

HOUSE BILL REPORT

ESHB 1705

As Passed House:

March 4, 2023

Title: An act relating to stormwater control facilities and county jurisdiction.

Brief Description: Concerning stormwater control facilities and county jurisdiction.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Griffey, Couture and Wylie).

Brief History:

Committee Activity:

Local Government: 2/8/23, 2/17/23 [DPS].

Floor Activity:

Passed House: 3/4/23, 95-1.

Brief Summary of Engrossed Substitute Bill

- Provides that a county that plans to extend or improve a stormwater control facility within an operating diking or drainage district should notify the diking or drainage district.
- Allows a county and a diking or drainage district to enter into an agreement that the district will operate a stormwater control facility constructed by the county within the district.
- Provides that a diking or drainage district that operates a stormwater control facility pursuant to an agreement may be eligible to receive a portion of the stormwater rates and service charges collected by the county.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

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

Signed by 6 members: Representatives Duerr, Chair; Alvarado, Vice Chair; Goehner, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Berg and Riccelli.

Staff: Kellen Wright (786-7134).

Background:

A stormwater control facility is a facility or improvement that is used to protect life or property from storm, waste, or flood water. Counties may acquire, construct, and improve storm control facilities within the county. This can be done in conjunction with other government agencies.

A county may assess rates and service charges for properties that are served by, or benefit from, the stormwater control facility, or that contribute to an increase in surface water runoff. In fixing the rates and charges, the county can consider the service provided, the benefits received, the character and use of the land, whether the ratepayer is a public benefit nonprofit corporation, the income level of the ratepayer, and any other matters that are reasonable grounds for determining rates and charges. The revenue from the rates and service charges must be placed in a special fund or funds and only used for maintaining, operating, acquiring, constructing, or improving stormwater control facilities.

When a county proposes to construct or improve a stormwater control facility within a city or town (city), the county must first obtain the consent of the city. A county and a city may agree that, upon completion, any facility or portion of a facility within the city will be operated and maintained by the city as a part of the city's stormwater control system.

Diking districts, drainage districts, and sewerage improvement districts are special purpose districts. From the end of the nineteenth century to the 1930s, they proliferated, and there were multiple permutations of diking, drainage, or sewerage improvement districts authorized. The various districts were standardized to some extent in the 1980s and 1990s. In general, each type of district has authority to engage in flood, stormwater, and drainage control, and to construct and maintain the facilities necessary to do so. To fund their activities, the districts are authorized to impose assessments, rates, and charges on property within their districts.

Summary of Engrossed Substitute Bill:

A county that intends to extend or improve a stormwater control facility that is within an operating diking or drainage district, and that interacts with or changes water movement within the district, should notify the diking or drainage district. A county's undertaking ordinary maintenance on a stormwater control facility does not require notification.

A county and a diking or drainage district may enter into an agreement that, upon the

completion of a stormwater control facility constructed by the county within a diking and drainage district, the diking and drainage district will operate and maintain the facility, and that it will become part of the diking and drainage district's system.

A diking or drainage district that maintains and operates a stormwater control facility pursuant to such an agreement may be eligible to receive a portion of the stormwater rates and service charges collected by the county for stormwater control in order for the district to pay its operating and administrative costs for the facility.

Beginning in 2024, rates and service charges collected by the county for stormwater control facilities operated and maintained by a diking or drainage district may be deposited into the revenue account for that district.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) If counties collect fees for stormwater control, they need to work with districts within the county that also operate stormwater control facilities. These special purpose districts are very familiar with the land that they work on, and on how to operate stormwater control facilities. The special purpose district that actually operates the facilities should be able to receive a portion of the fee. This bill would allow funds that the county collects to be put into the fund for districts. There are 98 diking and drainage districts in the state, and they are empowered to maintain and operate stormwater control facilities, which removes the county's responsibility to act in this area. This bill should help to correct the mistake that occurred when counties were authorized to do what the special purpose districts were already doing. This has left landowners paying the county instead of the district providing the service. Current law does not allow transfers of funds collected by the county, as it would be a constitutional violation. This bill will correct this issue and allow the money that is collected to be used where it is most needed and where it will do the most good. A county could refuse to transfer the funds under the language in the bill, and the transfer should be mandatory for the fees collected by the county from those taxpayers who also pay the district.

(Opposed) The current bill is better than the version from last session, as it is more permissive. However, the new version is still problematic, as the county utilities that were set up to comply with the Clean Water Act have a different mission than the special purpose districts do. The county facilities are mostly for stopping water contamination. Mixing the funding that is received for one purpose with a use for another purpose is dangerous.

(Other) The special purpose districts need to get the necessary funds. Most landowners are charged by the water flow from their property rather than by the contaminants from their property, which is what the charge should be based on.

Persons Testifying: (In support) Representative Dan Griffey, prime sponsor; and Mat Jackmond, Thurston County.

(Opposed) Axel Swanson, Washington State Association of County Engineers.

(Other) John Worthington.

Persons Signed In To Testify But Not Testifying: None.