

RESOLUTION NO. 2012-5

A Resolution of the Pierce County Flood Control Zone District Relating to Indemnification and Defense of the Board of Supervisors of the District from Claims Against their Performance of Statutorily-Required Duties for the District.

Whereas, under Revised Code of Washington (RCW) 86.15.050(1), the members of the Pierce County Council, by virtue of their office, are ex-officio members of the Board of Supervisors of the Pierce County Flood Control Zone District ("District"); and

Whereas, the District desires to avail itself of the rights afforded municipal corporations under RCW 4.96.041 to protect its supervisors against claims arising out of their performance, purported performance or failure of performance in good faith of their duties for the District; **Now, therefore**,

BE IT RESOLVED by the Board of Supervisors of the Pierce County Flood Control Zone District:

Section 1. Definitions.

For purposes of this Resolution, the following words shall have the following meanings unless the context indicates otherwise:

A. "Claim" means a claim or lawsuit.

B. "District's legal counsel" means the District's legal counsel or designee.

C. "Supervisor" means any person who is serving or has served on the Board of Supervisors of the District.

Section 2. Legal representation. The District shall provide to a supervisor such legal representation as may be reasonably necessary to defend any claim filed against the supervisor, arising out of the performance, purported performance or failure of performance in good faith of duties for the District. This legal representation shall be a condition of service for the District and shall be provided by the District's legal counsel, except as may be provided under an insurance policy or self-insurance or joint insurance program.

1 Section 3. Exclusions - Determination of representation. This Resolution shall
2 not apply to any dishonest, fraudulent, criminal or malicious act, to any act outside the
3 scope of service, to any lawsuit brought by or on behalf of the District or to any accident,
4 occurrence or circumstance in which the District or a supervisor is insured against loss
5 or damages under the terms of an insurance policy or self-insurance or joint insurance
6 program. The District's legal counsel shall determine whether a supervisor was
7 performing duties for the District in good faith, and whether a supervisor committed a
8 dishonest, fraudulent, criminal or malicious act. The supervisor may appeal such
9 determination to the Board of Supervisors of the District.

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11 Section 4. Payment of claims - Conditions of representation.

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13 A. At the request of a supervisor, the District's legal counsel shall investigate
14 and defend a claim which is covered by this Resolution. If that claim is deemed by the
15 District's legal counsel to be a proper claim against the supervisor, the claim shall be
16 paid by the District as long as the following requirements are met:

17
18 1. As soon as practicable after receipt of notice of a claim, the supervisor
19 shall give the District's legal counsel notice of the claim, specifying the name of the
20 supervisor involved, the date, time, place and circumstances surrounding the incident or
21 conduct giving rise to the claim, the names and addresses of all persons allegedly
22 injured, the names and addresses of owners of allegedly damaged property, and the
23 names and addresses of all witnesses;

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25 2. The supervisor shall cooperate with the District's legal counsel and, upon
26 request, shall assist in making settlements of any lawsuits and in enforcing any claim for
27 subrogation against any persons or organizations that may be liable to the District
28 because of any damages or losses arising from the incident or conduct; and

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30 3. The supervisor shall attend interviews, depositions, hearings and trials as
31 requested, and assist in securing and giving evidence and obtaining the attendance of
32 witnesses.

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34 B. If the District's legal counsel determines that a claim against a supervisor is
35 not covered by this Resolution and a court of competent jurisdiction in a final judgment
36 finds that the claim is covered by this Resolution, the District shall pay the claim and
37 reasonable attorney's fees.

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39 Section 5. Refusal to Cooperate. If any supervisor fails or refuses to meet the
40 requirements of Section 4 of this Resolution or elects to provide his or her own
41 representation on any claim, this Resolution shall be inapplicable and of no force and
42 effect with respect to that claim.

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44 Section 6. Conflict with Provisions of Insurance Policies. Nothing contained in
45 this Resolution shall be construed to modify or amend any provision of an insurance
46 policy or any coverage through a self-insurance or joint insurance program. If there is a
47 conflict between this Resolution and the provisions of any such policies or coverage, the
48 provisions of any such policies or coverage shall control.

Section 7. Pending Claims. This Resolution shall apply to any pending claim against a supervisor and to any claim hereafter filed irrespective of the date of the events or circumstances giving rise to the claim.

ADOPTED this 11th day of July, 2012.

ATTEST:

**PIERCE COUNTY FLOOD CONTROL
ZONE DISTRICT**

Pierce County, Washington

Cathy Sala, Clerk of the Board

Joyce McDonald, Board Chair