



Metropolitan Water Reclamation District of Greater Chicago

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Chicago, IL 60611

Legislation Details (With Text)

File #: 10-1597 **Version:** 1

Type: Agenda Item **Status:** Adopted

File created: 12/9/2010 **In control:** State Legislation & Rules Committee

On agenda: 12/16/2010 **Final action:** 12/16/2010

Title: Recommendations for the State of Illinois 2011 Legislative Program

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
12/16/2010	1	Committee of the Whole	Recommended	
12/16/2010	1	Board of Commissioners	Approved	Pass

TRANSMITTAL LETTER FOR BOARD MEETING OF DECEMBER 16, 2010

COMMITTEE ON STATE LEGISLATION AND RULES

Honorable Terrence J. O'Brien, President and Members of the Board of Commissioners

Recommendations for the State of Illinois 2011 Legislative Program

Dear Commissioners:

I respectfully submit the following legislative initiatives and recommendations to the Board of Commissioners for their consideration and guidance.

Legislative Initiative #1

Amend the Illinois Power Agency Act (20 ILCS 3855) to include biogas and biosolids produced by governmental wastewater treatment plants as renewable energy resources.

Section 1-10 of the Illinois Power Agency Act defines "Renewable Energy Resources" as energy and its associated renewable energy credits or renewable energy credits from wind, solar thermal energy, photovoltaic cells and panels, biodiesel, crops, untreated and unadulterated organic waste biomass, tree waste, existing hydropower facilities, landfill gas, and other alternative resources of environmentally preferable energy. While biogas and biosolids could be considered an alternative resource of environmentally preferable energy under current law, the recommended amendment would make it explicit and allow the District to pursue options for cogeneration projects at its various treatment facilities.

Legislative Initiative #2

Amend the District's Act to allow for the use of a design-build approach to construction projects.

Historically, and as a general rule, all sectors of government across the nation have accomplished construction work using a system called "design-bid-build." Under the design-bid-build system, the public agency first awards an architect/engineer a contract to design a project based on specified criteria of qualifications and

experience of the architect/engineer. This contract generally accounts for a relatively small portion of the project's total costs. After detailed project plans and drawings are completed, a contractor is selected to perform the construction work which accounts for the majority of the project's costs. In almost all cases, contracts for the construction portion of the project are awarded objectively based on competitive bidding.

In recent years, an alternative approach to public construction has emerged called design-build. With design-build, the public agency contracts with a general contractor to both design and build the project. The agency does not separately contract with an architect/engineer for design. That is the responsibility of the general contractor. The general contractor in turn subcontracts, through competitive bidding or otherwise, for an architect/engineer and various construction trade work.

A number of states and some units of government in Illinois have introduced legislation allowing them to utilize this alternative approach. The Engineering and M&O Departments have indicated that in certain applications the design-build approach might be useful to expedite certain projects and reduce administrative costs.

Legislative Initiative #3

Amend several sections of the District's Act that prohibit officers and employees of the District from participating in political activities outside of the workplace.

Three specific sections of the District's Act read as follows:

Sec. 4.22. No officer or employee shall solicit, orally or by letter, or give or receive, or be in any manner concerned in soliciting or giving or receiving any assessment, subscription or contribution from any member of the classified civil service for any party or political purpose whatever.

Sec. 4.23. No person shall solicit, orally or by letter, or be in any manner concerned in soliciting any assessment, contribution or payment for any party or any political purpose whatever from any officer or employee in the classified civil service.

Sec. 4.25. No officer or employee in the service of the Sanitary District shall, directly or indirectly, give or hand over to any officer or employee in said classified civil service, or to any senator or representative or alderman, councilman or trustee, any money or other valuable thing on account of or to be applied to the promotion of any party or political object whatever. No employee in the classified service shall take any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion, and to cast his vote, provided, however, that an employee shall have the right to hold any public office, either by appointment or election, that is not incompatible with his duties as an employee of the District, and provided further that such employee does not campaign or otherwise engage in political activity during working hours. This Section shall not be deemed to authorize conduct prohibited by the Federal Hatch Act by employees subject to said Act.

Sections 4.22 and 4.23 were amendments to the District's Act in 1935, and predate the Federal Hatch Act enacted in 1939. Under the Hatch Act, which prohibits certain political activity of federal employees and agencies utilizing federal funds, none of the prohibitions in Sections 4.22, 4.23 and 4.25 of the District's Act would apply to employees while off duty. Section 4.25 was enacted in 1982 and while attempting to clarify political activity in respect to the Federal Hatch Act, the Section is silent in respect to allowable political participation of District employees and officers while off duty.

In order that District employees and officers may exercise their rights as private citizens to engage in political campaigns outside of the workplace, it is recommended that these sections of the District Act be amended to clarify that the prohibitions detailed therein do not apply when exercised outside of the workplace and while off duty.

Legislative Initiative #4

Amend the District's Act to include web site postings of notices for District job examinations and solicitation of contract and purchase order bids as an option and alternative to newspaper publications.

Section 4.8 and 11.7 of the District's Act, respectively, require that exam announcements for positions and requests for bid proposals for certain contracts and purchase orders be published in a circular English language newspaper of general circulation.

While the District does not intend to abandon this practice in all cases, current job seekers, contractors and service providers more often rely on web sites to access this type of information. This amendment will allow the District to utilize its web site as a substitute for the newspaper publication. Annual savings to the District, should this amendment be enacted, would be approximately \$48,000 annually.

Legislative Initiative #5

Amend Section 7a(c) of the District's Act to increase the minimum civil penalties for violations of its federally mandated pretreatment requirements from \$100 to \$2,000 per day, to \$1,000 to \$2,000 per day of violation.

The District owns and operates seven (7) water reclamation plants that provide wastewater service to the vast majority of Cook County. The District is the sole holder of the National Pollutant Discharge Elimination System (NPDES) permits issued for these facilities. These permits require pretreatment programs.

The District's pretreatment program consists of 9,881 regulated non-domestic dischargers. This includes 377 facilities classified as Significant Industrial Users (SIUs) of which, as defined in the Code of Federal Regulations, 249 are classified as Categorical Industrial Users. The District's pretreatment program is incorporated in its Sewage and Waste Control Ordinance (SWCO). This ordinance details all categorical pollutants, their respective discharge limits, and penalties for violation of the ordinance.

In a recent audit of the District's pretreatment program by the United States Environmental Protection Agency (USEPA), the Agency determined that the District needed to take additional steps to ensure that it was meeting all federal pretreatment requirements specified in its seven (7) NPDES permits. Specifically the USEPA noted that federal regulations provide that "all publicly owned treatment works shall have the authority to seek or access penalties in at least the amount of \$1,000 a day for each violation by industrial users." The District's Sewage and Waste Control Ordinance and statutory authority (Section 7a (c) specifies that penalties shall be assessed at the level of \$100 to \$2,000 per day for each violation.

The District's seeks to amend its statute to allow it to be consistent with the federal requirements.

Legislative Initiative #6

Amend Section 4.1 of the District's Act to incorporate "Passing of Tests Required" language as it applies to promotional exams.

Section 4.1 of the District's Act provides in part that "In promotional examinations, efficiency and seniority in service shall form part of such examination, but combined shall not carry a weight of more than 25% of the total examination points."

District Personnel Rule 6.47 "Passing of Tests Required" provides that whenever an exam requires candidates to pass one or more tests separately, as part of the entire exam, each separate test must be passed. If not, the candidate shall be removed from participating further in the overall exam process.

It has recently been considered, as the result of arguments in a civil service case, that Section 4.1 of the District's Act and Personnel Rule 6.47 can conflict when an employee whose most recent performance evaluation of "requires improvement" is the basis for failing the efficiency and seniority component of the exam and, according to rule, the employee is removed from further participating in the exam process. An affected employee might then argue that his efficiency rating and score derived from his performance evaluation

became 100% of the exam score rather than the 25% maximum provided for in Section 4.2 of the District's Act.

In order to clarify this discrepancy between the District statute and Personnel Rule, the Law and Human Resource Departments recommend that Section 4.1 of the District's Act be amended as follows (changes underlined):

"In promotional examinations, efficiency and seniority in service shall form part of such examination, but combined shall not carry a weight of more than 25% of the total examination points. Although efficiency and seniority shall not carry a weight of more than 25% of the total examination points, the Director may require candidates to separately pass the efficiency and seniority tests on the examination in order to continue competing in subsequent tests of that examination. When the Director requires candidates to separately pass the efficiency and seniority tests on the examination, every candidate who does not pass the efficiency and seniority tests on the examination, shall also fail the entire examination."

Legislative Initiative #7

Amend Section 4.11 of the District's Act to clarify the District's hiring and promotional appointment practice of certifying eligible candidate names from a categorical eligibility list such that, once less than 5 candidates are available to the appointing authority from a categorical list, all candidates from the next level categorical list become eligible for consideration, until which time the appointing authority has a minimum of 5 candidates to consider.

Section 4.11 of the District's Act "Appointments" provides: "Whenever a position classified under this Act is to be filled... the appointing officer shall make requisition upon the Director, and the Director shall certify to him from the register of eligibles for the position the names and addresses a) of the five candidates standing highest upon the register of eligibles for the position, or b) of the candidates within the highest ranking group upon the register of eligibles if the register is by categories such as excellent, well qualified, and qualified, provided, however, that any certification shall consist of at least five names, if available. The Director shall certify names from succeeding categories in order of excellence of the categories until at least 5 names are provided to the appointing officer. The appointing officer shall notify the Director of each position to be filled separately and shall fill the position by appointment of one of the persons certified to him by the Director."

In a recent summary judgment ruling, a judge indicated that pursuant to the above language, where there are less than five categorically "excellent" candidates on an eligible list, the District could just certify the name(s) of the highest ranking subsequent categorical "well qualified" candidates until there were five names for the appointing officers consideration, instead of certifying the entire "well qualified" category.

Contrary to this interpretation, and in order to provide the appointing officer the greatest pool of qualified candidates, it is the intent of the District to certify all the names in the succeeding category when there are less than five names remaining in the higher category. In order to prevent the aforementioned interpretation, it is recommended that Section 4.1 of the District's Act be amended as follows (changes underlined).

"The Director shall certify all of the names and addresses of the candidates from the succeeding categories in order of the excellence of the categories only until at least 5 names are provided to the appointing officer, if available."

Legislative Initiative #8

Amend Section 9.6a of the District's Act to include administrative office buildings to the list of projects permitted to be financed by the Capital Improvement Bond Fund.

Section 9.6a of the District Act reads: "Bonds for sewage treatment and water quality improvements. The corporate authorities of a Sanitary District, in order to provide funds required for the replacing, remodeling, completing, altering, constructing and enlarging of sewage treatment works, water quality improvement

projects, or flood control facilities, and additions therefore, pumping stations, tunnels, conduits, intercepting sewers and outlet sewers, together with the equipment, including air pollution equipment, and appurtenances thereto, to acquire property, real, personal or mixed, necessary for said purposes, for costs and expenses for the acquisition of the sites and rights-of-way necessary thereto, and for engineering expenses for designing and supervising the construction of such works...”

This listing of items includes all of the capital type projects of the District where construction is financed by bonds, since their useful lives will exceed 20 years or more. Not explicit in this listing is an administrative building which, while not on site of a treatment facility, houses staff which perform the engineering design and support services to those treatment works. Given the over 800 square miles of service area the District covers, it is often more efficient and effective to locate these facilities in more central locations.

Recommended, Richard Lanyon, Executive Director, KJF:bh

Respectfully Submitted, Debra Shore, Chairman Committee State Legislation and Rules

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for December 16, 2010