
**Agriculture & Natural
Resources Committee**

SB 5665

Brief Description: Changing irrigation district administration provisions.

Sponsors: Senators Rasmussen and Swecker.

Brief Summary of Bill

- Expands civil liability immunity for irrigation districts.
- Alters the formula for how much money must be dedicated to an irrigation district's upgrade and improvement fund.
- Provides judicial directions for foreclosure challenges and defenses.
- Removes irrigation districts from the statutes that regulate utility billings at property sales.

Hearing Date: 4/2/03

Staff: Jason Callahan (786-7117).

Background:

General

Irrigation districts may be created for a number of reasons, including to provide a system of water distribution for irrigation purposes. Irrigation districts may purchase, construct, operate, maintain, and repair systems of diverting conduits from a natural source of water supply for individual distribution for irrigation. An irrigation district also may perform a variety of other functions, including purchase and sale of electric power for irrigation and domestic use, operation of a domestic water system for irrigated land owners, and operation of a drainage or sewage system.

Irrigation districts may impose rates and charges for district services through collection or a levy of assessments. Unpaid rates and charges are deemed charges against the property to which the service is available.

Civil Liability

Directors and employees of irrigation districts are immune from civil liability for mistakes and errors of judgement involving electrical utilities. The immunity only applies to the actual director or employee, and only applies when the individual is acting in good faith within the scope of his or her official duties. In addition, an irrigation district may purchase liability insurance to protect other officials and employees from liability arising during official duties not covered under the immunity protection.

Upgrade and Improvement Funds

Each irrigation district must have an upgrade and improvement fund. This fund may only be used to modernize, improve, or upgrade irrigation facilities, or to respond to emergencies. At least five percent of all annual revenues must be placed in each irrigation district's upgrade and improvement fund.

Foreclosures

Irrigation districts may initiate foreclosure proceedings against all properties that are in a delinquent status due to failure to pay assessments. Any property owner who has a foreclosure proceeding initiated against him or her may make all payments before the day of foreclosure and satisfy the lien against his or her property. Once foreclosure occurs, the court is instructed to direct the county treasurer to proceed with a sale of the property, which is then sold to the highest bidder.

Irrigation districts and county treasurers can agree to initiate combined foreclosure proceedings for delinquent irrigation district assessments and property tax payments.

Liens

Upon the sale of real property, the seller is responsible for satisfying any liens against the property. The seller must also make a closing agent aware of any utilities that provide service to the property to be sold, including services provided by irrigation districts. The closing agent then is directed to make a request to the utilities to provide the final billing information for that property. Any charges owed by the seller of the property are extinguished if a utility fails to provide an estimated final billing statement within seven days of receiving a mailed request, or within three days of receiving a faxed or in-person request.

Summary of Bill:

Civil Liability

The civil liability immunity provided to irrigation districts is altered. The immunity that is granted to the directors and employees of irrigation districts is expanded to include officers and agents. Also, the included individuals are protected from liability arising from the exercise of their judgement and discretion, or from the failure to exercise judgement and discretion. Finally, the responsibilities for which the immunity applies is expanded from

electrical utilities to include hydroelectric facilities and irrigation works.

Upgrade and Improvement Funds

The statutory provisions outlining an irrigation district's upgrade and improvement fund is changed. Instead of each fund receiving *at least* five percent of an irrigation district's revenue, the fund received *no more than* five percent. In addition, each upgrade and improvement fund is permitted to receive all, or a portion of, the revenue from the sale, delivery, and distribution of electrical energy. Any revenue collected in the fund due to electrical energy profits does not count against the five percent of annual revenues cap.

Foreclosures

Provides the Board of Directors ("Board") of an irrigation district with the discretionary authority to foreclose on a piece of property if assessments are delinquent and foreclosure is in the best interest of the irrigation district. In making that determination, the Board is directed to compare the amount of delinquent assessments with the costs of foreclosure.

Parties with an interest in property that is subject to foreclosure are given the opportunity to file a limited written objection or defense to the entry of a foreclosure judgment; however, the defending party may not file a counterclaim. Objections or defenses to foreclosure must be limited to:

- The form of pleading;
- The manner of service;
- Invalidity of the assessments claimed delinquent;
- Assessments claimed delinquent were paid; or
- Property being foreclosed is not subject to assessment.

Any findings on an objection or defense must either be made by a court in a summary proceeding based only on the irrigation district's pleading and the defending party's answer, or held over to a later time where evidence can be collected. Hearings on the evidence must be limited to affidavits or declarations, and the court is directed to give these hearings priority over all other pending civil cases. If a defect is found in the foreclosure notice, the court is directed to liberally allow amendments to the irrigation district's pleading to cure the defect.

When a combined foreclosure for property taxes and delinquent irrigation assessments is initiated, the county treasurer has the authority to use the irrigation district foreclosure procedures, or the procedures established for counties.

Liens

References to irrigation districts are removed from the utility statutes so that irrigation district liens will not automatically extinguish upon a district's failure to respond promptly to a closing agent's request for final billing information.

Appropriation: None.

Fiscal Note: Not Requested.

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