

HOUSE BILL REPORT

ESHB 2588

As Amended by the Senate

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.

Brief Summary of Engrossed Substitute Bill

- Allows counties to withhold funding from special purpose districts that fail to file required annual reports, and 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 expend funds in the place of a special purpose district that has failed to file a required annual report or which has been found to be unauditible.
- Requires that a county treasurer act as an ex-officio treasurer for a special purpose district that has a majority of the special purpose district's area within the county, unless the special purpose district is authorized by law to utilize a different treasurer.
- Requires special purpose districts to post agendas and other information online at least 72 hours prior to scheduled meetings, and provides that any action taken at a meeting in which a special purpose district has not published

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an agenda online as required, or proper notice has not been provided, is null and void.

- Repeals campaign and finance disclosure exemptions for conservation district supervisors.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

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 Minority 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 SPD's 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.

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. However, agencies without a website, or with fewer than 10 full-time employees are not required to post agendas in advance online.

Conservation District Exemption.

Conservation district supervisors are exempted from certain public disclosure requirements of campaign finance reporting and personal financial reporting. Elected conservation district supervisors are not considered elected officials for purposes of annual personal financial affairs reporting requirements.

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 failed to file a required annual financial statement for the most recent fiscal year or if the SPD has been found to be 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 for three years.

If a county has been notified by the State Auditor that a SPD has failed to file a required annual financial statement, then the county's legislative authority may withhold funds from, and not expend funds on behalf of, the SPD 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 SPD has been found to be unauditable, then the county must withhold funds from, and not expend funds on behalf of, the SPD, until the county has received notice that the SPD has filed the most recent financial statement, has filed any past due financial statements necessary for the SPD to be found auditable, and that the SPD is auditable. Until this notice is received, neither the SPD nor the county auditor may issue warrants against the funds of a SPD, and any warrants presented to the county treasurer for payment will be refused.

While a county withholds funds and expenditures from the SPD due either to a failure to file a required annual financial statement or a finding that the SPD is unauditable, the county legislative authority may authorize the use of those funds for the purposes for which the assessment was collected within the boundaries of the SPD.

When a SPD has been found to be unauditable 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 unauditable. 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 unauditable, 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 unauditable 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 legislative authority may continue to carry out the functions of an unauditible SPD, 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 SPD continue operations.

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.

Special Purpose District Online Reporting Requirements.

Every SPD must publish online the annual budget approved by its governing body, the minutes of its meetings for the prior 12 months, and the annual auditable financial statements submitted to the State Auditor. A SPD 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. An agenda for a regular meeting must include a direct link to the minutes of the governing body's held within the preceding 12 months. At least 72 hours prior to a special meeting of its governing body, a SPD must prominently post notice of the meeting outside of the SPD'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. Any action taken after October 1, 2020, at a meeting where the agenda was not posted or notice was not provided as required, is null and void. Beginning on October 1, 2020, the State Auditor must review compliance with the publication requirements when the State Auditor conducts an accountability audit of a SPD. Special purpose districts may enter into interlocal agreements with each county within which the SPD collects rates, charges, fees, or assessments, or with another SPD with which it shares constituents or adjoins, to maintain a website for the purposes of the required publications and other public communications.

County Treasurers and Special Purpose Districts.

Unless a SPD is authorized by law to use a different treasurer, the county treasurer of the county that contains most of the SPD must act as the ex-officio treasurer of the SPD. When the county treasurer does act as treasurer for a SPD, the SPD must provide an approved annual budget and a list of those with signature authority for the SPD to the county treasurer by January 31 of each year. Any SPD that has been found unauditible must use the county treasurer. An unauditible SPD may regain the ability to use a different treasurer if the SPD has used the county treasurer for at least five years; has complied with all conditions imposed by the State Auditor; and the State Auditor recommends that the SPD be allowed to use a different treasurer.

Conservation District Exemption.

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

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

- removes the intent section;
- amends the definition of "unauditable" to remove the requirement that the district be incapable of being audited for three years before being found unauditable;
- requires the state auditor to only notify counties if a district has been determined to be unauditable, and removes the requirement that the state auditor transmit the results of all audits of special purpose districts to the districts and the county;
- removes the authorization for a county to withhold funds if the district has failed to file a financial statement for the most recent completed fiscal year;
- prohibits a special purpose district and a county auditor acting on behalf of the special purpose district to issue warrants against the funds of an unauditable special purpose district until a financial report from the district has been certified by the state auditor;
- prohibits the state treasurer from distributing local sales and use taxes imposed by a special purpose district to an unauditable special purpose district until a financial report from the district has been certified by the state auditor;
- allows a county auditor to authorize an unauditable special purpose district to issue warrants in cases of emergency, to prevent interruption of services, or to allow the district to carry out any district duties or responsibilities;
- removes the public utility district exemption from the district dissolution provisions;
- allows a county to impose a separate regular property tax levy or a special assessment, subject to certain conditions, if the county assumes responsibility for services previously provided by the district;
- allows a county to, by resolution, expressly assume the obligations or liabilities of a dissolved special purpose district from which the county was transferred real property or improvements to real property;
- removes the online publication and notice requirements for special purpose district budgets, agendas, and special meetings;
- removes provisions providing that the county treasurer act as ex-officio treasurer for a special purpose district, as well as provisions relating to removing the authority of an unauditable district to utilize its own treasurer; and
- restores the conservation district exemptions related to public disclosure and campaign finance.

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 unauditable, 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 unauditable.

(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 unauditable and to be subjected to harsh consequences under the bill; a SPD should not be able to be found unauditable 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, Inslee 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.