

BILL ANALYSIS

Senate Research Center
88R23684 ANG-F

C.S.S.B. 1056
By: Hinojosa
Local Government
4/20/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1056 is a local bill that applies only to Hidalgo County Water Improvement District No. 3 (district). S.B. 1056 builds on the administration and operation reforms passed under S.B. 2185 (87R) with reforms to improve accountability and transparency that align with the district's current use. The district formed in 1921 for the purposes of providing water to serve agricultural interests despite being located in the heart of the city of McAllen. The district today is essentially engaged in one activity—taking water out of the Rio Grande River and pumping it a few miles along a canal into a holding reservoir owned by the City of McAllen. With less than ten farmers in the district's territory that still flood irrigate, the district's source of revenue is entirely dependent on the City of McAllen. By selling non-potable water for municipal purposes and charging services fees, the City of McAllen accounts for approximately 90 percent of the district's total operating revenue. Every single resident of McAllen is impacted by the district's policies, because the cost the McAllen public utility charges for water is directly impacted by the district's pricing.

Year after year the citizens of McAllen support an obsolete, burdensome, and unnecessary layer of government, yet cannot hold the board of directors accountable for their decisions that result in their water bills going up. Despite this burden, the overwhelming majority of the registered voters living within the district are unable to participate in board elections. For the May 2022 elections, there were an estimated 70,000 residents living within the district's territory, yet by exercising the district's exclusion authority, the board determined only 335 people were eligible to vote.

S.B. 1056 addresses this disparity by improving accountability to allow the district's actual customers and largest source of revenue to vote in fair elections. The bill also adds safeguards to conflicts of interest by board members and employees. The bill also establishes the framework to provide for effective governance, transparency, and management of the district's finances and operations.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1056 amends current law relating to the directors and administration of the Hidalgo County Water Improvement District No. 3 and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle I, Title 6, Special District Local Laws Code, by adding Chapter 9054, as follows:

CHAPTER 9054. HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 3

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9054.0001. DEFINITIONS. Defines "board," "commission," "director," and "district."

Sec. 954.0002. NATURE OF DISTRICT. Provides that the Hidalgo County Water Improvement District No 3 (district) is a conservation and reclamation district organized to accomplish the purposes of Section 59, Article XVI, Texas Constitution, and operating as a water control and improvement district in accordance with Chapters 49 (Provisions Applicable to All Districts) and 51 (Water Control and Improvement Districts), Water Code.

SUBCHAPTER B. ELECTIONS

Sec. 9054.0101. ELECTIONS. (a) Requires the district to hold an election on the uniform election date in November of each even-numbered year to elect the appropriate number of directors.

(b) Requires the district to contract with the county elections administrator as provided by Subchapter D (Contract for Election Services), Chapter 31, Election Code, to perform all duties and functions of the district in relation to an election of directors.

(c) Provides that Section 49.110 (Election Judge), Water Code, does not apply to the district.

(d) Provides that the exemptions provided by Section 49.111 (Exemptions From Use of Accessible Voting Systems), Water Code, do not apply to the district.

Sec. 9054.0102. ELIGIBILITY TO VOTE. Provides that to be eligible to vote in an election in the district, a person is required to be:

(1) a qualified voter as defined by Section 11.002 (Qualified Voters), Election Code, on the day the person offers to vote; and

(2) a person who resides on land inside the territory defined by the boundaries of the district as those boundaries existed on January 1, 2011.

Sec. 9054.0103. PROCEDURES FOR IDENTIFYING VOTERS; PROVISIONAL VOTING. (a) Requires the district to submit to the registrar a description or map of the territory defined by the boundaries of the district as those boundaries existed on January 1, 2011, that is in sufficient detail to enable the registrar to produce the official list of the district's eligible voters.

(b) Requires the district to submit the information required under this section not later than the 30th day after the date of the last day to order a general or special election.

(c) Authorizes the voter to be accepted to vote only provisionally under Section 63.011 (Provisional Voting), Election Code, if the county election officials are unable to verify whether a voter is eligible under Section 9054.0102.

Sec. 9054.0104. BOND AND CONTRACT ELECTIONS; NOVEMBER DATES. (a) Requires a bond election held by the district to be held in accordance with Section 49.106 (Bond Elections), Water Code, except that the district is prohibited from holding the election on a date other than the uniform election date prescribed by Section 41.001 (Uniform Election Dates), Election Code, that occurs in November of the applicable tax years.

(b) Requires a contract election held by the district to be held in accordance with Section 49.108 (Contract Elections), Water Code, except that the district is prohibited from holding the election on a date other than the uniform election date

prescribed by Section 41.001, Election Code, that occurs in November of the applicable tax year.

SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 9054.0201. DIRECTORS; TERMS. (a) Provides that the district is governed by a board of five directors (board).

(b) Provides that directors serve staggered terms of four years and are prohibited from serving more than two consecutive terms.

Sec. 9054.0202. VACANCIES. (a) Requires the district to fill a vacancy on the board in accordance with Sections 49.105(a)-(c) (relating to the policies, requirements, and provisions for filling vacancies on the board), Water Code.

(b) Requires the board, if a position on the board becomes vacant on a date that is more than two years before the next scheduled date for an election for the office, to:

(1) appoint a person to fill the vacant office until a person elected to that office has qualified; and

(2) hold an election to elect a member to fill the vacant office for the remainder of the unexpired term together with the next regularly scheduled election for other directors' offices.

(c) Provides that Section 49.105(d) (relating to the requirement that current members of the board or temporary board holding positions be deemed elected and serve an additional term in the event of a failure to elect one or more members of the board resulting from an absence of an election by the district) does not apply to the board.

Sec. 9054.0203. QUALIFICATIONS FOR DIRECTOR. (a) Requires that a person, to be qualified to serve as a director:

(1) is required to be eligible to hold office under Section 141.001 (Eligibility Requirements for Public Office), Election Code, and Section 9054.0204; and

(2) is required to:

(A) own land subject to taxation in the district;

(B) be a user of the facilities of the district; or

(C) be a qualified voter of the district under Section 9054.0102.

(b) Provides that Section 49.052, Water Code, applies to the district.

Sec. 9054.0204. DISQUALIFICATION OF DIRECTORS. (a) Provides that a member of the governing body of another political subdivision is disqualified from serving as a director.

(b) Provides that a director is disqualified from serving as a director if:

(1) the director is appointed or elected as a member of the governing body of another political subdivision; or

(2) the board determines a relationship or employment exists that constitutes a disqualification under Section 49.052(a) (relating to

conditions that disqualify a person from serving as a member of a board or district), Water Code.

(c) Provides that a person is disqualified from serving as a director if the person or a relative of the person within the third degree by consanguinity or affinity, as determined by Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code:

(1) received 10 percent or more of gross income for the previous year from a business entity or other organization, other than a governmental entity, that receives money from the district;

(2) is employed by or participates in the management of a business entity or other organization, other than a governmental entity, that receives money from the district;

(3) directly or indirectly owns or controls more than a 10 percent interest in the fair market value of a business or other organization that receives money from the district;

(4) serves as a corporate officer or member of the board of directors of a business entity or other organization that receives money from the district;

(5) is a creditor, debtor, or guarantor in an amount of \$5,000 or more of a person or business entity that receives money from the district;

(6) uses or receives a substantial amount of tangible goods, services, or money from the district other than compensation or reimbursement authorized by law; or

(7) is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the district.

Sec. 9054.0205. DIRECTORS' EDUCATION PROGRAM. (a) Requires the board to establish a program of education for the directors that includes information on:

(1) the history of the district;

(2) the district's statutory authority;

(3) laws applicable to the district, including the requirements of Chapters 551 (Open Meetings) and 552 (Public Information), Government Code;

(4) relevant legal developments related to water district governance;

(5) the duties and responsibilities of the board;

(6) conflict of interest laws and other laws related to public officials; and

(7) any applicable ethics policies adopted by the Texas Commission on Environmental Quality (TCEQ) or the Texas Ethics Commission (TEC).

(b) Requires the district to pay from district revenue the costs associated with the development of the education program.

(c) Authorizes the education program to include training provided by an organization offering courses that have been approved by the TCEQ.

(d) Authorizes the board to adopt bylaws modifying the education program as necessary to meet district needs.

Sec. 9054.0206. MANDATORY EDUCATION FOR DIRECTORS. (a) Requires each director to complete the education program established under Section 9054.0205 before the first anniversary of the date on which the director was appointed or elected.

(b) Requires the district to reimburse a director for the reasonable expenses incurred by the director in attending the education program.

(c) Requires a director who is elected to serve a subsequent term to fulfill the education requirements specified by district bylaws.

Sec. 9054.0207. DIRECTORS' CONFLICTS OF INTEREST. Provides that a director is subject to the provisions of Chapters 171 (Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments) and 176 (Disclosure of Certain Relationships With Local Government Officers; Providing Public Access to Certain Information), Local Government Code, relating to the regulation of conflicts of interest of officers of local governments.

Sec. 9054.0208. REMOVAL OF DIRECTOR. (a) Authorizes a director to be removed from the board by a majority of the other directors if the director:

(1) does not have at the time of appointment the qualifications required to be eligible to hold office under Section 141.001, Election Code;

(2) does not complete the education program as required by Section 9054.0206;

(3) does not meet the qualifications for serving under Section 9054.0203 or is disqualified from serving under Section 9054.0204;

(4) violates Section 9054.0301;

(5) misses one-half or more of the regularly scheduled meetings during the preceding 12 months; or

(6) has been convicted or plead guilty to a civil or criminal offense of:

(A) bribery;

(B) embezzlement, extortion, or other theft of public money;

(C) perjury;

(D) coercion of public servant or voter;

(E) tampering with governmental record;

(F) misuse of official information;

(G) abuse of official capacity;

(H) conspiracy to commit or an attempted commission of an offense described by Paragraphs (A)-(G); or

(I) an offense related to the management or governance of the district.

(b) Requires the board to adopt procedures for the removal of a director under this section that are designed to provide due process to the director. Requires procedures adopted under this subsection to include reasonable notice and public hearing.

(c) Requires the board to start the process of notice and public hearing not later than the 30th day after the date the general manager or a director not subject for removal receives notice of a violation under Subsection (a). Requires the remaining board of directors, on or before the 60th day after the date of the public hearing, to make a determination on whether a violation under Subsection (a) occurred.

(d) Requires the board to start the process to fill the vacancy to replace the director with a qualified person, not later than the 30th day after the date of the board votes to remove a director.

(e) Provides that reasonable notice and a public hearing are not required if the director to be removed expressly and in writing waives the notice and hearing.

Sec. 9054.0209. FILING DIRECTOR'S FINANCIAL STATEMENT. (a) Requires a director to file the financial statement required of state officers under Subchapter B (Personal Financial Statement), Chapter 572, Government Code, with TEC.

(b) Provides that Subchapter B, Chapter 572, Government Code:

(1) applies to a director as if the director were a state officer; and

(2) governs the contents, timeliness of filing, and public inspection of a statement filed under Subsection (a).

(c) Provides that a director commits an offense if the director fails to file the statement required by Subsection (a). Provides that an offense under this subsection is a Class B misdemeanor.

Sec. 9054.0210. SPECIAL DIRECTOR. (a) Authorizes the governing body of a municipality that enters into a contract or agreement with a district located within at least 80 percent of the corporate limits or extraterritorial jurisdiction of a municipality to appoint a special director to the board. Authorizes the governing body to appoint not more than one special director to serve at a time, irrespective of the number of contracts or agreements that are in effect.

(b) Provides that notwithstanding Section 51.072 (Qualifications for Director), Water Code, a special director is not required to own land subject to taxation in the district or be a qualified voter of the district.

(c) Provides that a special director serves as a director only during the period a contract or agreement described by Subsection (a) is in effect. Provides that if a contract or agreement is in effect for a term of more than four years, a special director serves a four-year term of office. Requires the governing body of the municipality that appointed a special director to fill a vacancy in the office of special director.

(d) Authorizes a special director to vote only on a matter before the board that is directly related to the subject of the contract or agreement between the municipality and the district.

(e) Provides that a matter on which a special director is authorized to vote requires at least four affirmative votes for passage.

SUBCHAPTER D. DISTRICT ADMINISTRATION

Sec. 9054.0301. PROHIBITED CONDUCT FOR DIRECTORS AND DISTRICT EMPLOYEES. Prohibits a director or district employee from:

- (1) accepting or soliciting a gift, favor, or service that:
 - (A) might reasonably influence the director or employee in the discharge of an official duty; or
 - (B) the director or employee knows or should know is offered with the intent to influence the director's or employee's official conduct;
- (2) accepting other employment or engaging in a business or professional activity that the director or employee might reasonably expect would require or induce the director or employee to disclose confidential information acquired in the course of the director's or employee's duties under this chapter;
- (3) accepting other employment or compensation that could reasonably be expected to impair the director's or employee's independent judgment in the performance of the director's or employee's duties under this chapter;
- (4) making personal investments that could reasonably be expected to create a substantial conflict between the director's or employee's private interest and the interest of the district;
- (5) intentionally or knowingly soliciting, accepting, or agreeing to accept a benefit for the director's or employee's exercise of powers under this chapter or performance of duties under this chapter in favor of a third party;
- (6) having a personal interest in an agreement executed by the district; or
- (7) being employed by, participating in the management of, or having a substantial interest in a business entity or other organization, other than a governmental entity, which receives money from the district.

Sec. 9054.0302. PROHIBITED HIRING OR CONTRACTING PRACTICES. Prohibits the board from employing as an employee, as a consultant, or on a contract basis, if a director is an employee of another taxing entity or economic development corporation located in Hidalgo County:

- (1) an elected official of the other taxing entity or economic development corporation that employs the director; or
- (2) a person related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to an elected official described by Subdivision (1).

Sec. 9054.0303. POWERS AND DUTIES OF BOARD MEMBERS. (a) Provides that the president is the chief executive officer of the district and presides at all meetings of the board. Authorizes the president to execute documents on behalf of the district.

- (b) Requires the vice president to act as president in the absence or disability of the president.

Sec. 9054.0304. GENERAL MANAGER. (a) Requires the district to employ a general manager.

- (b) Provides that the general manager serves at the pleasure of and reports only to the board.

(c) Prohibits the general manager from serving as a director on the board of directors of the district.

(d) Requires a person, to be eligible to serve as the general manager, to:

(1) have previous administrative experience and training applicable to special districts as general manager; and

(2) be qualified to perform the duties described by Section 9054.0305.

(e) Provides that the general manager is subject to the standards for disqualification for serving as a director described by Section 9054.0204. Requires a person applying to serve as general manager of the district to disclose any potential violations of Section 9054.0204 before accepting the position of general manager

(f) Requires the board to determine the compensation and terms of employment for the general manager. Authorizes the board to increase the compensation of the general manager in an amount not to exceed 10 percent of the amount of the general manager's compensation immediately before the effective date of the increase. Prohibits the term of the contract from exceeding two years if the board enters into an employment contract with the general manager.

(g) Provides that a failure of the general manager to disclose any potential violations of Section 9054.0204 is a ground for the general manager's termination.

Sec. 9054.0305. DUTIES OF GENERAL MANAGER. (a) Authorizes the board to delegate duties to the general manager except as provided by Subsection (c). Prohibits the board from assigning the general manager's duties to any other person.

(b) Requires the general manager to:

(1) manage the overall strategy and operations of the district's projects, services, budget, finances, and community relations subject only to orders of the board;

(2) consult with, advise, and support the board to efficiently accomplish the purposes of the district and to ensure compliance with all regulatory, financing, and legal requirements;

(3) assist the board in planning, developing, and implementing policies to accomplish the purposes of the district;

(4) develop and implement policies to improve the district's communication with the district's service community;

(5) provide leadership and supervision to district employees;

(6) create and maintain organizational charts to improve the district's effectiveness;

(7) coordinate and develop short-term and long-term goals for the district;

(8) monitor current district projects and prioritize future district projects;

(9) evaluate contracts, grants, and commitments as authorized by the board;

(10) plan, organize, and direct district programs and services, evaluate the results of those programs and services, and recommend policies, procedures, and board actions based on that evaluation;

(11) employ all persons necessary for the proper handling of the business and operation of the district and determine the compensation of those employees; and

(12) perform other general responsibilities as determined by the board.

(c) Prohibits the board from authorizing the general manager or other employee of the district to execute a contract or documents on behalf of the district that have a value of \$10,000 or more.

Sec. 9054.0306. EXCLUSION OF TERRITORY. (a) Provides that this section applies to the exclusion of territory by the district under the Authority of Subchapter J (Annexation or Exclusion of Land) and J-1 (Exclusion of Urban Property From Certain Water Districts), Chapter 49, Water Code, and Subchapter O (Adding and Excluding Territory and Consolidating Districts), Chapter 51, Water Code.

(b) Authorizes the district to exclude territory on the basis that the land is in agricultural use only if the land meets the requirements for agricultural use under Section 23.51 (Definitions), Tax Code.

(c) Authorizes the district to exclude territory on the basis that the land is nonirrigated property only if the land meets the requirements for nonirrigated property under Section 49.309 (Exclusions of Nonirrigated Property), Water Code.

(d) Authorizes the district to exclude territory on the basis of the property being urban property only if the property meets the requirements of Section 49.3181 (Definitions), Water Code.

(e) Prohibits the district from excluding territory during the period of time between the first day that a candidate is authorized to file an application under Section 141.040 (Notice of Deadlines and Filing Methods), Election Code, and the day of the election in which that candidate appears on the ballot.

(f) Prohibits the board from initiating an exclusion of territory unless the board receives an application or petition requesting the exclusion as provided by Subchapter O, Chapter 51, Water Code.

SUBCHAPTER E. OPERATING PROVISIONS

Sec. 9054.0401. WATER CHARGES. Prohibits the district from charging a rate for the delivery of water to all customers that is greater than the lowest comparable delivery rate charged by any other irrigation district in Hidalgo County.

Sec. 9054.0402. ADDITION OF TERRITORY. Prohibits the district from annexing or otherwise adding territory to the district.

Sec. 9054.0403. CONSTRUCTION OR EXPANSION OF WATER DELIVERY SYSTEM. Prohibits the district from constructing or extending any water delivery system beyond the district boundaries, as those boundaries existed on April 1, 2022.

Sec. 9054.0404. INFORMATION REQUIRED ON DISTRICT WEBSITE. (a) Requires the district to maintain and update an Internet website.

(b) Requires the district to post regularly for public viewing on the district's Internet website in a manner that is searchable and intuitive to users:

(1) the annual financial statement required by Section 140.005 (Annual Financial Statement of School, Road, or Other District), Local Government Code;

(2) the annual audit report required by Section 49.191 (Duty to Audit), Water Code, or the annual financial dormancy affidavit submitted under Section 49.197 (Financially Dormant Districts), Water Code;

(3) budget information of the district described by Sections 26.18(4)-(8) (relating to a taxing unit's budget), Tax Code;

(4) property tax rate information of the district described by Sections 26.18(9), (10), (12), and (13), (relating to a taxing unit's tax rate)Tax Code;

(5) operating information of the district described by Sections 2051.202(d)(2)-(14) (relating to the requirement that certain information be posted on an Internet website of a special district), Government Code, if applicable, including the name of the general manager; and

(6) financial information of the district that satisfies the requirements of Sections 403.0241(c)(9)-(11) (relating to the requirement that certain information be made available in the Special Purpose Public Information Database), Government Code.

(c) Requires the district to update the information under this section routinely as the information and documents become available to and are provided by the designated officers or employees of the district.

(d) Requires the district to publish on the district's Internet website the agenda for the meeting not later than the third day before the date a meeting is held by the district.

(e) Requires the district to publish on the district's Internet website the minutes adopted by the district not later than the third day after the date the district adopts the minutes of a meeting held by the district

Sec. 9054.0405. SEARCHABLE DISTRICT EXPENDITURE DATABASE. (a) Requires the district to establish and post on the district's Internet a database of district check register reports, including district expenditures and contracts. Requires that the database include the amount, date, description, payor, and payee of the expenditures and, if applicable, parties to the contract.

(b) Prohibits the district from including in the database developed under Subsection (a) a district employee's:

(1) personal identifying information, as defined by Section 521.002, Business and Commerce Code; or

(2) salary.

(c) Requires the district to display prominently on the district's Internet website a link to the database established under this section.

(d) Requires the information provided in the district check register reports to be updated monthly.

(e) Requires the district to maintain in the database information related to an adopted budget as required by this section until the third anniversary of the date the budget was adopted.

Sec. 9054.0406. ANNUAL FINANCIAL AUDIT REPORT PROVIDED TO COMMISSION. (a) Provides that the district is subject to the audit requirements of Section 49.191, Water Code, unless the district meets the requirements of Section 49.197, Water Code. Provides that the district is not exempt under Section 49.198 (Audit Report Exemption), Water Code, from the audit report unless the district has no outstanding debt obligations or has not issued a public security as defined by Section 1201.002 (Definitions), Government code, during the fiscal year.

(b) Requires the district to include in the annual audit report budget-to-actual comparisons in connection with general purpose external financial reporting to demonstrate compliance with applicable law. Requires the district to include a budgetary comparison schedule of the proprietary fund or enterprise fund to demonstrate compliance with applicable law and contractual provisions.

(c) Requires the district to include in the annual audit report a statistical section that provides a range of trend data covering key financial indicators from the immediately preceding 10 fiscal years, including general government revenues and expenditures, property tax collections, and debt burden.

(d) Requires the district to prepare and present TCEQ's supplementary information schedules in the district's annual audit report. Prohibits the district, if the district generated more than 70 percent of its operating revenue for the delivery of raw water used for municipal purpose, from claiming in its annual audit report the exemption applicable to a district whose only purpose is to provide irrigation or navigation facilities or services.

(e) Requires the information required by this section to be subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, the independent auditor's opinion of the information.

(f) Requires the district to publish the audit on the district's Internet website not later than the third day after the date the accountant finalizes the audit required by this section.

Sec. 9054.0407. REVIEW AND COMMENT ON BUDGET. Requires the district to develop and implement a program that provides the district's wholesale customers an opportunity to review and comment on the district's annual budget that applies to the wholesale customers' services before the board adopts that budget.

Sec. 9054.0408. INTERNET POSTING OF MEETING MATERIALS; RECORDING OF CERTAIN HEARINGS. Provides that the district is subject to the requirements of Section 551.1283 (Meetings Using Telephone, Video Conference, or Internet), Government Code.

SECTION 2. (a) Provides that a person who has served as a director of the district for more than eight consecutive years as of the effective date of this Act is disqualified from serving another term as a director of that district.

(b) Authorizes a director described by Subsection (a) of this section serving on the board immediately before the effective date of this Act to continue to serve as director of that district for the remainder of the director's term.

SECTION 3. Requires the board to adopt procedures for the removal of a director of that district under Section 9054.0208, Special District Local Laws Code, as added by this Act, not later than the 30th day after the effective date of this Act.

SECTION 4. Repealers: Sections 1 through 7, Chapter 1022 (S.B. 2185), Acts of the 87th Legislature, Regular Session, 2021.

SECTION 5. Provides that the requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 6. Effective date: upon passage or September 1, 2023.