

IN THE SENATE

SENATE BILL NO. 1344

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO FLOOD CONTROL; AMENDING SECTION 42-3103, IDAHO CODE, TO DEFINE
2 TERMS; AMENDING SECTION 42-3114, IDAHO CODE, TO REVISE COMPENSATION
3 AND REIMBURSEMENT PROVISIONS FOR FLOOD CONTROL DISTRICT COMMISSION-
4 ERS; AMENDING SECTION 42-3115, IDAHO CODE, TO REVISE AND TO PROVIDE FOR
5 CERTAIN POWERS AND DUTIES OF COMMISSIONERS AND TO MAKE TECHNICAL COR-
6 RECTIONS; AMENDING CHAPTER 31, TITLE 42, IDAHO CODE, BY THE ADDITION OF
7 A NEW SECTION 42-3116, IDAHO CODE, TO REQUIRE FLOOD CONTROL DISTRICTS
8 TO OBTAIN APPROVAL OF THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER
9 RESOURCES IN THE EVENT ACTIVITIES AND OPERATIONS OF THE DISTRICT WILL
10 ALTER A STREAM CHANNEL AND TO PROVIDE THAT UNDER CERTAIN CIRCUMSTANCES
11 A STREAM CHANNEL ALTERATION PERMIT WILL NOT BE REQUIRED PROVIDED SPEC-
12 IFIED CONDITIONS ARE MET; AMENDING SECTION 46-1021, IDAHO CODE, TO
13 REVISE A DEFINITION AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING
14 SECTION 46-1022, IDAHO CODE, TO PROVIDE THAT LOCAL GOVERNMENT APPROVAL
15 SHALL NOT BE REQUIRED IF A FLOOD CONTROL DISTRICT IS CONDUCTING A FLOOD
16 FIGHT UNDER CERTAIN CONDITIONS AND TO MAKE TECHNICAL CORRECTIONS.
17

18 Be It Enacted by the Legislature of the State of Idaho:

19 SECTION 1. That Section 42-3103, Idaho Code, be, and the same is hereby
20 amended to read as follows:

21 42-3103. DEFINITIONS. Whenever used or referred to in this act, unless
22 a different meaning clearly appears from the context, the following terms
23 shall have the following meanings:

24 ~~(1-)~~ "Board" or "board of commissioners" means the board of commission-
25 ers of the flood control district.

26 ~~(2-)~~ "Commissioner" means a member of the board of commissioners of the
27 flood control district.

28 ~~(3-)~~ "Debris removal" means to remove from the channels and banks of
29 streams any artificial debris, plants and other materials that obstruct or
30 are likely to obstruct the flow of water therein and thereby cause flooding
31 or interfere with the lawful diversion and beneficial use of water.

32 ~~(4)~~ "Department" means the department of water resources, state of
33 Idaho.

34 ~~4-(5)~~ "Director" means the director of the department of water re-
35 sources, state of Idaho.

36 ~~5-(6)~~ "District" means any flood control district organized by author-
37 ity of this act or prior acts of the Idaho legislature.

38 ~~(7)~~ "Flood" or "flooding" means the inundation of normally dry land ar-
39 eas with water caused by the overflow or rise of rivers, streams or lakes, and
40 other surface watercourses, or the unusual and rapid accumulation or runoff
41 of surface waters from any source.

1 (8) "Flooding emergency" means a circumstance in which the board has
 2 determined that the district is required to take immediate action to protect
 3 life or property from injury or damage resulting from existing or imminent
 4 flooding.

5 (9) "Flood fight" means the activities and operations authorized by the
 6 board in response to a flooding emergency.

7 ~~6.~~(10) "State" means the state of Idaho.

8 (11) "Structural works of improvement" means any undertaking for flood
 9 prevention, including structural and land treatment measures, and for the
 10 conservation, development, utilization and disposal of water, as provided
 11 for in the act of the congress of the United States known as the Watershed
 12 Protection and Flood Prevention Act (U.S.C., tit. 16, sections 1001-1008)
 13 and acts amendatory thereto.

14 SECTION 2. That Section 42-3114, Idaho Code, be, and the same is hereby
 15 amended to read as follows:

16 42-3114. COMPENSATION OF COMMISSIONERS. The commissioners of the dis-
 17 trict shall fix the compensation they shall each receive for their services,
 18 not to exceed the sum of twenty one hundred dollars (\$20.00100) per day, and
 19 fifteen cents (15¢) per mile for shall fix the reimbursement they shall each
 20 receive for their travel and their necessary expenses for each day they shall
 21 be away from their place of residence and engaged in the business of their
 22 office, subject to the limits provided in section 67-2008, Idaho Code. The
 23 commissioners shall present an itemized account under oath on forms pre-
 24 scribed by the board.

25 SECTION 3. That Section 42-3115, Idaho Code, be, and the same is hereby
 26 amended to read as follows:

27 42-3115. COMMISSIONERS -- POWERS AND DUTIES. The board of commission-
 28 ers of flood control districts shall have the following powers and duties:

29 (1-) To annually fix and determine, the amount of money required to be
 30 raised by taxation to supply funds for costs of construction, costs of oper-
 31 ation and maintenance of the work and equipment of the district, and to levy
 32 and cause to be collected assessments on real property within the district
 33 in an amount not to exceed six hundredths of one percent (.06%) of the market
 34 value for assessment purposes on all taxable property within the district,
 35 provided however that a higher levy may be approved and ratified by the qual-
 36 ified voters at an election to be held, subject to the provisions of section
 37 34-106, Idaho Code, for that purpose in the same manner as provided for the
 38 approval and ratification of contracts, in section 42-3117, Idaho Code, and
 39 said levy shall be certified by the board to the board of county commission-
 40 ers of the county, or counties, in which said district is located, with di-
 41 rections that at the time and in the manner required by law for levying taxes
 42 for county purposes, such board, or boards, of county commissioners shall
 43 levy such tax upon the market value for assessment purposes of the real prop-
 44 erty within the boundaries of the district. Such certification of levies
 45 shall be prepared and forwarded by the board of the flood control district
 46 to the board, or boards, of county commissioners on or before September 1 of
 47 each year.

1 Such levies shall be levied and collected in the manner provided by law,
2 and the moneys collected shall be turned over to the treasurer or treasurers,
3 of the county, or counties, in which said district is located.

4 Said moneys shall be public funds and subject to the provisions of the
5 public depository laws of the state.

6 (2-) To employ such personnel as may be necessary to carry out the pur-
7 poses and objects of this chapter, with the full power to bind said district
8 for the compensation of such personnel.

9 (3-) To sue and be sued in the name of the district; to have a seal, which
10 seal shall be judicially noticed; to have perpetual succession unless ter-
11 minated as hereinafter provided; to make and execute contracts and other in-
12 struments necessary or convenient to the exercise of its power and to promul-
13 gate, amend and repeal rules not consistent with the provisions of this chap-
14 ter.

15 (4-) To manage and conduct the business and affairs of the district,
16 both within and without the district.

17 (5-) To ~~construct, operate and maintain structural works of improve-~~
18 ~~ment for the prevention of floodwater and sediment damages, and the conser-~~
19 ~~vation, development, utilization, and disposal of water, whether within or~~
20 ~~without the boundaries of the district, and to enter into contracts~~ for the
21 purposes set forth above of this chapter, provided however, that the board
22 shall purchase goods and services in accordance with the provisions of chap-
23 ter 28, title 67, Idaho Code. However, where it is determined by order of
24 the board that there is an existing flooding emergency, or ~~where it is deter-~~
25 ~~mined that the district is in a flood fight resulting from unanticipated con-~~
26 ~~ditions~~, the requirement for sealed competitive bids shall not apply.

27 (6-) To prescribe the duties of officers, agents and employees as may be
28 required.

29 (7-) To establish the fiscal year of the district and to keep records of
30 all business transactions of the district.

31 (8-) To prepare a statement of the financial condition of the district
32 at the end of each fiscal year, ~~in a form to be prescribed by the director or~~
33 ~~by the legislative services office, and to~~ publish in at least one (1) is-
34 ~~ssue of some newspaper published, or in general circulation in~~ the county, or
35 counties, in which such district is located and to file a certified copy of
36 such financial report with the director and the legislative services office
37 on or before February 2 of each year.

38 (9-) To have an audit of the financial affairs of the district as re-
39 quired in section 67-450B, Idaho Code. A certified copy of said audit shall
40 be filed with the director on or before February 2 following the audit.

41 (10-) To obtain options upon and acquire by purchase, exchange, lease,
42 gift, grant, bequest, devise, or otherwise, any property, real or personal,
43 and improve any properties acquired; to receive income from such properties
44 and to expend such income in carrying out the purposes and provisions of this
45 chapter; to lease any of its property or interest therein in furtherance of
46 the purposes and provisions of this chapter, provided that no contract or
47 agreement for the acquisition, purchase or repair of personal property in-
48 volving expenditure in excess of one thousand dollars (\$1,000), shall be en-
49 tered into without first advertising for sealed competitive bids as herein
50 provided.

1 (11-) To have the power of eminent domain for the use of the district in
2 the construction, operation, maintenance and upkeep of its structures, wa-
3 terways, dikes, dams, basins, or any other use necessary in the carrying out
4 of the provisions of this chapter.

5 (12-) To convey rights-of-way and easements for highways, public roads,
6 public utilities, and for other purposes, over district property, as shall
7 be determined by the board to be in the best interests of the district.

8 (13-) To convey, by deed, bill of sale, or other appropriate instrument,
9 all of the estate and interest of the district, in any real or personal prop-
10 erty. Prior to such sale or conveyance, the board shall have the property
11 appraised by three (3) disinterested residents of the district, which ap-
12 praisal shall be entered in the minutes of the board. The property may be
13 sold at public auction or at a private sale by sealed competitive bids, as the
14 board shall determine, to the highest cash bidder, provided that in no case
15 shall any property of a district be sold for less than its appraised value.
16 All sales by sealed competitive bids shall be advertised as herein provided.

17 (14-) To conduct the following activities and operations for the
18 prevention of floodwater and sediment damages, and the conservation, de-
19 velopment, utilization and disposal of water, whether within or outside the
20 boundaries of the district:

21 (a) To construct, operate and maintain structural works of improve-
22 ment;

23 (b) To use natural streams and to improve the same for use as a flood
24 control structure. However, in the event that the use of the natural
25 stream involves alteration of the stream channel, no such alteration
26 shall be made by the district until such alteration is approved by the
27 director;

28 (c) To declare a flooding emergency and fight floods. Provided how-
29 ever, that the extent of any stream channel alteration shall be limited
30 to that amount of work deemed necessary by the board to safeguard life or
31 property, including growing crops during the period of emergency;

32 (d) To repair and stabilize stream banks;

33 (e) To remove debris. If the district determines that there is no
34 reasonable means of transporting and disposing of debris outside the
35 mean high water mark of the channel, the district may deposit the de-
36 bris along the stream banks outside the mean high water mark, and may
37 thereafter dispose of combustible materials removed from the stream by
38 burning in conformance with any applicable permitting requirements of
39 the state of Idaho or local governments, and after reasonable notice to
40 nearby landowners; and

41 (f) To conduct flood control operations to prevent flooding from the
42 release of water from a canal, ditch or drain upon the request of the
43 owner thereof.

44 (15-) To enter into contracts or agreements with the United States or
45 any of its officers, agents, or subdivisions, or with the state or any of its
46 officers, agents or political subdivisions, and to cooperate with such gov-
47 ernments, persons or agencies in effectuating, promoting and accomplishing
48 the purposes of this chapter, provided that the district has sufficient mon-
49 eys on hand, or in their budget for the year in which said contract is entered

1 into, to defray the expenditure of funds called for in such contract without
2 the creation of any indebtedness.

3 Whenever any such contract shall, by its terms, require the expenditure
4 of funds by the district in excess of the moneys on hand or the funds to be re-
5 alized from ~~their~~ its budget for the year in which said contract is entered
6 into, then such contract may not be entered into by the district until rati-
7 fied by two-thirds (2/3) of the qualified voters voting at an election to be
8 held, subject to the provisions of section 34-106, Idaho Code, for that pur-
9 pose, according to the provisions of this chapter.

10 (16-) To bear its allocated share of the cost of any project resulting
11 from any contract or agreement entered into as provided herein.

12 (17-) To take over, administer and maintain pursuant to any agreement
13 or contract entered into in accordance with the provisions of this chapter,
14 any flood control project within or without the boundaries of the district
15 undertaken in cooperation with the United States or any of its agencies, or
16 with the state of Idaho or any of its agencies, or any combinations thereof.

17 (18-) To accept donations, gifts and contributions in money, services,
18 or materials, or otherwise, from the United States or any of its agencies, or
19 the state of Idaho or any of its agencies or any combinations thereof, and to
20 expend such moneys, services, or materials in carrying on its operations.

21 (19-) To exercise all other powers necessary, convenient or incidental
22 to carrying out the purposes and provisions of the chapter.

23 SECTION 4. That Chapter 31, Title 42, Idaho Code, be, and the same is
24 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
25 ignated as Section 42-3116, Idaho Code, and to read as follows:

26 42-3116. DIRECTOR'S APPROVAL -- WHEN REQUIRED. (1) In the event that
27 the district's activities and operations will alter a stream channel within
28 the meaning of section 42-3802, Idaho Code, the district shall obtain the di-
29 rector's prior approval pursuant to chapter 38, title 42, Idaho Code.

30 (2) The district's conduct of a flood fight in response to a flooding
31 emergency declared by the board shall not require a stream channel alter-
32 ation permit, provided the district complies with the emergency waiver pro-
33 cedures consistent with section 42-3808, Idaho Code, and rules promulgated
34 by the Idaho water resource board.

35 SECTION 5. That Section 46-1021, Idaho Code, be, and the same is hereby
36 amended to read as follows:

37 46-1021. DEFINITIONS. As used in this act:

38 (1) "Development" means any ~~manmade~~ man-made change to improved or
39 unimproved real estate, including, but not limited to, the construction
40 of buildings, structures or accessory structures, or the construction of
41 additions or substantial improvements to buildings, structures or acces-
42 sory structures; the placement of mobile homes; mining, dredging, filling,
43 grading, paving, excavation or drilling operations; and the deposition or
44 extraction of materials; specifically including the construction of dikes,
45 berms and levees. The term "development" does not include the operation,
46 cleaning, maintenance or repair of any ditch, canal, lateral, drain, diver-

1 sion structure or other irrigation or drainage works that is performed or
2 authorized by the owner thereof pursuant to lawful rights and obligations.

3 (2) "Flood" means a general or temporary condition of partial or com-
4 plete inundation of normally dry land areas caused by the overflow or rise
5 of rivers, ~~ocean~~, streams or lakes, or the unusual and rapid accumulation or
6 runoff of surface waters from any source.

7 (3) "Flood fringe" is that portion of the floodplain outside of the
8 floodway covered by floodwaters during the regulatory flood.

9 (4) "Floodplain" is the land that has been or may be covered by floodwa-
10 ters, or is surrounded by floodwater and inaccessible, during the occurrence
11 of the regulatory flood. The riverine floodplain includes the floodway and
12 the flood fringe.

13 (5) "Floodplain management" is the analysis and integration of the en-
14 tire range of measures that can be used to prevent, reduce or mitigate flood
15 damage in a given location, and that can protect and preserve the natural,
16 environmental, historical, and cultural values of the floodplain.

17 (6) "Floodproofing" means the modifications of structures, their
18 sites, building contents and water and sanitary facilities, to keep water
19 out or reduce the effects of water entry.

20 (7) "Flood protection elevation" means an elevation that shall cor-
21 respond to the elevation of the one percent (1%) chance flood (one hundred
22 (100) year flood) plus any increased flood elevation due to floodway en-
23 croachment, plus any required freeboard.

24 (8) "Floodway" is the channel of the river or stream and those portions
25 of the floodplain adjoining the channel required to discharge and store the
26 floodwater or flood flows associated with the regulatory flood.

27 (9) "Freeboard" represents a factor of safety usually expressed in
28 terms of a certain amount of feet above a calculated flood level. Freeboard
29 shall compensate for the many unknown factors that contribute to flood
30 heights greater than the height calculated. These unknown factors include,
31 but are not limited to, ice jams, debris accumulation, wave action, obstruc-
32 tion of bridge openings and floodways, the effects of urbanization on the
33 hydrology of the watershed, loss of flood storage areas due to development
34 and the sedimentation of a river or stream bed.

35 (10) "Local government," in the context of this chapter, means any
36 county or city having planning and zoning authority to regulate land use
37 within its jurisdiction.

38 (11) "Mitigation" means any action taken which will reduce the impact,
39 damage or cost of the next flood that occurs.

40 (12) "Person" means any individual, group of individuals, corporation,
41 partnership, association, political subdivision, public or private agency
42 or entity.

43 (13) "Regulatory flood" is a flood determined to be representative of
44 large floods known to have occurred in Idaho and which may be expected to oc-
45 cur on a particular stream because of like physical characteristics. The
46 regulatory flood is based upon a statistical analysis of stream flow records
47 available for the watershed or an analysis of rainfall and runoff character-
48 istics in the watershed. In inland areas, the flood frequency of the regu-
49 latory flood is once in every one hundred (100) years; this means that in any

1 given year there is a one percent (1%) chance that a regulatory flood may oc-
2 cur or be exceeded.

3 SECTION 6. That Section 46-1022, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 46-1022. LOCAL GOVERNMENTS MAY ADOPT FLOODPLAIN ZONING ORDI-
6 NANCES. Subject to the availability of adequate mapping and data to properly
7 identify the floodplains, if any, within ~~their~~ its jurisdiction, each local
8 government is encouraged to adopt a floodplain map and floodplain manage-
9 ment ordinance which identifies these floodplains and which requires, at
10 a minimum, that any development in a floodplain must be constructed at a
11 flood protection elevation and/or have adequate floodproofing. The local
12 government may regulate all mapped and unmapped floodplains within ~~their~~ its
13 jurisdiction. Nothing in this act shall prohibit a local government from
14 adopting more restrictive standards than those contained in this chapter.
15 Floodplain zoning ordinances shall not regulate the operation, cleaning,
16 maintenance or repair of any ditch, canal, lateral, drain, diversion struc-
17 ture or other irrigation or drainage works that is performed or authorized
18 by the owner thereof pursuant to lawful rights and obligations. If not oth-
19 erwise exempt from approval, a flood control district's conduct of a "flood
20 fight," as defined in section 42-3103, Idaho Code, shall not require prior
21 local government approval provided all such approvals are obtained within a
22 reasonable time after the imminent flooding event has ended.