

HOUSE BILL REPORT

HB 1049

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: Representative Takko.

Brief History:

Committee Activity:

Local Government: 1/22/13, 1/31/13 [DPS].

Brief Summary of Substitute Bill

- Amends public bidding requirements and procedures for flood control district contracts for construction, maintenance, labor, or materials.
- Exempts flood control district contracts with a total cost of less than \$5,000 from the public bidding procedure, and authorizes alternative bidding procedures for contracts with a total cost of less than \$50,000.
- Modifies provisions relating to flood control district board of directors' election of officers and the location of their office and principal place of business.
- Requires flood control district board of directors to hold open 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 6 members: Representatives Takko, Chair; Fitzgibbon, Vice Chair; Kochmar, Assistant Ranking Minority Member; Liias, Springer and Upthegrove.

Minority Report: Do not pass. Signed by 2 members: Representatives Taylor, Ranking Minority Member; Buys.

Staff: Michaela Murdock (786-7289).

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.

Background:

Flood Control Districts.

Flood control districts (flood control districts or districts) may be created and maintained for the protection of life and property, to preserve public health, and to conserve the state's natural resources. Flood control districts may be organized to provide for the necessary control of all or part of the stream system of a stream or tributary, or for the protection of tidal or other bodies of water. Among other general authorized purposes, flood control districts may be organized or maintained for the planning, construction, improvement, and repair of dams, dikes, levees, and other works that are convenient and necessary to control floods and lessen their danger and damages. Flood control districts may include all or part of the territory within a county and may include territory in two or more counties.

Board of Directors.

With some exceptions, flood control districts are managed by three-member boards of directors (boards). District boards, which are also referred to as "governing bodies," are authorized to manage and conduct the business affairs of the district, including adopting rules and regulations, employing personnel, and generally performing any and all acts necessary to carry out the purpose of the district. The initial directors of a newly created district must be 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. Currently, each board is required to elect a chairman from their number, and to either elect a secretary from their number or appoint a voter of the district to act as secretary.

Statutes specific to the flood control district board require that the board hold regular meetings at their office no less than once a year, and authorize the board to hold special meetings at any time by order of a majority of the directors. The board cannot change the day of the annual regular meeting without receiving prior written consent of the county legislative authority, passing a resolution to that effect at a regular meeting, and posting public notice of the change at least 10 days prior. All board meetings must be public, and all board records must be publicly available. The bylaws, rules, and regulations of the board must be available in print form for distribution.

Office Location.

The board must designate a location for its office within the boundaries of the district, if possible. However, if no place convenient and suitable for district business and public hearings is available within the district, the office may be located in the county encompassing most of the district territory.

If a board wants to change the location of its office, it must do the following:

- obtain prior written consent from the county legislative authority;
- pass a resolution to move its office at a regular meeting; and
- post public notices at or near both its current office and its new office at least 10 days prior to relocating.

Open Public Meetings Act.

The Open Public Meetings Act (OPMA) requires that all meetings of the governing body of a public agency be open to the public and all persons shall be allowed to attend. For the

purposes of the OPMA, a public agency is defined broadly and includes, but is not limited to, any state board, commission, department, education institution, agency, local government, and special purpose district. A governing body is defined as the multimember board, commission, committee, council, or other policy or rulemaking body of a public agency or any committee thereof that is acting on behalf of the public agency. The OPMA outlines certain procedures for meetings at which action is taken by governing boards of public agencies.

Installment Contracts.

A district that enters into contracts for construction, services, or materials may provide that payments will be made in monthly proportion of the contract price as work progresses. The board may determine the installment amounts. The state director must approve all contracts, plans, and specifications prior to the district entering into any contract.

Public Bidding Procedures.

Flood control district contracts for construction, labor, or materials must be awarded through a public bidding process. The board must run a public announcement in a newspaper of general circulation for a period of not less than two weeks (three weekly issues) before opening the bidding process. Bid proposals must include a certified check for an amount set by the board, which shall guarantee compliance with the bid.

The board must award the contract to the lowest and best responsible bidder; however, the board has authority to reject any or all bids. In such an event, the board must re-advertise for bids, following the same procedure as before. If the board does not receive a satisfactory bid, it may then proceed to construct the works by force account.

Contractor's Bond.

For any flood control district contract for construction, labor, or materials, where the total amount to be paid is \$1,000 or more, the contractor (*i.e.*, the successful bidder) must enter into a bond to the State of Washington for 100 percent of the contract price. The bond is conditioned upon the contractor's faithful performance of the contract. State and federal governments are exempted from this provision.

Summary of Substitute Bill:

Installment Contracts.

Contracts for maintenance entered into by flood control districts are added to the list of contracts for which the district may provide that payments will be made in monthly proportion of the contract price as work progresses. Five percent of all payments made pursuant to contracts for construction, services, materials, or maintenance must be withheld until the contract is complete. The requirement that the district obtain the state director's approval prior to entering into such contracts is removed.

Public Bidding Procedures.

Flood control district contracts for construction, maintenance, labor, or materials may only be awarded through a public bidding process, unless otherwise exempt from public bidding or

when a satisfactory bid is not received. The district must publish notice calling for sealed bid proposals at least once 14 days before the submission deadline. Bid proposals must be in writing, filed, and made public, and must be accompanied by a deposit equaling 5 percent of the total cost of the project.

For all contracts awarded through the public bidding process, three or more bid proposals are required. For contracts with a total cost of less than \$5,000, districts are not required to use public bidding procedures. For contracts with a total cost of less than \$50,000, districts may dispense with advertisement and competitive bidding.

Performance Bond.

The threshold contract amount for furnishing a performance bond for 100 percent of the contract price is increased from \$1,000 to \$5,000. The bond must be entered into with the district, rather than the State of Washington.

Board of Directors.

The board must now elect both a chair and vice chair from their number, rather than one chairman. The board may also either elect a secretary from their number or appoint and employ a secretary.

Statutes relating to flood control district board of directors' meetings and records are repealed. Instead, the board is now required to hold meetings in accordance with the Open Public Meetings Act. Additionally, conditions relating to changing or relocating the board's office and place of business are removed.

Substitute Bill Compared to Original Bill:

The substitute bill modifies section 2 of the original bill in several ways:

- it exempts contracts with a total cost of less than \$5,000 from the requirement that all district contracts for construction, maintenance, labor, or materials be awarded through a public bidding process;
- it requires that all contracts awarded through the public bidding process specified in section 2 of the substitute bill have three or more bid proposals. In contrast, the original bill required three or more bid proposals only for district construction and maintenance contracts with total project costs that equal or exceed \$50,000; and
- it creates authority for district boards to dispense with advertisement and competitive bidding for contracts with a total cost of less than \$50,000.

Appropriation: None.

Fiscal Note: Available.

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) The bill will bring flood control district statutes into conformity with statutes on similar subjects that govern other local government entities.

The bidding process for flood control districts will be streamlined. Currently, a flood control district is required to seek competitive bids for any project, regardless of the total cost of the project. Other local government entities, such as counties, are permitted to award contracts on projects with a total cost below a certain threshold without having to go through the formal bidding process. Flood control districts need to be able to do the same thing. They are asking that contracts below \$5,000 be exempt from all bidding requirements and that contracts below \$50,000 be exempt from formal bidding procedures.

Flood control district boards will be allowed to hire a secretary, rather than having to appoint a current county employee to the position.

The bill will bring statutes governing the operation and administration of flood control districts' board of directors into compliance with the Open Public Meetings Act and the Public Records Act.

(Opposed) None.

Persons Testifying: Representative Takko, prime sponsor; and Kenneth C. Stone, Cowlitz County Silver Lake Flood Control District.

Persons Signed In To Testify But Not Testifying: None.