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HOUSE BILL 2189

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State of Washington

63rd Legislature

2014 Regular Session

By Representatives Takko, Buys, and Blake

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1 AN ACT Relating to the administration and operation of flood  
2 control districts; amending RCW 86.09.175, 86.09.178, 86.09.259,  
3 86.09.268, and 86.09.271; and repealing RCW 86.09.181, 86.09.274,  
4 86.09.277, and 86.09.280.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 86.09.175 and 1937 c 72 s 59 are each amended to read  
7 as follows:

8 (1) Contracts entered into by districts for construction ~~((or~~  
9 ~~for))~~, services ~~((or))~~, materials, or maintenance may provide that  
10 payments ~~((shall))~~ will be made in such monthly proportion of the  
11 contract price, as determined by the board ~~((shall determine thereon))~~,  
12 as the work progresses, or as the services ~~((or))~~, materials, or  
13 maintenance are furnished, on monthly estimates of the value thereof ~~((~~  
14 ~~approved by the state director. Before the district shall enter into~~  
15 ~~any contract, the plans, specifications and form of contract therefor~~  
16 ~~shall be approved by the state director))~~.

17 (2) Except for contracts for materials, the district must withhold  
18 five percent of all payments made under subsection (1) of this section

1 until the contract is complete, as evidenced by releases issued by the  
2 district.

3 **Sec. 2.** RCW 86.09.178 and 1965 c 26 s 2 are each amended to read  
4 as follows:

5 ~~((Contracts for construction, or for labor or materials entering~~  
6 ~~into the construction of any improvement authorized by the district~~  
7 ~~shall be awarded at public bidding except as herein otherwise provided.~~  
8 ~~A notice calling for sealed proposals shall be published in such~~  
9 ~~newspaper or newspapers of general circulation as the board shall~~  
10 ~~designate for a period of not less than two weeks (three weekly issues)~~  
11 ~~prior to the day of the opening of the bids. Such proposals shall be~~  
12 ~~accompanied by a certified check for such amount as the board shall~~  
13 ~~decide upon, to guarantee a compliance with the bid and shall be opened~~  
14 ~~in public at the time and place designated in the notice. The contract~~  
15 ~~shall be awarded to the lowest and best responsible bidder: PROVIDED,~~  
16 ~~That the board shall have authority to reject any or all bids, in which~~  
17 ~~event they shall readvertise for bids and, when no satisfactory bid is~~  
18 ~~then received and with the written approval of the director, may~~  
19 ~~proceed to construct the works by force account.)) (1) Contracts~~  
20 entered into by districts for construction, services, or maintenance,  
21 or for purchases of materials, supplies, or equipment, the estimated  
22 cost of which is fifty thousand dollars or more, may only be let by  
23 contract and competitive bidding. The contract and competitive bidding  
24 process must comply with the following:

25 (a) The board must publish notice calling for sealed bid proposals  
26 in a newspaper of general circulation in the district at least once  
27 thirteen days before the deadline for submitting bid proposals. The  
28 notice must state generally the work to be done, must call for sealed  
29 bid proposals to be filed with the district on or before a specified  
30 date and hour, and must state the time and location that submitted bid  
31 proposals will be publicly opened and read. When notice is published,  
32 the work, plans, and specifications for which bid proposals are being  
33 requested must be on file in the district's office and be available for  
34 public inspection;

35 (b) Bid proposals must be in writing and be filed at the  
36 appropriate location on or before the date and hour specified in the  
37 notice. Proposals must also be accompanied by a bid proposal deposit

1 in an amount not less than five percent of the total amount of the bid.  
2 The bid proposal deposit must be in the form of cash, a certified  
3 check, a cashier's check, a postal money order, or a surety bond issued  
4 by a surety company authorized to do business in this state. A  
5 proposal may not be considered unless accompanied by a bid proposal  
6 deposit that meets these requirements; and

7 (c) Bid proposals must be opened and read in public by the board or  
8 its designee at the time and location specified in the notice.

9 (2) The board may let the contract to the lowest responsible bidder  
10 upon plans and specifications on file. The board may also reject any  
11 or all bids for good cause and readvertise. The board must return the  
12 deposit of any rejected bid proposal to the bidder.

13 (3) If a bid is accepted, the board must return the bid proposal  
14 deposits to all unsuccessful bidders. The bid proposal deposit of the  
15 successful bidder must be held until the contract between the bidder  
16 and the district is executed and a performance bond for the full amount  
17 of the contract price is furnished to the district in accordance with  
18 the bid.

19 (4) If the successful bidder fails to enter into a contract and  
20 fails to furnish a satisfactory performance bond within ten days of  
21 receiving notice of the board's acceptance of the bid, the bid proposal  
22 deposit is forfeited to the district. Additionally, the district is  
23 entitled to recover from the successful bidder any legal expenses,  
24 including reasonable attorneys' fees, incurred as a result of the  
25 bidder's failure to enter into a contract and the board's actions to  
26 collect on any surety bond required under this section.

27 (5) A low bidder, who claims error and fails to enter into a  
28 contract with the district in accordance with the bid, is prohibited  
29 from bidding on the same project if the board subsequently submits a  
30 new notice calling for sealed bid proposals.

31 (6) If a satisfactory bid is not received under this section, the  
32 district may complete the project by an agreed price or force account.

33 (7) This section does not restrict a district from: (a) Using  
34 volunteer labor and equipment on improvements and providing  
35 reimbursement for actual expenses; or (b) entering into an interlocal  
36 agreement for district construction, maintenance, or other work with a  
37 county, city, or other governmental entity.

1           **Sec. 3.** RCW 86.09.259 and 2013 c 23 s 448 are each amended to read  
2 as follows:

3           A flood control district (~~shall~~) must be managed by a board of  
4 directors consisting of three members. The initial directors (~~shall~~)  
5 must be appointed, and the elected directors elected, as provided in  
6 chapter 85.38 RCW. The directors (~~shall~~) must elect a chair and vice  
7 chair from their number (~~and shall either~~). The directors may elect  
8 (~~one of~~) a secretary from their number (~~or appoint a voter of the~~  
9 ~~district, as secretary~~) to hold office at (~~its~~) the board's pleasure  
10 and (~~who shall~~) to keep a record of (~~its~~) the board's proceedings.  
11 In accordance with RCW 86.09.268, the directors may also appoint and  
12 employ a secretary.

13           **Sec. 4.** RCW 86.09.268 and 1937 c 72 s 90 are each amended to read  
14 as follows:

15           The board (~~shall have the power and it shall be its duty to adopt~~  
16 ~~a seal of the district, to~~) must:

17           (1) Manage and conduct the business affairs of the district, (~~to~~)  
18 including holding regular meetings at least once each year;

19           (2) Employ and appoint (~~such~~) agents, engineers, attorneys,  
20 officers, and employees as may be necessary, and prescribe their  
21 duties (~~to~~);

22           (3) Establish reasonable (~~by laws,~~) rules and regulations for the  
23 government and management of affairs of the district (~~and~~);

24           (4) Hold open meetings in accordance with chapter 42.30 RCW; and

25           (5) Generally (~~to~~) perform any and all acts necessary to carry  
26 out the purpose of the district organization.

27           **Sec. 5.** RCW 86.09.271 and 1985 c 396 s 59 are each amended to read  
28 as follows:

29           The office of the directors and principal place of business of the  
30 district (~~shall~~) must be located, if possible, (~~at some place~~)  
31 within the district (~~to be~~) at a place designated by the board. If  
32 a place convenient and suitable for conducting district business and  
33 public hearings required by this chapter cannot be found within the  
34 district, the office may be located in the county within which the  
35 major portion of district lands is situated. (~~The office and place of~~  
36 ~~business cannot thereafter be changed, except with the previous written~~

1 ~~consent of the county legislative authority of the county within which~~  
2 ~~the major portion of the district is situated, and without passing a~~  
3 ~~resolution to that effect at a previous regular meeting of the board,~~  
4 ~~entered in the minutes thereof and without posting a notice of the~~  
5 ~~change in a conspicuous public place at or near the place of business~~  
6 ~~which is to be changed at least ten days prior thereto and by the~~  
7 ~~previous posting of a copy of the notice for the same length of time at~~  
8 ~~or near the new location of the office.))~~

9 NEW SECTION. **Sec. 6.** The following acts or parts of acts are each  
10 repealed:

11 (1) RCW 86.09.181 (Contractor's bond) and 1965 c 26 s 3 & 1937 c 72  
12 s 61;

13 (2) RCW 86.09.274 (Board of directors--Meetings--Change of date)  
14 and 1985 c 396 s 60 & 1937 c 72 s 92;

15 (3) RCW 86.09.277 (Board of directors--Special meetings--When  
16 notice required--Authorized business) and 1937 c 72 s 93; and

17 (4) RCW 86.09.280 (Board of directors--Meetings and records  
18 public--Printing of bylaws and rules) and 1937 c 72 s 94.

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