

SENATE BILL REPORT

ESHB 2588

As of February 27, 2020

Title: An act relating to improving openness, accountability, and transparency of special purpose districts.

Brief Description: Improving openness, accountability, and transparency of special purpose districts.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Pollet, Leavitt, Valdez, Senn, Duerr, Ryu, Frame, Boehnke, Hudgins and Kraft).

Brief History: Passed House: 2/19/20, 91-7.

Committee Activity: Local Government: 2/27/20.

Brief Summary of Bill

- Allows counties to withhold funding from special purpose districts that fail to file annual financial reports, and requires counties to withhold funding from unauditible special purpose districts.
- Allows a county to dissolve an unauditible special purpose district.
- Establishes new notice and publication requirements for special purpose districts.
- Repeals campaign and finance disclosure exemptions for conservation districts.

SENATE COMMITTEE ON LOCAL GOVERNMENT

Staff: Greg Vogel (786-7413)

Background: Local Government Financial Reporting. State laws require local governments to be audited by the State Auditor's Office (SAO) and for them to submit annual financial reports. Local governments include but are not limited to all counties, cities, and other political subdivisions, municipal corporations, and quasi-municipal corporations. The reports must be prepared, certified, and filed with the state auditor within 150 days after the close of each fiscal year.

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.

Annual reports must contain statements of:

- all collections made or receipts received by local government officers;
- all uncollected accounts due the public treasury;
- all expenditures and the authority for making the expenditures;
- costs and income for each public service industry owned and operated by a local government;
- the entire public debt of the local government, including each purpose for which an item of debt was created and any provisions made for payment;
- all receipts and expenditures by any public institution;
- all labor relations consultant expenditures; and
- any other information required by the SAO.

The SAO produces a report called *A Guide to Unauditable Governments in Washington*. The report includes a list of all local governments that do not file annual financial reports as state law requires. According to the report, the SAO is unable to audit over \$1 million of public money because of the 40 unauditable governments included on the list.

Dissolution of Inactive Special Purpose Districts. State law provides for the dissolution of inactive special purpose districts. The dissolution provisions apply to every municipal and quasi-municipal corporation other than counties, cities, towns, industrial development districts created by port districts, local improvement districts, utility local improvement districts, and road improvement districts.

An inactive special purpose district is characterized by either of the following:

- the district has not carried out any special purpose or function for which it was formed within the preceding five years; or
- no election has been held for the purpose of electing a member of the governing body within the preceding seven years, or for districts with appointed members, no member has been appointed within the preceding seven years.

A public utility district is characterized as inactive if it meets both criteria.

When a district is deemed inactive and dissolution is found to be in the public interest, the county legislative authority must adopt an ordinance dissolving the district. Except for the purpose of winding up its affairs, a dissolved district will cease to exist, and the authority and obligation to carry out the purposes for which it was created ceases, after 31 days.

Open Public Meetings Act and Special Purpose Districts. Special purpose districts are subject to the provisions of the Open Public Meetings Act. Public agencies must generally post a regular meeting's agenda 24 hours ahead of the meeting. Agencies without a website, or with fewer than ten full-time employees are not required to post agendas in advance online.

Campaign and Personal Finance Disclosure. Candidates and elected officials for state and local office are subject to varying campaign and personal financial disclosure requirements depending on factors such as numbers of voters and amount of money raised. Elections of conservation district supervisors are not considered general or special elections for purposes of campaign disclosure and personal financial affairs reporting requirements. Elected

conservation district supervisors are not considered elected officials for purposes of annual personal financial affairs reporting requirements.

Summary of Bill: By December 31st of each year, the state auditor is required to search available records and notify a county legislative authority if a special purpose district has failed to file a required annual financial statement for the most recent fiscal year or if the district has been found to be unauditible. A district is unauditible if the state auditor determines that the district has improperly maintained, or failed to maintain or submit, adequate records, files, or reports for an audit to be completed for three years.

If a county has been notified by the state auditor that a district has failed to file a required annual financial statement, then the county's legislative authority may withhold funds from, and choose not to expend funds on behalf of, the district until the county receives notice that any past due financial statements have been filed.

If a county is notified by the state auditor that a district has been found to be unauditible, then the county must withhold funds from, and not expend funds on behalf of the district until the county has received notice that the district has filed the most recent financial statement, has filed any past due financial statements necessary for the district to be found auditible, and that the district is auditible. Until this notice is received, neither the district nor the county auditor may issue warrants against the funds of a district, and any warrants presented to the county treasurer for payment will be refused.

If a county is notified and funds are withheld, the county legislative authority is authorized to allow the use of the funds to carry out any of the purposes for which the funds were collected.

When a district has been found to be unauditible, the county legislative authority in which the greatest portion of the district resides must hold public hearings to determine whether the district is unauditible. Notice of the hearing must be provided for at least three consecutive weeks in a newspaper of general circulation within the district, posted in at least three places within the district, and sent to the governing members of the district, any relevant district association, and to anyone who is known to have a claim against the district. Notice must also be sent to any other counties that contain a portion of the district.

If the district is determined to be unauditible, then the county legislative authority may dissolve the district if it makes additional written findings detailing why dissolution is in the public interest. An interested party has 30 days to appeal the dissolution on the grounds that the district is not unauditible or that dissolution is not in the public interest.

A county legislative authority may continue to carry out the functions of an unauditible district, including the collection of rates, charges, assessments, and fees, if it also makes written findings detailing why it is in the public interest that the district continue operations.

At any time, even without notification from the county auditor, a county legislative authority may hold hearings on the dissolution of any district that appears to meet the criteria of being unauditible. The procedures are the same as if notice was provided.

Every district must publish online the annual budget approved by its governing body, the minutes of its meetings for the prior 12 months, and its annual financial statement submitted to the state auditor. A district must post agendas for every regular or special meeting of its governing body online at least 72 hours prior to the published start time of the meeting. Any subsequent modifications must be posted online at least 48 hours in advance of the published start time of the meeting. The agenda for a regular meeting must include a direct link to the minutes of each of the governing body's meetings that occurred within the immediately preceding 12 months.

At least 72 hours prior to a special meeting of its governing body, a district must prominently post notice of the meeting outside of the district's principal location and the meeting site, and must provide notice to each local newspaper, radio, or television station that has requested to be notified of special meetings.

After October 1, 2020, any action taken at a meeting where the agenda was not posted or notice was not provided is null and void. Beginning on October 1, 2020, the state auditor must review compliance with the notice and publication requirements whenever the state auditor conducts an accountability audit of a district.

Districts may enter into interlocal agreements with a county or another district to maintain a website for the purposes of the publication requirements and other public communications.

Unless a district is authorized by law to use a different treasurer, the county treasurer of the county that contains largest geographic portion of the district must act as the ex-officio treasurer of the district. When the county treasurer does act as treasurer for a district, the district must provide an approved annual budget and a list of those with signature authority to the county treasurer by January 31st of each year.

Any district that has been found to be unauditible must utilize the county treasurer as its ex-officio treasurer. An unauditible district may regain the ability to use a different treasurer if the county treasurer has acted as ex-officio treasurer for the district for not less than five years, the state auditor finds that the district has complied with all conditions imposed by the state auditor, and the state auditor recommends that the district be allowed to utilize a different treasurer and it is allowed by law.

The campaign and personal public disclosure requirement exemptions applying to conservation districts and conservation district supervisors are repealed.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: We have all heard the news stories about special purpose districts, dozens of them that have had done no filings as required by law

with the state auditor. The auditor will talk about how hard it has worked to track down these districts. If you live in these districts, you should be able to know when the district is meeting and that it is meeting accountability provisions in state law, and if not, the county, if it wants, should be able to withhold the funds of the district.

The bills have addressed a lot of the concerns treasurers had with the original language. The senate version is much direct and simpler worded. The auditor's office is agnostic on the publication and notice requirements. It would be nice to have these so we could track down districts when we can.

CON: There is one issue that is very significant, the 72 hour advance notice of agenda. It is very problematic, especially for smaller districts. The senate bill has provisions that allow basic services to continue. There is also the question of why lake management districts are included in this bill.

We have concerns with the county treasurer being defined by the greatest geographic portion. My PUD has extensive holdings in two counties and are concerned how a creative auditor could say we are not functional. We do not understand why we are being held to higher standard than cities and counties.

Fire districts prefer the senate bill. We have issues with the penalties after one year versus three years. The additional notice and publication requirements are concerning. Maybe a compromise is an exception for districts with under five paid employees.

The intent section unnecessarily vilifies special purpose districts across the state. Most districts are actively in compliance with the laws and do our best to comply with the statutes we're supposed to work with. This bill would impair the ability of conservation districts to attract board supervisors.

OTHER: We have concerns about the 72 hour notice because if a pipe breaks or a pump breaks, we would have to react quickly. We worry a great deal about these types of constraints and ask that you take a close look at this.

PUDs also have concerns with the notice and publication requirements. These requirements are placed in the wrong chapter and should be placed in the OPMA statutes. Some of the late OPMA changes do not work for the things that a special purpose district needs to do. We would prefer the senate version. If there is OPMA issues that need to be addressed, this is a good topic for a separate bill.

Persons Testifying: PRO: Representative Gerry Pollet, Prime Sponsor; Jeff Gadman, Thurston County Treasurer; Scott Nelson, State Auditor's Office.

CON: Joe Daniels, Washington Association of Sewer and Water Districts; Christopher Stearns, Thurston PUD; Washington PUD Association Water Committee Vice-Chair; Ryan Spiller, Washington Fire Commissioners; Mike Schwisow, Washington State Water Resources Association; Tom Salzer, Washington Association of Conservation Districts.

OTHER: Steve Lindstrom, Sno-King Water District Coalition; Bill Clarke, Washington PUD Association.

Persons Signed In To Testify But Not Testifying: No one.