

BILL ANALYSIS

C.S.S.B. 1188
By: Hinojosa
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Since its inception, the Agua Special Utility District has been plagued with numerous controversies, such as unexplained water bills, foul water, unannounced water shutoffs, and corruption within the district. Taxpayers have expressed their concerns but there hasn't been a proper resolution to these issues. C.S.S.B. 1188 seeks to prevent further malfeasance and safeguard taxpayer dollars by revising provisions relating to the district's board of directors and by requiring the attorney general, at the request of the Texas Commission on Environmental Quality, to bring an action for the appointment of a receiver to collect the assets and carry on the business of the district in specified circumstances.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 1188 amends the Special District Local Laws Code to require a candidate for a position on the board of directors of the Agua Special Utility District to file a campaign treasurer appointment form described by the Election Code with the Texas Ethics Commission (TEC) and file each report required under Election Code provisions relating to the regulation of political funds and campaigns with the TEC and the board.

C.S.S.B. 1188 includes the following as grounds for removal of a director by a majority of the other directors:

- the director is disqualified from serving as provided by the bill;
- the director repeatedly fails to file an affidavit under applicable Government Code provisions disclosing an interest in property to be acquired with public money;
- the director repeatedly fails to file a conflicts disclosure statement under applicable Local Government Code provisions;
- the director fails to comply with a Local Government Code requirement for a local public official to file an affidavit and abstain from further participation in a matter involving a business entity or real property in which the official has a substantial interest;
- the director does not file the applicable financial statement required of state officers; and
- the director does not file a campaign treasurer appointment form or a report required by the bill for a candidate for a position on the board.

The bill requires a director to be removed from the board by the other remaining directors if the director has been convicted of or has pleaded guilty or nolo contendere to a civil or criminal offense of the following:

- bribery;
- embezzlement, extortion, or other theft of public money;
- perjury;
- coercion of a public servant or voter;
- tampering with a governmental record;
- misuse of official information;
- abuse of official capacity; or
- conspiracy to commit or an attempted commission of any of these offenses.

The bill requires the board to begin the process of notice and public hearing for the removal of a director not later than the 30th day after the date the board receives notice of an applicable violation and, not later than the 30th day after the date the board removes a director, to begin the process of filling the vacancy in accordance with specified Water Code provisions. The bill requires the board, not later than the 30th day after the bill's effective date, to adopt or update procedures for the removal of a director under these provisions of the bill.

C.S.S.B. 1188 disqualifies a director from serving as a director in the following circumstances:

- the director is a member or is appointed or elected as a member of the governing body of another political subdivision;
- the director does not meet district director eligibility requirements or does not file a campaign treasurer appointment form or each report required by the bill of a director candidate; or
- the board determines a relationship or employment exists which would disqualify the director from serving as a director under specified Water Code provisions.

C.S.S.B. 1188 establishes that, if a director announces the director's candidacy or becomes a candidate in any general, special, or primary election for any elective office other than the office of director for the district, that announcement or candidacy constitutes an automatic resignation of the office of the director.

C.S.S.B. 1188 requires the district to post to the district's website and make publicly available each report required to be filed with the TEC under Election Code provisions relating to the regulation of political funds and campaigns by the following entities:

- a director;
- a candidate for the board; or
- a specific-purpose committee responsible for supporting, opposing, or assisting a director or candidate for the board.

The bill requires the district to make available such a report not later than the fifth business day after the date the report is filed with the board. The bill prohibits these bill provisions from being construed to limit public access to information in such a report through other electronic or print distribution. The bill authorizes the district to remove the address of a person, except for the city, state, and zip code, listed as having made a political contribution to the director, candidate, or committee before posting a report on the district's website. The bill requires the information to remain available in a copy of the report maintained in the district's office.

C.S.S.B. 1188 requires the attorney general, at the request of the Texas Commission on Environmental Quality (TCEQ), to bring an action for the appointment of a receiver to collect the assets and carry on the business of the district in the following circumstances:

- the district received three consecutive audit reports with anything other than an unqualified or clean opinion;
- the district completed five consecutive fiscal years at a net loss;
- the district has defaulted on more than one financial debt obligation;

- the district has a director or an applicable agent who has been convicted of or has pleaded guilty or nolo contendere to a civil or criminal offense related to the management or governance of the district; or
- the district violates a final judgment issued by a district court in an action brought by the attorney general under the following:
 - statutory provisions relating to the district and Water Code provisions relating to enforcement, water rates and services, general law districts, and special utility districts;
 - laws governing the selection, monitoring, or review and evaluation of professional services, vendors, or contractors for construction or improvement projects; or
 - a rule adopted or order issued under any such statute.

The bill defines "agent" as an individual who exercises discretion in the planning, recommending, selecting, or contracting of a vendor or contractor for the sale, lease, or purchase of real property, goods, or services on behalf of the district. The bill requires the court to appoint a receiver if an appointment is necessary to do the following:

- guarantee the collection of assessments, fees, penalties, or interest;
- guarantee continuous and adequate service to the district's customers; or
- prevent continued or repeated violations of a court order or final TCEQ order.

C.S.S.B. 1188 requires the receiver to execute a bond in an amount to be set by the court to ensure the proper performance of the receiver's duties. The bill requires the receiver, after appointment and execution of bond, to take possession of the district's assets specified by the court. The bill requires the receiver, until discharged by the court, to perform the duties that the court directs to preserve the assets and carry on the business of the district and strictly observe the final order involved. The bill establishes that the receiver has the powers and duties necessary to ensure the district's continued operation and the provision of continuous and adequate services, including the following:

- meter reading;
- billing for services;
- collecting revenue;
- disbursing funds;
- accessing all system components; and
- requesting rate increases.

C.S.S.B. 1188 authorizes the court to dissolve the receivership and order the assets and control of the business returned to the district if the district shows good cause for the receivership's dissolution. The bill's provisions relating to the receivership of the district expressly do not affect the TCEQ'S authority to pursue an enforcement action against the district or an affiliated person.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1188 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

Whereas the engrossed replaced the authorization for a director to be removed from the board by a majority of the other directors for the specified grounds with a requirement for the director to be removed for such grounds, the substitute does not make this replacement and retains the discretionary removal of directors for such grounds.

The substitute omits a provision present in the engrossed that required the remaining directors, on or before the 60th day after the date of the public hearing for the removal of a director, to make a determination on whether an applicable violation occurred.