

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5665

58th Legislature
2004 Regular Session

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

President of the Senate

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

Speaker of the House of Representatives

Approved

Governor of the State of Washington

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.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5665

AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By Senate Committee on Agriculture (originally sponsored by Senators Rasmussen and Swecker)

READ FIRST TIME 01/28/04.

1 AN ACT Relating to administration of irrigation districts; and
2 amending RCW 87.03.138, 87.03.277, 87.03.443, 87.06.030, 87.06.060,
3 87.06.110, 60.80.005, 60.80.010, and 60.80.020.

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

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

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

17 **Sec. 2.** RCW 87.03.277 and 2002 c 53 s 1 are each amended to read
18 as follows:

1 Irrigation districts that have designated their own treasurers as
2 provided in RCW 87.03.440 may accept credit cards, charge cards, debit
3 cards, smart cards, stored value cards, federal wire, and automatic
4 clearinghouse system transactions, or other electronic communication,
5 for any payment of any kind including, but not limited to, assessments,
6 fines, interest, penalties, special assessments, fees, rates, tolls and
7 charges, or moneys due irrigation districts. A payer desiring to pay
8 by a credit card, charge card, debit card, smart card, stored value
9 card, federal wire, automatic clearinghouse system, or other electronic
10 communication shall bear the cost of processing the transaction in an
11 amount determined by the treasurer, unless the board of directors finds
12 that it is in the best interests of the district to not charge
13 transaction processing costs for all payment transactions made for a
14 specific category of (~~nonassessment~~) payments due the district,
15 including, but not limited to, assessments, fines, interest (~~not~~
16 ~~associated with assessments~~), penalties (~~not associated with~~
17 ~~assessments~~), special assessments, fees, rates, tolls, and charges.
18 The treasurer's cost determination shall be based upon costs incurred
19 by the treasurer and may not, in any event, exceed the additional
20 direct costs incurred by the district to accept the specific form of
21 payment used by the payer.

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

24 There may be created for each irrigation district a fund to be
25 known as the upgrading and improvement fund. (~~At least five percent~~)
26 The board of directors shall determine what portion of the annual
27 revenue of ((each)) the irrigation district ((may annually)) will be
28 placed into its upgrading and improvement fund, including all or any
29 part of the funds received by a district from the sale, delivery, and
30 distribution of electrical energy. Moneys from the upgrading and
31 improvement fund may only be used to modernize, improve, or upgrade the
32 irrigation facilities of the irrigation district or to respond to an
33 emergency affecting such facilities.

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

36 The treasurer shall order a title search of the property for which

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

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

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

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

30 (3) A party with an interest in real property subject to
31 foreclosure within the district may file a written answer within the
32 time permitted by RCW 87.06.040(1)(d) asserting an objection or defense
33 to the entry of a foreclosure judgment against the property. However,
34 defenses or objections shall be limited to: (a) The form of pleading;
35 (b) manner of service; (c) invalidity of the assessments claimed
36 delinquent; (d) payment of the assessments claimed delinquent; or (e)
37 that the real property against which foreclosure is sought is not

1 subject to district assessment. No counterclaim shall be permitted.
2 The court shall liberally permit amendment or supplementation of the
3 district's challenged pleading or procedure to cure the claimed defect.

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

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

14 The board of directors of the irrigation district and the county
15 treasurer may through the interlocal cooperation agreement act, chapter
16 39.34 RCW, choose to have one of the treasurers proceed with a combined
17 foreclosure for all property taxes, irrigation assessments, and all
18 costs and interest owing to both entities. Any such agreement shall
19 include a specific statement as to which entity shall assume title if
20 no bids are received equal to or greater than the amount listed on the
21 minimum bid sheet. The agreement shall also clearly specify how any
22 unclaimed excess funds from the sale will be divided between the county
23 and the irrigation district.

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

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

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

35 (1) Except as otherwise provided in this subsection (1), "charges"
36 include: (a) All lawful charges assessed by a utility operated under

1 chapter 35.21, 35.67, 36.36, 36.89, 36.94, (~~(56.167)~~) or 57.08(~~(7 or~~
2 ~~87.03)~~) RCW, but not evidenced by a recorded lien, recorded covenant,
3 recorded agreement, or special assessment roll filed with the city or
4 county treasurer or assessor, and not billed and collected with
5 property taxes; and (b) penalties and interest, and reasonable
6 attorneys' fees and other costs of foreclosure if foreclosure
7 proceedings have been commenced.

8 (2) "Closing agent" means an escrow agent as defined in RCW
9 (~~(18.44.010(4))~~) 18.44.011(6) or a person exempt from licensing (~~and~~
10 ~~registration~~) requirements under RCW (~~(18.44.020)~~) 18.44.021, handling
11 the escrow on the sale of the real property.

12 (3) "Real estate agent" means a real estate broker, real estate
13 salesperson, associate real estate broker, or person as defined in RCW
14 18.85.010 (1) through (4).

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

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

20 (1) Unless otherwise stated and acknowledged in writing by the
21 purchaser, the seller of a fee interest in real property is responsible
22 for satisfying, upon closing, any lien provided for by RCW 35.21.290,
23 35.67.200, 36.36.045, 36.89.090, or 36.94.150(~~(, 56.16.100, 57.08.080,~~
24 ~~or 87.03.445)~~).

25 (2) No closing agent may refuse a written request by the seller or
26 purchaser of a fee interest in real property to administer the
27 disbursement of closing funds necessary to satisfy unpaid charges as
28 charges are defined in RCW 60.80.005. Except as otherwise provided in
29 this subsection (2), a closing agent who refuses such a written request
30 is liable to the purchaser for unpaid charges for utility services
31 covered by the request. A closing agent is not liable if the closing
32 agent's refusal is based on the seller's inaccurate or incomplete
33 identification of utilities providing service to the property, or if a
34 utility fails to provide an estimated or actual final billing, or
35 written extension of the per diem rate, as required by RCW 60.80.020,
36 or if disbursement of closing funds necessary to satisfy the unpaid
37 charges would violate RCW (~~(18.44.070)~~) 18.44.400.

1 (3) A closing agent may charge a fee for performing the services
2 required of the closing agent by this chapter, which fee may be in
3 addition to other fees or settlement charges collected in the course of
4 ordinary settlement practices.

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

7 (1) Unless the seller and purchaser waive, in writing, the services
8 of a closing agent in administering the disbursement of closing funds
9 necessary to satisfy unpaid charges as charges are defined in RCW
10 60.80.005, the seller shall, as a provision in a written agreement for
11 the purchase and sale of real estate, inform the closing agent for the
12 sale of the names and addresses of all utilities, including special
13 districts, providing service to the property under chapter 35.21,
14 35.67, 36.36, 36.89, 36.94, ((~~56.167~~)) or 57.08((~~7-or-87.03~~)) RCW. The
15 provision of the information in a written agreement for the purchase
16 and sale of real estate constitutes a written request to the closing
17 agent to administer disbursement of closing funds necessary to satisfy
18 unpaid charges.

19 Unless the seller and purchaser have waived the services of a
20 closing agent as provided in this subsection, the closing agent shall
21 submit a written request for a final billing to each utility identified
22 by the seller as providing service to the property under chapter 35.21,
23 35.67, 36.36, 36.89, 36.94, ((~~56.167~~)) or 57.08((~~7-or-87.03~~)) RCW.
24 Either the seller or purchaser may submit a written request for a final
25 billing to each utility identified by the seller as providing service
26 to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94,
27 ((~~56.167~~)) or 57.08((~~7-or-87.03~~)) RCW.

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

35 (2) After receiving a written request for a final billing for
36 utility services to real property to be sold, a utility operated under
37 chapter 35.21, 35.67, 36.36, 36.89, 36.94, ((~~56.167~~)) or 57.08((~~7-or~~

1 ~~87.03~~) RCW shall provide the requesting party with a written estimated
2 or actual final billing as provided in this section. If the utility is
3 unable to provide a written estimated or actual final billing or
4 written extension of the per diem rate, due to insufficient information
5 to identify the account, the utility shall notify the requesting party
6 in writing that the information is insufficient to identify the
7 account.

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

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

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

31 (c) If a utility fails to provide a written estimated or actual
32 final billing, written extension of the per diem rate, or statement
33 that the information in the request is insufficient to identify the
34 account, within seven business days of receipt of a written request if
35 the request was mailed to the utility, or within three business days if
36 the request was sent to the utility by facsimile or delivered to the
37 utility by messenger, an unrecorded lien provided for by RCW 35.21.290,
38 35.67.200, 36.36.045, 36.89.090, or 36.94.150(~~(, 56.16.100, 57.08.080,~~

1 ~~or 87.03.445~~) for charges incurred prior to the closing date is
2 extinguished, and the utility may not recover the charges from the
3 purchaser of the property.

4 (d) A closing agent shall inform the seller and purchaser of all
5 applicable estimated and actual final billings furnished by utilities.

6 In performing his or her duties under this chapter, a closing agent
7 may rely upon information provided by utilities and is not liable if
8 information provided by utilities is inaccurate or incomplete.

9 (3) If closing occurs no later than the last date for which per
10 diem charges may be applied, full payment of the estimated or actual
11 final billing plus per diem charges extinguishes a lien of the utility
12 provided for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090, or
13 36.94.150(~~, 56.16.100, 57.08.080, or 87.03.445~~) for charges incurred
14 prior to the closing date.

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

20 A utility may not recover from a purchaser unpaid utility charges
21 incurred prior to closing in excess of an estimated final billing.

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

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

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