

# HOUSE BILL REPORT

## ESSB 5665

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**As Passed House:**

March 3, 2004

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

**Brief Description:** Changing irrigation district administration provisions.

**Sponsors:** By Senate Committee on Agriculture (originally sponsored by Senators Rasmussen and Swecker).

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 2/25/04 [DP].

**Floor Activity:**

Passed House: 3/4/04, 95-0.

**Brief Summary of Engrossed Substitute Bill**

- Expands civil liability immunity for irrigation districts.
- Allows an irrigation district's board of directors to determine how much money must be dedicated to an irrigation district's upgrade and improvement fund.
- Provides judicial directions for foreclosure challenges and defenses.
- Removes references to irrigation districts from the utility lien statutes.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** Do pass. Signed by 12 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, Eickmeyer, Hunt, McDermott, Orcutt, Quall and Sump.

**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 the purchase and sale of electric power for irrigation and domestic use, the operation of a domestic water system for irrigated land owners, and the 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 5 percent of all annual revenues must be placed in each irrigation district's upgrade and improvement fund.

### Collection of Payments

Irrigation districts have the authority to accept credit cards and other forms of electronic payments. The cost of the transaction must be identified by the treasurer of the irrigation district, and generally, that cost must be borne by the party providing payment. The irrigation district can waive that cost to the payee if it is in the best interest of the district. However, the cost cannot be waived for the payment of assessments.

### 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 pay 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.

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### **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 any discretionary decisions. Finally, the responsibilities for which the immunity applies is expanded from electrical utilities to 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 5 percent of an irrigation district's revenue, the board of directors ("board") for each irrigation district is required to determine what portion of the district's annual revenue will be placed into the fund. 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.

#### Collection of Payments

Irrigation districts may waive the fee charged to parties that choose to use credit cards or other forms of electronic payment to pay assessments.

#### Foreclosures

The board of an irrigation district that is 200,000 acres or more in size is provided with the discretionary authority to not foreclose on a piece of property if the board determines that foreclosure would not be in the best interest of the district after comparing 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 judgement; 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;
- Claims that the assessments claimed delinquent were invalid;
- Claims that the assessments claimed delinquent were paid; or
- Claims that the 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. 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.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This bill is an updating of historic statutes, some of which were initially created in the first ever legislative session. The provisions on civil liability immunity will enable irrigation districts to market a more attractive insurance packet. They currently can find obtaining adequate insurance a challenge. The bill is not intended to expand existing immunity.

The bill also allows irrigation districts to accept credit card assessment payments. In the past, irrigation districts believed that they could not accept credit card transactions because of the transaction costs. Some districts have found a way to accomplish these transactions, and need the statutory change in order to accept credit cards. Also, less federal money is being provided for upgrades and improvements, and this bill allows more flexibility for using local money.

The bill also provides flexibility to larger irrigation districts in foreclosures, by not forcing them to foreclose on a property if the costs of foreclosure would exceed the recovered assessments. This has recently been an issue for some of the larger irrigation districts. Limiting foreclosure defenses to arguments that are germane to the foreclosure proceedings can avoid costly court battles. Irrigation district assessments are more like property taxes than they are like utilities, and should not be subject to the same procedures as utilities are when a property changes ownership.

**Testimony Against:** None.

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

**Persons Signed In To Testify But Not Testifying:** None.