

ASSEMBLY BILL NO. 310—ASSEMBLYMEN
GRADY; AND HANSEN

MARCH 18, 2013

JOINT SPONSORS: SENATORS SETTELMAYER,
GOICOECHEA; AND GUSTAVSON

Referred to Committee on Natural Resources,
Agriculture, and Mining

SUMMARY—Revises provisions governing irrigation districts.
(BDR 48-941)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to irrigation districts; authorizing an irrigation district to purchase and maintain insurance or make other financial arrangements for any liability asserted against an officer of the irrigation district and certain other persons; setting forth certain duties owed by an officer of an irrigation district to the irrigation district; authorizing an irrigation district to indemnify an officer of the irrigation district and certain other persons for any debt, obligation or other liability incurred by the officer or person under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law provides for the formation and operation of irrigation districts in
- 2 this State. (Chapter 539 of NRS) The officers of each irrigation district must consist
- 3 of a president, vice president, secretary, treasurer and three, five or seven directors.
- 4 (NRS 539.063) The board of directors of each irrigation district may appoint or
- 5 employ agents, officers, employees, delegates to conventions and other
- 6 representatives as the board may require in the interest of the irrigation district.
- 7 (NRS 539.193) The board may also enter into a contract of indemnity and guaranty,
- 8 in any form approved by the board, relating to the performance of any contract or
- 9 agreement which the irrigation district is authorized to enter into. (NRS 539.200)



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Sections 2-4 of this bill enact specific provisions governing the indemnification from liability of each officer of an irrigation district and each agent, officer, employee, delegate or representative appointed or employed by the board. Section 2 authorizes the board to purchase insurance or make certain other financial arrangements on behalf of any such agent, officer, employee, delegate or representative for any liability asserted against the agent, officer, employee, delegate or representative in his or her capacity as such an agent, officer, employee, delegate or representative of the irrigation district. Section 3 specifies that each officer of an irrigation district owes a duty of loyalty and a duty of care to the irrigation district and requires each officer to manage the irrigation district in good faith. Section 4 authorizes an irrigation district to indemnify any officer of an irrigation district or any agent, officer, employee, delegate or representative appointed or employed by the irrigation district for any debt, obligation or other liability incurred in the course of his or her activities on behalf of the district if he or she has not violated certain provisions governing the fiduciary duties owed to the irrigation district or has acted in good faith and without a reasonable cause to believe his or her conduct was unlawful. Section 4 also authorizes an irrigation district to approve an advance payment or reimbursement of expenses of a person who is made or threatened to be made a party to an action based on his or her activities on behalf of the irrigation district. Section 4 limits the amount of any indemnification or advancement or reimbursement of expenses or coverage provided under a policy of insurance to not more than \$50,000 per person.

Existing law authorizes a board of directors of an irrigation district to incur an indebtedness not exceeding in the aggregate the sum of \$500,000. (NRS 539.480) Section 5 of this bill increases the amount of indebtedness that the board may incur to \$1,000,000.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 539 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *An irrigation district may purchase and maintain insurance or make other financial arrangements on behalf of any person who is or was an officer of the irrigation district specified in NRS 539.063 or an agent, officer, employee, delegate or representative appointed or employed pursuant to NRS 539.193 for any liability asserted against the person and liability and expenses incurred by the person in his or her capacity or arising out of his or her status as such an agent, officer, employee, delegate or representative of the irrigation district.*

2. *Any financial arrangements made by an irrigation district pursuant to subsection 1 may include the following:*

(a) The creation of a trust fund.

(b) The establishment of a program of self-insurance.

(c) The securing of its obligation of indemnification by granting a security interest or other lien on any assets of the irrigation district.

(d) The establishment of a letter of credit, guaranty or surety.



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1 ↪ Any financial arrangement made pursuant to this subsection
2 must not provide protection for a person adjudged by a court of
3 competent jurisdiction, after exhaustion of all appeals therefrom,
4 to be liable for intentional misconduct, fraud or a knowing
5 violation of law, except with respect to any indemnification or
6 advancement of expenses ordered by a court.

7 3. Any insurance or other financial arrangement made on
8 behalf of a person pursuant to this section may be provided by the
9 irrigation district or any other person approved by the board of
10 directors.

11 4. In the absence of fraud:

12 (a) The decision of the board of directors as to the propriety of
13 the terms and conditions of any insurance or other financial
14 arrangement made pursuant to this section and the choice of the
15 person to provide the insurance or other financial arrangement is
16 conclusive; and

17 (b) The insurance or other financial arrangement:

18 (1) Is not void or voidable; and

19 (2) Does not subject any member of the board of directors
20 approving it to personal liability for his or her action,

21 ↪ even if a member of the board of directors approving the
22 insurance or other financial arrangement is a beneficiary of the
23 insurance or other financial arrangement.

24 5. An irrigation district which provides self-insurance for
25 itself pursuant to this section is not subject to the provisions of title
26 57 of NRS.

27 **Sec. 3. 1. Each officer of an irrigation district specified in**
28 **NRS 539.063 owes to the irrigation district the fiduciary duties of**
29 **loyalty and care.**

30 2. Each officer specified in subsection 1 shall manage the
31 irrigation district in good faith, in a manner the officer reasonably
32 believes to be in the best interests of the irrigation district, and
33 with such care, including reasonable inquiry, as a prudent person
34 would reasonably exercise in a similar position and under similar
35 circumstances. The officer may rely in good faith upon any
36 opinion, report, statement or other information provided by
37 another person that the officer reasonably believes is a competent
38 and reliable source for the information.

39 3. After full disclosure of all material facts, a specific act or
40 transaction that would otherwise violate the duty of loyalty by an
41 officer specified in subsection 1 may be authorized or ratified by a
42 majority of the members of the board of directors of the irrigation
43 district who are not interested directly or indirectly in the act or
44 transaction.



1 4. *An officer specified in subsection 1 who makes a business*
2 *judgment in good faith satisfies the duties specified in that*
3 *subsection if the officer:*

4 (a) *Is not interested, directly or indirectly, in the subject of the*
5 *business judgment and is otherwise able to exercise independent*
6 *judgment;*

7 (b) *Is informed with respect to the subject of the business*
8 *judgment to the extent the officer reasonably believes to be*
9 *appropriate under the circumstances; and*

10 (c) *Believes that the business judgment is in the best interests*
11 *of the irrigation district and in accordance with its purposes.*

12 5. *The bylaws, rules or regulations of an irrigation district*
13 *may limit or eliminate the liability to the irrigation district of an*
14 *officer specified in subsection 1 for damages for any action taken,*
15 *or for failure to take any action, as such an officer, except liability*
16 *for:*

17 (a) *The amount of financial benefit improperly received by the*
18 *officer;*

19 (b) *An intentional infliction of harm on the irrigation district;*

20 (c) *An intentional violation of criminal law;*

21 (d) *Breach of the duty of loyalty; or*

22 (e) *Improper distributions.*

23 Sec. 4. NRS 539.200 is hereby amended to read as follows:

24 539.200 1. The board of directors of any district now or
25 hereafter organized under the provisions of this chapter ~~shall have~~
26 ~~power to~~ *may* enter into contracts of indemnity and guaranty, in
27 such form as may be approved by the board, relating to or connected
28 with the performance of any contract or agreement which the district
29 ~~shall be~~ *is* empowered to enter into under the provisions of this
30 chapter or any other law of this state.

31 2. *An irrigation district may indemnify any officer of the*
32 *irrigation district specified in NRS 539.063 or any agent, officer,*
33 *employee, delegate or representative appointed or employed*
34 *pursuant to NRS 539.193 for any debt, obligation or other liability*
35 *incurred in the course of his or her activities on behalf of the*
36 *irrigation district if the agent, officer, employee, delegate or*
37 *representative:*

38 (a) *Has not violated the provisions of section 3 of this act; or*

39 (b) *Acted in good faith and in a manner which he or she*
40 *reasonably believed to be, or not opposed to, the best interests of*
41 *the irrigation district and, with respect to any criminal action or*
42 *proceeding, did not have any reasonable cause to believe the*
43 *conduct was unlawful.*

44 3. *If a person is made or threatened to be made a party in an*
45 *action based on his or her activities on behalf of an irrigation*



1 *district and the person submits a written request to the irrigation*
2 *district, a majority of the disinterested members of the board of*
3 *directors of the irrigation district may approve, in writing, an*
4 *advance payment or reimbursement by the irrigation district of all*
5 *or part of the reasonable expenses, including, without limitation,*
6 *attorney's fees and costs, incurred by the person before the final*
7 *disposition of the proceeding. To receive any advance payment or*
8 *reimbursement pursuant to this subsection, the person must*
9 *indicate in a notarized affidavit that he or she has a good faith*
10 *belief that the criteria for indemnification set forth in subsection 2*
11 *have been satisfied and that the person will repay any amount*
12 *advanced or reimbursed if those criteria have not been satisfied.*
13 *Except as otherwise provided in subsection 6 and section 3 of this*
14 *act, the board of directors may, in the bylaws, rules and*
15 *regulations of the irrigation district, broaden or limit the advance*
16 *payments or reimbursements.*

17 *4. An irrigation district may purchase or maintain insurance*
18 *or make other financial arrangements on behalf of a person*
19 *pursuant to section 2 of this act.*

20 *5. The rights of indemnification and advancement or*
21 *reimbursement of expenses pursuant to this section apply to any*
22 *former agent, officer, employee, delegate or representative of the*
23 *irrigation district specified in subsection 2 for an activity*
24 *undertaken on behalf of the irrigation district while he or she was*
25 *an agent, officer, employee, delegate or representative of the*
26 *irrigation district.*

27 *6. The amount of any indemnification or advancement or*
28 *reimbursement of expenses pursuant to this section or any*
29 *coverage under a policy of insurance or other financial*
30 *arrangement provided pursuant to section 2 of this act:*

31 *(a) Must not exceed \$50,000 for each person who is*
32 *indemnified, insured or paid any advancement or reimbursement*
33 *of expenses; and*

34 *(b) May be paid from the general fund of the irrigation district.*

35 **Sec. 5.** NRS 539.480 is hereby amended to read as follows:

36 539.480 1. For the purpose of organization or any of the
37 purposes of this chapter, the board of directors may incur an
38 indebtedness not exceeding in the aggregate the sum of ~~[\$500,000]~~
39 **\$1,000,000** and may cause warrants or negotiable notes of the
40 district to issue therefor, bearing interest which must not exceed by
41 more than 5 percent the Index of Revenue Bonds which was most
42 recently published before the bids are received or a negotiated offer
43 is accepted. The board may levy an assessment on all lands in the
44 district for the payment of those expenses.



1 2. Subject to the provisions of subsections 3, 4 and 5, thereafter
2 the board may levy:

3 (a) An annual assessment, in the absence, except as otherwise
4 provided in paragraph (b), of assessments therefor pursuant to any
5 of the other provisions of this chapter, of not more than \$1.50 per
6 acre on all lands in the district for the payment of the ordinary and
7 current expenses of the district, including the salaries of officers and
8 other incidental expenses; and

9 (b) An annual assessment of not more than \$5 per acre on all the
10 lands in the district for deposit in a capital improvement fund for the
11 construction, reconstruction or maintenance of the irrigation system
12 of the district and any appurtenances necessary thereto.

13 3. Annual assessments levied pursuant to the provisions of
14 subsection 2 may not cumulatively exceed \$5 per acre.

15 4. No portion of the amount collected from the assessment
16 levied pursuant to the provisions of paragraph (b) of subsection 2
17 may be used for the payment of the ordinary and current expenses of
18 the district, including the salaries of officers and other incidental
19 expenses.

20 5. The assessments authorized pursuant to the provisions of
21 subsection 2 must be collected as provided in this chapter for the
22 collection of other assessments.

23 **Sec. 6.** This act becomes effective on July 1, 2013.

