

# HIGHLINE WATER DISTRICT KING COUNTY, WASHINGTON

## RESOLUTION 17-3-28A

### **A RESOLUTION OF THE BOARD OF COMMISSIONERS OF HIGHLINE WATER DISTRICT, KING COUNTY, WASHINGTON, PROVIDING FOR THE INDEMNIFICATION AND DEFENSE OF DISTRICT COMMISSIONERS AND EMPLOYEES.**

**WHEREAS**, RCW 4.96.041 and RCW 36.16.138 authorize Highline Water District (District) to provide for the indemnification and defense of commissioners and employees from and against actions or proceedings for damages arising from the performance, or the purported performance in good faith, of official duties; and

**WHEREAS**, to provide protection for District Commissioners and employees who act in good faith and within the scope of their employment or appointment, the District desires to provide for their defense and indemnification; now, therefore

**BE IT RESOLVED** by the Board of Commissioners of Highline Water District, King County, Washington, as follows:

**Section 1.** Pursuant to RCW 36.16.138, the District shall procure insurance to protect and hold personally harmless any of its Commissioners, officers, and employees from any action, claim, or proceeding instituted against the foregoing individuals arising out of the performance, purported performance, or failure of performance, in good faith of duties for, or employment with, the District; and shall hold these individuals harmless from any expenses connected with the defense, settlement or monetary judgments from such actions, claims or proceedings.

**Section 2.** The District shall provide to a Commissioner or an employee such legal representation at the District's expense as may be reasonably necessary to defend any claim filed against the Commissioner or employee arising out of the performance, purported performance or failure of performance in good faith of duties for or employment with the District. This legal representation shall be a condition of service to or employment with the District and shall be provided by the District's attorney or an attorney retained by the Board of Commissioners, except as may be provided under an insurance policy or self-insurance or joint insurance program.

**Section 3.** This resolution and the policies set forth herein shall not apply to any dishonest, fraudulent, criminal or malicious act, to any act outside the scope of service or employment, to any lawsuit brought by or on behalf of the District or to any accident, occurrence or circumstance in which the District or a Commissioner or employee is insured against loss or damages under the terms of an insurance policy or self-insurance or joint insurance program.

The District's attorney shall determine whether the Commissioner or employee was performing duties for or employment with the District in good faith, or whether a Commissioner or employee committed a dishonest, fraudulent, criminal or malicious act. The Commissioner or employee may appeal such determination(s) to the Board of Commissioners.

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**Section 4.** At the request of a Commissioner or employee, the District's attorney or the attorney retained by the Board of Commissioners shall investigate and defend a claim that is covered by this resolution. If the attorney deems the claim to be sustained under the law and the facts, the claim shall be paid by the District as long as the following requirements are met:

A. As soon as practicable after receipt of notice of a claim, the Commissioner or employee shall give the District's attorney written notice of the claim, specifying the names of the Commissioners or employees involved, the date, time, place and circumstances surrounding the incident or conduct giving rise to the claim, the names and addresses of all persons allegedly injured, the names and addresses of owners of allegedly damaged property, and the names and addresses of all witnesses;

B. The Commissioner or employee shall cooperate with the District's attorney or the attorney retained by the Board of Commissioners and, upon request, shall assist in making settlements of any lawsuits and in enforcing any claim for subrogation against any persons or organizations that may be liable to the District because of any damages or losses arising from the incident or conduct; and

C. The Commissioner or employee shall attend interviews, depositions, hearings and trials as requested, and assist in securing and giving evidence and obtaining the attendance of witnesses.

If the District attorney determines that a claim against the Commissioner or employee is not covered by this resolution and a court of competent jurisdiction in a final judgment finds that the claim is covered by this resolution, the District shall pay the claim and reasonable attorney's fees incurred by the Commissioner or employee relating to such claim.

**Section 5.** If any Commissioner or employee has been represented at the expense of the District as provided in Section 2 herein relative to a claim against such Commissioner or employee and the court hearing the action finds that the Commissioner or employee was acting within the scope of his or her official duties, but enters a judgment against the Commissioner or employee under chapter 4.96 RCW or 42 U.S.C. Sec. 1981 et seq., and awards punitive damages against the Commissioner or employee, the District's attorney shall determine whether the Commissioner or employee was performing duties for or employment with the District in good faith, and whether a Commissioner or employee committed a dishonest, fraudulent, criminal or malicious act. If the District's attorney determines the Commissioner or employee was performing duties for or employment with the District in good faith, the District shall then pay such award for punitive damages, subject to any right of appeal. If the District's attorney determines that the Commissioner or employee committed a dishonest, fraudulent, criminal or malicious act, the District shall not pay such award for punitive damages. The Commissioner or employee may appeal such determination(s) to the Board of Commissioners.

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**Section 6.** If any Commissioner or employee elects to provide his or her own representation on any claim, this resolution shall be inapplicable and of no force and effect with respect to that claim.

**Section 7.** Nothing contained in this resolution shall be construed to modify or amend any provision of an insurance policy or any coverage through a self-insurance or joint insurance program. If there is a conflict between this resolution and the provisions of any such policies or coverage, the provisions of any such policies or coverage shall control.

**Section 8.** This resolution shall apply to any pending claim against a Commissioner or employee and to any claim hereafter filed irrespective of the date of the events or circumstances giving rise to the claim.

**Section 9.** All District resolutions, policies and procedures are hereby repealed, superseded and amended to be in accordance with the foregoing.

**Section 10.** This resolution and the policies and procedures set forth herein shall be effective on the date set forth below.

**ADOPTED BY THE BOARD OF COMMISSIONERS** of Highline Water District, King County, Washington, at a regular open public meeting thereof held on the **28th** day of **March 2017**.

**BOARD OF COMMISSIONERS**

  
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**Todd Fultz**, President

  
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**Daniel Johnson**, Secretary

  
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**Vince Koester**, Commissioner

  
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**George Landon**, Commissioner

  
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**Kathleen Quong-Vermeire**, Commissioner

**Agenda Item No.:** 5.1  
**Agenda Date:** 03/28/17  
**Reviewed By:** M.E.

Subject: Resolution providing indemnity and defense for Commissioners and Employees

CATEGORY	
<i>Executive</i>	<input type="checkbox"/>
<i>Administrative</i>	<input checked="" type="checkbox"/>
<i>Engineering/Operations</i>	<input type="checkbox"/>

FINANCIAL			
<i>Expenditures?</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
<i>Budgeted?</i>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Amount: \$ _____			

**ATTACHMENTS:**

1. Resolution 17-3-28A

**COMMENTS:**

At the 3/15/17 Board meeting, Matt informed the Commissioners that a resolution would be presented at the 3/28/17 Workshop to establish a policy providing for the indemnification and defense of District Commissioners and Employees.