

HOUSE BILL REPORT

HB 2189

As Reported by House Committee On:
Local Government

Title: An act relating to the administration and operation of flood control districts.

Brief Description: Concerning the administration and operation of flood control districts.

Sponsors: Representatives Takko, Buys and Blake.

Brief History:

Committee Activity:

Local Government: 1/13/14, 1/16/14 [DPS].

Brief Summary of Substitute Bill

- Modifies rules and requirements for flood control district contracts, including: (1) authorizing installment payments for contracts for maintenance, similar to other types of district contracts; (2) creating thresholds of \$40,000 and \$20,000, over which certain contracts may only be let by contract and competitive bidding; and (3) modifying competitive bidding procedures.
- Modifies requirements for performance bonds furnished by recipients of flood control district contracts, such as raising the threshold at which a performance bond for the full amount of the contract price is required to either \$40,000 or \$20,000 (depending on the type of contract), and specifying that the bond must be furnished to the district, rather than to the State of Washington.
- Amends and consolidates provisions relating to the administration and operation of the flood control district board of directors, and specifies that the board must hold meetings in accordance with the Open Public Meetings Act.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Takko, Chair; Gregerson, Vice Chair; Fitzgibbon, Pike and Springer.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 3 members: Representatives Overstreet, Ranking Minority Member; Kochmar, Assistant Ranking Minority Member; Taylor.

Staff: Michaela Murdock (786-7289).

Background:

Flood Control Districts.

Flood control districts (flood control districts or districts) are special purpose districts (*i.e.*, limited purpose local governments separate from a city, town, or county government). Flood control districts may be comprised of land located in all or part of one or more counties and may include state and federal lands. Districts may be created and maintained to protect life and property, to preserve public health, and to conserve the state's natural resources.

Districts must be organized to provide for the control of streams, tributaries, and their systems, or to protect tidal or other bodies of water. Additionally, districts may be organized or maintained to:

- provide for the collection, control, and safe conveyance of surface and drainage water, if the district is established wholly within the boundaries of any city or town;
- investigate, construct, or acquire dams, dikes, levees, ditches, channels, canals, banks, revetments, and other works, equipment, and property to control and lessen the impact of floods; and
- cooperate with federal and state agencies in investigating, controlling, and lessening the impact of floods.

Board of Directors.

Flood control districts are managed by a board of directors (board) consisting of three members, except that districts with territory in three or more counties may have five or more members. Initial directors of the district are appointed by the legislative authority of the county within which the district, or the largest portion of the district, is located. Subsequent directors are elected to six-year terms.

The board must elect a chair from their number, and must either elect a secretary from their number or appoint a voter of the district to act as secretary.

The board must designate a location for their office and the district's place of business within the boundaries of the district, if possible. If no place convenient and suitable is available within the district, the office may be located in the county with the most district territory. The designated location may not be changed unless specific procedures are followed, including obtaining consent from the county.

The board must hold regular meetings at their office at least once a year, and special meetings may be called at any time by a majority of the directors. All board meetings must be public, and all board records must be available for inspection.

Opening Public Meetings Act.

Under the Open Public Meetings Act (OPMA), all meetings of the governing body of a public agency must be open and public and all persons must be allowed to attend. For purposes of the OPMA, a special purpose district (such as a flood control district) is a "public agency." Public agencies are required to comply with the OPMA in scheduling, conducting, and taking action at regular and special meetings, and are subject to penalties for violating the provisions of the OPMA.

Installment Contracts.

Flood control districts have authority to enter into all necessary contracts to carry out the purposes for which they were created, including contracts for construction, services, or materials. Such contracts may provide that payments will be made in monthly proportion of the contract price as work progresses or as services or materials are furnished. Before a district enters into a contract or an installment payment arrangement, the state director (previously of the Department of Conservation and Development) must approve the plans, specifications, and form of the contract, or payment arrangement.

Public Bidding Procedures.

Flood control district contracts for construction, labor, or materials must be awarded at public bidding, which must meet the following requirements:

- The board must publish notice calling for sealed bid proposals in a newspaper of general circulation for a period of not less than two weeks (three weekly issues) prior to the day of opening the bids.
- Proposals must be accompanied with a certified check for an amount determined by the board.
- Bids must be opened in public at the time and place designated in the notice.

The board must award the contract to the lowest and best responsible bidder; however, the board has authority to reject any or all bids and, if this occurs, the board must readvertise. If a satisfactory bid is not received, the board, with the written approval of the director, may construct the works by force account.

Contractors' Performance Bond.

Recipients of a flood control district contract for construction, labor, or materials with a total contract price exceeding \$1,000 must furnish a performance bond to the State of Washington for 100 percent of the amount to be paid. The bond must be approved and filed with the state director.

Summary of Substitute Bill:

Installment Contracts.

Similar to contracts for construction, services, and materials, flood control districts are authorized to make payments on contracts for maintenance in monthly proportion of the contract price as work progresses or maintenance is furnished. Additionally, districts are no longer required to obtain the state director's approval for the plans, specifications, and form of contracts, or for installment payment arrangements. Finally, except for contracts for

materials, districts are now required to withhold 5 percent of all monthly installment payments until the contract is complete.

Public Bidding and Performance Bond.

Instead of having to engage in public bidding for all flood control district contracts for construction, labor, or materials, only the following contracts entered into by the district must be let by contract and competitive bidding: (1) contracts for construction, services, or maintenance that have an estimated cost of \$20,000 or more; and (2) contracts for purchases of materials, supplies, or equipment that have an estimated cost of \$40,000 or more.

Also, the contract and competitive bidding procedures for districts is modified and prescribed in additional detail, including:

- The notice calling for sealed bid proposals must be published in a newspaper of general circulation at least once 13 days before the deadline for submitting bid proposals (as opposed to a period of not less than two weeks prior to opening the bids).
- The notice calling for bids must contain specified information.
- Bid proposal deposits must be in an amount not less than 5 percent of the bid and in the form of cash, certified or cashier's check, postal money order, or surety bond.

Contracts awarded through competitive bidding (*i.e.*, certain contracts with an estimated cost of \$20,000 or more, or \$40,000 or more), rather than certain contracts with a total contract price exceeding \$1,000, must have performance bonds. The successful bidder must execute a contract with the district and furnish a performance bond to the district, instead of the State of Washington, for 100 percent of the total contract price or else forfeit the bid proposal deposit.

In the event that a successful bidder fails to enter into a contract or furnish a satisfactory performance bond, the district may recover all costs and expenses, including attorneys' fees, caused by the failure.

Board of Directors and Meetings.

Changes are made to provisions governing the administration and operation of the flood control district board of directors, including:

- The board of directors must now elect a vice chair, in addition to a chair.
- The board are authorized to elect a secretary from their number or appoint and employ a secretary.
- The board are expressly required to hold meetings in accordance with the OPMA.
- Certain provisions concerning changing the location of the board's office and the district's place of business, and scheduling, conducting, and taking action at regular and special meetings are removed or consolidated.

Substitute Bill Compared to Original Bill:

The substitute bill creates two different estimated cost thresholds for different types of contracts. Instead of the threshold of \$50,000 or more, which was in the underlying bill, contracts for construction, services, or maintenance that have an estimated cost of \$20,000 or

more, and contracts for purchases of materials, supplies, or equipment of \$40,000 or more, must be let by contract and competitive bidding.

The substitute bill also modifies a provision in the underlying bill giving flood control districts a right to recover legal expenses, including reasonable attorneys' fees, from a successful bidder who fails to enter into a contract. The substitute bill establishes: (1) that flood control districts may recover all costs and expenses, not just legal expenses and reasonable attorneys' fees; and (2) that the costs and expenses must be incurred by the district as a result of the bidder failing to enter into a contract with the district, or failing to furnish a satisfactory performance bond, rather than as a result of the bidder failing to enter into a contract and the board's actions to collect on any surety bond required under the bill.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill will streamline the contracting and bidding procedures for flood control districts, bring other statutory provisions into line with the law (*e.g.*, bring it into compliance with the Open Public Meetings Act), and help the districts to more easily go out and get their work done.

(Opposed) None.

Persons Testifying: Representative Takko, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.