

HOUSE BILL REPORT

ESHB 2588

As Passed Legislature

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:

Committee Activity:

Local Government: 1/21/20, 1/24/20 [DPS].

Floor Activity:

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

Senate Amended.

Passed Senate: 3/5/20, 46-2.

House Concurred.

Passed House: 3/7/20, 90-7.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Requires state auditors to report unauditible special purpose districts to the county or counties within which the special purpose district is located.
- Requires counties to withhold funding from unauditible special purpose districts.
- Allows a county legislative authority to dissolve an unauditible special purpose district after a public hearing and the passage of an ordinance.
- Allows counties to impose an additional levy if a county assumes responsibility for the provision of services previously provided by a dissolved special purpose district.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Pollet, Chair; Duerr, Vice Chair; Kraft, Ranking Member; Appleton, Goehner and Senn.

Staff: Kellen Wright (786-7134).

Background:

Formation of Special Purpose Districts.

A special purpose district (SPD or district) is a limited purpose local government separate from a city, town, or county government. Districts provide a limited number of public facilities or services, and the types of services provided depend on the particular purpose for which the district was created. The formation of a SPD generally requires two elements: a resolution by a county legislative authority or a petition to the county legislative authority signed by a sufficient number of voters, and voter approval of a ballot proposition.

Dissolution of Special Purpose Districts.

State law provides different mechanisms dissolving certain districts. In general, however, dissolution occurs in two ways. First, the SPD may petition for dissolution to the respective county superior court. If, after a hearing, the court finds that dissolution is in the best interests of all concerned, then the court can dissolve the SPD. If the SPD is insolvent, then an additional hearing is required to create a plan to retire the SPD's debt (including, if necessary, an additional levy against property within the SPD).

Second, a SPD may be dissolved if it is found to be inactive. A SPD may be found to be inactive if it has failed to carry out any of the special purposes or functions for which it was formed for the past five years, or if no election or appointment has been made to the SPD's governing board for seven years. At any time, a county legislative authority may hold hearings on the dissolution of any SPD that appears to meet the criteria of being inactive. Additionally, the county auditor must notify the county legislative authority by June 1 of every year if a SPD within the county appears to be inactive.

Then, by September 1 of the same year, the county must hold one or more public hearings on whether the district should be dissolved. Notice of the hearing must be provided for at least three consecutive weeks in the newspaper, posted in at least three places within the SPD, and sent to the governing members of the SPD, any relevant SPD association, and to anyone who has a claim against the SPD. Notice must also be sent to any other counties that contain a portion of the SPD.

After a hearing, the county legislative authority must make written findings about whether the SPD is inactive. The county legislative authority may dissolve the SPD by ordinance if the SPD is inactive and there are additional written findings detailing why dissolution is in the public interest. An interested party has 30 days to appeal such a dissolution on the grounds that the SPD was not inactive or that dissolution is not in the public interest. After a SPD is ordered to be dissolved, the county legislative authority may then act to wind up a dissolved SPD's affairs.

An additional method of dissolution applies to inactive SPDs in counties with a population of 210,000 or more. This process can be initiated in two ways: by the filing of a resolution by any local government calling for the disincorporation of the SPD with the legislative authority of each county in which a district is located; or by the filing of a petition calling for the disincorporation of the SPD signed by 20 percent of the voters within a SPD with the legislative authority of each county in which a district is located. In either case, the county legislative authority must hold public hearings in response to determine whether or not services have been provided by the SPD within the last five years. If the county legislative authority finds that no services have been provided for five consecutive years and that the best interests of all persons concerned would be served by the proposed dissolution of the SPD, then it must order the disincorporation of the SPD, and supervise the liquidation of the SPDs assets and the satisfaction of any outstanding debt. If there are more proceeds from the liquidation than there are debts, the surplus is required to be paid to the school districts, or districts, in which the SPD was located. If the SPD's debts were greater than its assets, then the county legislative authority is required to levy assessments sufficient to satisfy the debt.

Auditing Special Purpose Districts.

All local governments, including SPDs, are required to file annual reports with the State Auditor. These reports must include, among other things, information on all collections made, or receipts received, from all sources; all accounts due to the public treasury but not collected; and all expenditures. The reports are required to be certified and filed with the state auditor within 150 days of the end of each fiscal year. The State Auditor is required to certify the correctness and completeness of such reports.

The State Auditor has the ability to audit any local government. The State Auditor is required to audit the finances of a local government at least once every three years.

Special Purpose District Funding

Most special purpose districts are funded, at least in part, by property taxes. Depending on the district, these taxes can be imposed as part of a regular tax levy (subject to the regular tax levy limit), an excess levy (sometimes in conjunction with a regular levy), or as an assessment based on the benefit that the property receives from the district.

Summary of Engrossed Substitute Bill:

Unauditable Special Purpose Districts.

By December 31 of every year, the State Auditor is required to search available records and to notify a county legislative authority if a special purpose district (SPD) partially or wholly within that county has been found to be unauditable. The State Auditor must also notify the State Treasurer if a SPD has been found unauditable. A SPD is unauditable if the State Auditor determines that the SPD has improperly maintained, or failed to maintain or submit, adequate records, files, or reports for an audit to be completed.

If a county is notified by the state auditor that a SPD has been found to be unauditible, then the SPD and the county auditor are generally prohibited from issuing warrants against the funds of the SPD, until the SPD has had its financial report certified by the State Auditor. The State Treasurer may not distribute any local sales and use tax imposed by an unauditible SPD until this finance report is certified. A county may, however, authorize the unauditible SPD and the county auditor to issue warrants against the funds of the SPD to prevent the discontinuation or interruption of services, for emergency or public health purposes, or to allow the district to carry out districts duties and responsibilities.

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

If the SPD is determined to be unauditible, then the county legislative authority may dissolve the district by ordinance if it makes additional written findings detailing why such dissolution is in the public interest. An interested party has 30 days to appeal such a dissolution on the grounds that the SPD is not unauditible or that dissolution is not in the public interest. After a SPD is ordered to be dissolved, the county legislative authority may then act to wind up a dissolved SPD's affairs.

A county that dissolves a special purpose district may impose a separate regular property tax levy or a special assessment if it assumes responsibility for providing the services previously provided by the dissolved special purpose district. Such a levy or assessment may not exceed the levy or assessment that the dissolved special purpose district was authorized to impose, and is subject to the same provisions as the county's general property tax levy.

At any time, even without notification from the county auditor, a county legislative authority may also hold hearings on the dissolution of any SPD that appears to meet the criteria of being unauditible. If the county does hold such hearings, the procedure followed is the same as if the county legislative authority had received notice from the State Auditor that the SPD was unauditible.

A public utility district can be found inactive—and subject to potential dissolution—if it has not carried out the functions for which it was formed for five years or if it has not held an election or had an appointment to its board in seven years.

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) Special purpose districts (SPDs) can be governed by arcane and antiquated laws that lead to a lack of oversight, public awareness, and transparency. This provides an opportunity for officials in SPDs to abuse their positions, and to remain in office for years without needing to hold an election. This is good legislation on an important policy issue. Taxpayers should know what their tax dollars are being spent on, and should know when their elected officials are meeting and what's on the agenda so that they can be heard. The bill would make it easier for smaller newspapers to cover SPD activities. This bill increases transparency, ends self-dealing, and provides accountability for SPDs that fail to provide timely reports to the State Auditor. If any district becomes unauditible, then it is important that the county is able to withhold funds and to take over or disband the SPD. The current proposed notification dates are cumbersome for the State Auditor to process, and should be changed so that the State Auditor has more time to review reports. This is really good legislation, but county treasurers would like a seat at the table to clean up a few logistical points. Having the county treasurer act as treasurer for metropolitan park districts or similar SPDs that use city finance departments does not make sense. There needs to be a determination whether interest is being paid on the money withheld from SPDs by counties, and a decision about what to do with warrants presented for payment when a SPD has been found unauditible.

(Opposed) None.

(Other) The intent of this bill is good, but there could be issues with the details. Special purpose districts should be accountable for public funds, however, many already are and some have their own treasurers. It is essential for some SPDs to be able to act as their own treasurer so that they can invest, have access to money immediately, and respond to emergency situations. Using the county treasurer takes longer and costs more. This bill may be trying to solve a problem that is not widespread, and may reduce functionality of SPDs. Many large districts are already subject to audit processes and other public disclosure requirements and have a significant history of clean audits. Large SPDs have competent staff and oversight. Each SPD performs very different functions and should be dealt with separately whenever possible. Most SPDs file the necessary financial statements on time, and those that don't are often small and have a difficult time keeping up with paperwork. Some SPDs have no staff and little revenue. Small SPDs should perhaps be exempted from the bill's requirements. Imposing more disclosure requirements could allow public records requestors to take advantage of SPDs. It is not necessarily possible for small SPDs to maintain a website or to post information online. It is not clear in the bill which legislative authority is allowed to make use of the funds withheld from SPDs. The bill makes it too easy for a SPD to be found unauditible and to be subjected to harsh consequences under the bill; a SPD should not be able to be found unauditible unless it has failed to provide multiple required reports. Dissolving SPDs is concerning, as those services are still needed.

Persons Testifying: (In support) Representative Pollet, prime sponsor; Scott Nelson, Office of the State Auditor; Jeff Gadman, Washington Association of Counties; Arny Davis, Lewis County Treasurer's Office; and Rowland Thompson, Allied Daily Newspapers of Washington.

(Other) Jim Fields, Vera Water and Power; Mike Schwisow, Washington State Water Resources Association; Scott Revell, Roza Irrigation District; Larry Davis, Whatcom

Conservation District; Steve Lindstrom, Sno-King Water District Coalition; Judi Gladstone, Washington Association of Water and Sewer District; Ron Speer, Soos Creek Water District; Eric Frimodt, Insee Best; Ryan Spiller, Washington Fire Commissioners; Sarah Richards, Whidbey Island Conservation District; Bill Clarke, Whatcom Agricultural Water Board; Victoria Lincoln, Washington Public Ports Association; and Chuck Freeman and Kipp Drummond, Kennewick Irrigation District.

Persons Signed In To Testify But Not Testifying: None.