foreclosure; or the court may, in its discretion, to provide substantial justice to the parties, continue the case to a later time to hear evidence on the issues raised by the answer. Hearings under this section shall be limited to affidavits or declarations, and shall be expedited.

Sec. 6. RCW 87.06.110 and 1988 c 134 s 11 are each amended to read as follows:

The board of directors of the irrigation district and the county treasurer may through the interlocal cooperation agreement act, chapter 39.34 RCW, choose to have one of the treasurers proceed with a combined foreclosure for all property taxes, irrigation assessments, and all costs and interest owing to both entities. Any such agreement shall include a specific statement as to which entity shall assume title if no bids are received equal to or greater than the amount listed on the minimum bid sheet. The agreement shall also clearly specify how any unclaimed excess funds from the sale will be divided between the county and the irrigation district.

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

Sec. 7. RCW 60.80.005 and 1996 c 43 s 1 are each amended to read as follows:

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

(1) Except as otherwise provided in this subsection (1), "charges" include: (a) All lawful charges assessed by a utility operated under
chapter 35.21, 35.67, 36.36, 36.89, 36.94, (56.16, or 87.03) RCW, but not evidenced by a recorded lien, recorded covenant, recorded agreement, or special assessment roll filed with the city or county treasurer or assessor, and not billed and collected with property taxes; and (b) penalties and interest, and reasonable attorneys' fees and other costs of foreclosure if foreclosure proceedings have been commenced.

(2) "Closing agent" means an escrow agent as defined in RCW (18.44.010(4)) or a person exempt from licensing requirements under RCW (18.44.020), handling the escrow on the sale of the real property.

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

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

Sec. 8. RCW 60.80.010 and 1996 c 43 s 2 are each amended to read as follows:

(1) Unless otherwise stated and acknowledged in writing by the purchaser, the seller of a fee interest in real property is responsible for satisfying, upon closing, any lien provided for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090, or 36.94.150 (56.16.100, 57.08.080, or 87.03.445).

(2) No closing agent may refuse a written request by the seller or purchaser of a fee interest in real property to administer the disbursement of closing funds necessary to satisfy unpaid charges as charges are defined in RCW 60.80.005. Except as otherwise provided in this subsection (2), a closing agent who refuses such a written request is liable to the purchaser for unpaid charges for utility services covered by the request. A closing agent is not liable if the closing agent's refusal is based on the seller's inaccurate or incomplete identification of utilities providing service to the property, or if a utility fails to provide an estimated or actual final billing, or written extension of the per diem rate, as required by RCW 60.80.020, or if disbursement of closing funds necessary to satisfy the unpaid charges would violate RCW (18.44.070) 18.44.400.
(3) A closing agent may charge a fee for performing the services required of the closing agent by this chapter, which fee may be in addition to other fees or settlement charges collected in the course of ordinary settlement practices.

Sec. 9. RCW 60.80.020 and 1996 c 43 s 3 are each amended to read as follows:

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

Unless the seller and purchaser have waived the services of a closing agent as provided in this subsection, the closing agent shall submit a written request for a final billing to each utility identified by the seller as providing service to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, ((56.16,)) or 57.08((, or 87.03)) RCW. Either the seller or purchaser may submit a written request for a final billing to each utility identified by the seller as providing service to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, ((56.16,)) or 57.08((, or 87.03)) RCW.

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

(2) After receiving a written request for a final billing for utility services to real property to be sold, a utility operated under chapter 35.21, 35.67, 36.36, 36.89, 36.94, ((56.16,)) or 57.08((, or
RCW shall provide the requesting party with a written estimated or actual final billing as provided in this section. If the utility is unable to provide a written estimated or actual final billing or written extension of the per diem rate, due to insufficient information to identify the account, the utility shall notify the requesting party in writing that the information is insufficient to identify the account.

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

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

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

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

(d) A closing agent shall inform the seller and purchaser of all applicable estimated and actual final billings furnished by utilities. In performing his or her duties under this chapter, a closing agent may rely upon information provided by utilities and is not liable if information provided by utilities is inaccurate or incomplete.

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

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

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

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

Passed by the Senate March 8, 2004.
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