

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 540

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO FLOOD CONTROL DISTRICTS; AMENDING SECTION 42-3102, IDAHO CODE,
2 TO REVISE PROVISIONS REGARDING THE POLICY OF THE STATE; AMENDING SEC-
3 TION 42-3103, IDAHO CODE, TO REVISE DEFINITIONS AND TO DEFINE TERMS;
4 AMENDING SECTION 42-3115, IDAHO CODE, TO REVISE PROVISIONS REGARDING
5 THE POWERS AND DUTIES OF COMMISSIONERS; AMENDING SECTION 42-3116, IDAHO
6 CODE, TO REVISE PROVISIONS REGARDING DIRECTOR APPROVAL; AND DECLARING
7 AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
8

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

10 SECTION 1. That Section 42-3102, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 42-3102. POLICY OF STATE. It is hereby recognized by the legislature
13 that ~~the protection of life~~ flooding can cause significant damage to life and
14 property from floods is of great importance to in this state. It is therefore
15 declared to be the policy of the state to provide for ~~the prevention of flood~~
16 damage flood risk reduction, flood response, and flood recovery in a manner
17 consistent with the conservation and wise development of our water resources
18 and thereby to protect and promote the health, safety, and general welfare of
19 the people of this state.

20 SECTION 2. That Section 42-3103, Idaho Code, be, and the same is hereby
21 amended to read as follows:

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

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

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

29 (3) "Debris removal" or "remove debris" means to remove from the chan-
30 nels and banks of streams, and any other surface watercourses, any artifi-
31 cial debris, gravel, sediment, plants, and other materials that obstruct or
32 are likely to obstruct the flow of water therein and thereby cause flooding
33 or interfere with the lawful diversion and beneficial use of water.

34 (4) "Department" means the department of water resources, state of
35 Idaho.

36 (5) "Director" means the director of the department of water resources,
37 state of Idaho.

38 (6) "District" means any flood control district organized by authority
39 of this act or prior acts of the Idaho legislature.

1 (7) "Flood," "flood event," or "flooding" means the inundation of nor-
 2 mally dry land areas with water caused by the overflow or rise of rivers,
 3 streams or lakes, and other surface watercourses, or the unusual and rapid
 4 accumulation or runoff of surface waters from any source.

5 (8) "Flood control" means the activities, operations, and projects au-
 6 thorized by the board for flood risk reduction, flood study, flood response,
 7 and flood recovery.

8 (9) "Flood control structure" or "structure" means any treatment mea-
 9 sure on land or the channels and banks of streams and any other surface water-
 10 courses authorized by the board for flood control, including but not limited
 11 to a bank barb, berm, dike, drop structure, levee, riprap, sill, planting,
 12 device, or other mechanism.

13 (10) "Flood recovery" means the activities, operations, and projects
 14 authorized by the board after a flood event, including but not limited to the
 15 maintenance, construction, or installation of any flood control structure
 16 or the implementation of any flood risk reduction measure.

17 (11) "Flood response" or "flood fight" means the activities, oper-
 18 ations, and projects authorized by the board in response to a flooding
 19 emergency.

20 (12) "Flood risk reduction" or "flood risk prevention" means activi-
 21 ties, operations, projects, structures, and studies authorized by the board
 22 to reduce the risk of flooding, including but not limited to the removal
 23 of debris and the maintenance, repair, stabilization, restoration, alter-
 24 ation, or improvement of stream banks, stream channels, and other surface
 25 watercourses.

26 (13) "Flood study" or "study" means any data gathering, study, model-
 27 ing, or other analysis used by the district in conducting flood control.

28 ~~(8) (14) "Flooding emergency" means a circumstance in which the board
 29 has determined that the district is required to take immediate action to
 30 protect reduce injury to life or damage to property from injury or damage
 31 resulting from during an existing or imminent flooding flood event.~~

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

34 ~~(10) (15) "State" means the state of Idaho.~~

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

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

43 42-3115. COMMISSIONERS -- POWERS AND DUTIES. The board of commission-
 44 ers of flood control districts shall have the following powers and duties:

45 (1) To annually fix and determine the amount of money required to be
 46 raised by taxation to supply funds for costs of construction, costs of oper-
 47 ation and maintenance of the work and equipment of the district, and to levy
 48 and cause to be collected assessments on real property within the district
 49 in an amount not to exceed six hundredths of one percent (.06%) of the market

1 value for assessment purposes on all taxable property within the district,
2 provided however that a higher levy may be approved and ratified by the qual-
3 ified voters at an election to be held, subject to the provisions of section
4 34-106, Idaho Code, for that purpose in the same manner as provided for the
5 approval and ratification of contracts, in section 42-3117, Idaho Code, and
6 said levy shall be certified by the board to the board of county commission-
7 ers of the county, or counties, in which said district is located, with di-
8 rections that at the time and in the manner required by law for levying taxes
9 for county purposes, such board, or boards, of county commissioners shall
10 levy such tax upon the market value for assessment purposes of the real prop-
11 erty within the boundaries of the district. Such certification of levies
12 shall be prepared and forwarded by the board of the flood control district
13 to the board, or boards, of county commissioners on or before September 1 of
14 each year.

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

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

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

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

29 (4) To manage and conduct the business and affairs of the district, both
30 within and without the district.

31 (5) To enter into contracts for the purposes of this chapter, provided
32 however, that the board shall purchase goods and services in accordance with
33 the provisions of chapter 28, title 67, Idaho Code. However, where it is de-
34 termined by order of the board that there is an existing flooding emergency,
35 or that the district is in a flood fight, the requirement for sealed competi-
36 tive bids shall not apply.

37 (6) To prescribe the duties of officers, agents and employees as may be
38 required.

39 (7) To establish the fiscal year of the district and to keep records of
40 all business transactions of the district.

41 (8) To prepare a statement of the financial condition of the district
42 at the end of each fiscal year in a form to be prescribed by the director or
43 by the legislative services office, to publish in at least one (1) issue of
44 some newspaper published, or in general circulation in the county, or count-
45 ties, in which such district is located and to file a certified copy of such
46 financial report with the director and the legislative services office on or
47 before February 2 of each year.

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

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

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

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

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

27 (14) ~~To conduct the following activities and operations for the preven-~~
 28 ~~tion of floodwater and sediment damages, and the conservation, development,~~
 29 ~~utilization and disposal of water, implement, participate in, and support~~
 30 ~~the following flood control activities and operations independently or in~~
 31 ~~cooperation with other agencies, entities, and individuals, whether within~~
 32 ~~or outside the boundaries of the district:~~

33 ~~(a) To construct, operate and maintain structural works of improve-~~
 34 ~~ment;~~

35 ~~(b) To use natural streams and to improve the same for use as a flood~~
 36 ~~control structure;~~

37 (a) Flood risk reduction;

38 (b) Flood response;

39 (c) Flood recovery;

40 (d) Construction, operation, maintenance, repair, or replacement of
 41 flood control structures;

42 (e) Flood studies;

43 (f) Use and improvement of streams, channels, and other surface water-
 44 courses for flood management;

45 ~~(e)(g) To declare Declaring a flooding emergency and fight floods~~
 46 ~~conducting flood response. Provided however, that the extent of any~~
 47 ~~stream channel alteration during a flooding emergency shall be limited~~
 48 ~~to that amount of work deemed necessary by the board to safeguard life or~~
 49 ~~property, including growing crops during the period of emergency;~~

1 ~~(d)~~ (h) ~~To repair and stabilize~~ Repair and stabilization of stream
2 banks;

3 ~~(e)~~ (i) ~~To remove~~ Removal of debris. If the district determines that
4 there is no reasonable means of transporting and disposing of debris
5 outside the mean high water mark of the channel, the district may de-
6 posit the debris along the stream banks outside the mean high water
7 mark, and may thereafter dispose of combustible materials removed from
8 the stream by burning in conformance with any applicable permitting
9 requirements of the state of Idaho or local governments, and after rea-
10 sonable notice to nearby landowners; and

11 ~~(f)~~ (j) ~~To conduct~~ Conducting flood control operations to prevent
12 flooding from the release of water from a canal, ditch or drain upon the
13 request of the owner thereof.

14 (15) To enter into contracts or agreements with the United States or any
15 of its officers, agents, or subdivisions, or with the state or any of its of-
16 ficers, agents or political subdivisions, and to cooperate with such gov-
17 ernments, persons or agencies in effectuating, promoting and accomplishing
18 the purposes of this chapter, provided that the district has sufficient mon-
19 eys on hand, or in their budget for the year in which said contract is entered
20 into, to defray the expenditure of funds called for in such contract without
21 the creation of any indebtedness.

22 Whenever any such contract shall, by its terms, require the expenditure
23 of funds by the district in excess of the moneys on hand or the funds to be
24 realized from its budget for the year in which said contract is entered into,
25 then such contract may not be entered into by the district until ratified by
26 two-thirds (2/3) of the qualified voters voting at an election to be held,
27 subject to the provisions of section 34-106, Idaho Code, for that purpose,
28 according to the provisions of this chapter.

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

31 (17) To take over, administer and maintain pursuant to any agreement or
32 contract entered into in accordance with the provisions of this chapter any
33 flood control project within or without the boundaries of the district un-
34 dertaken in cooperation with the United States or any of its agencies, or
35 with the state of Idaho or any of its agencies, or any combinations thereof.

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

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

42 SECTION 4. That Section 42-3116, Idaho Code, be, and the same is hereby
43 amended to read as follows:

44 42-3116. DIRECTOR'S APPROVAL -- WHEN REQUIRED. (1) In the event that
45 the district's activities and operations will alter a stream channel within
46 the meaning of section 42-3802, Idaho Code, the district shall obtain the di-
47 rector's prior approval pursuant to chapter 38, title 42, Idaho Code.

48 (2) The district's conduct of ~~a flood fight in~~ flood response to ~~during~~
49 a flooding emergency declared by the board shall not require a stream channel

1 alteration permit, provided the district complies with the emergency waiver
2 procedures consistent with section 42-3808, Idaho Code, and rules promul-
3 gated by the Idaho water resource board.

4 SECTION 5. An emergency existing therefor, which emergency is hereby
5 declared to exist, this act shall be in full force and effect on and after
6 July 1, 2024.