

BILL ANALYSIS

Senate Research Center
88R19274 ANG-F

C.S.S.B. 1188
By: Hinojosa
Local Government
4/4/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2021 and 2022, allegations that former directors of the board, employees, and contractors for the Agua Special Utility District (SUD) had participated in bribery and kickback scheme. Corrupt public officials and businessmen saddled Agua SUD with crippling non-voter approved debt in exchange for kickbacks facilitated through an energy savings performance contract (ESPC). Agua SUDs financial report for fiscal year 2021 revealed the district was facing major financial problems as a result of decisions made by former board members between 2016 and 2020. Those decisions racked up debt, ran six-figure deficits, and depleted a multi-million cash and balance down to less than \$232,000.

At the same time, Agua SUD was not collecting enough operating revenue to cover debt payments—which nearly doubled from 2016 to 2021—and expenses. The reduction in revenue is partially attributed to the ESPC project. Uncertainty grew when the \$11.6 million ESPC project was not paying for itself as guaranteed by the contractor. The savings from the installation of energy-efficient LED lights and the additional electromagnetic water meters estimated and calculated by the contractor did not materialize. In 2022, there was doubt Agua SUD was going to make \$1.1 million in lease payments for the ESPC project. These transgressions have created a sense of déjà vu to similar events in the mid-2000s that lead to the placement of Agua SUD's predecessor, the La Joya Water Supply Corporation, into receivership.

Given the district's history, the mechanisms are necessary to ensure nearly 17,000 ratepayers continue to receive utility services. S.B. 1188 would establish the process of placing the Agua SUD under receivership if certain contingencies occur should the need for it arrive. In addition, the bill would require candidates for and members of the utility board to file their campaign finance reports with the Texas Ethics Commission.

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

C.S.S.B. 1188 amends current law relating to receivership of the Agua Special Utility District and requirements for candidates for the board of directors of the Agua Special Utility District.

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 Section 7201.055(b), Special District Local Laws Code, as follows:

- (b) Requires a candidate for a position on the board of directors of the Agua Special Utility District (district) to:
 - (1)-(2) makes nonsubstantive changes to these subdivisions;
 - (3) file a campaign treasurer appointment form described by Chapter 252 (Campaign Treasurer), Election Code, with the Texas Ethics Commission (TEC);
 - and

(4) file each report required under Title 15 (Regulating Political Funds and Campaign), Election Code, with TEC and the board of directors of the district (board).

SECTION 2. Amends Section 7201.058, Special District Local Laws Code, by amending Subsection (a) and adding Subsections (c), (d), and (e), as follows:

(a) Requires, rather than 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 by Section 7201.055(b) or is disqualified from serving under Section 7201.059;

(2)-(3) makes no changes to these subdivisions;

(4)-(5) makes nonsubstantive changes to these subdivisions;

(6) repeatedly fails to file an affidavit under Section 553.002 (Disclosure of Interest in Property), Government Code, disclosing an interest in property to be acquired with public money;

(7) repeatedly fails to file a conflicts disclosure statement under Section 176.003 (Conflicts Disclosure Statement Required), Local Government Code;

(8) fails to comply with Section 171.004 (Affidavit and Abstention from Voting Required), Local Government Code;

(9) does not file the financial statement required of state officers under Section 7201.056 (Filing of Financial Statement by Director); or

(10) does not file a campaign treasurer appointment form or a required report under Section 7201.055 (Composition of the Board; Terms).

(c) Requires a director to be removed from the board by the other directors if the director has been convicted of or has pleaded guilty or nolo contendere to a civil or criminal offense of:

(1) bribery;

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

(3) perjury;

(4) coercion of a public servant or voter;

(5) tampering with a governmental record;

(6) misuse of official information;

(7) abuse of official capacity; or

(8) conspiracy to commit or an attempted commission of an offense described by Subdivisions (1)-(7).

(d) 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 a violation under Section 7201.058 (Grounds For Removal). Requires the remaining directors, on or before the 60th day after the date of the public hearing, to make a determination on whether the violation occurred.

(e) Requires the board, 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 Section 49.105 (Vacancies), Water Code.

SECTION 3. Amends Subchapter B, Chapter 7201, Special District Local Laws Code, by adding Section 7201.059, as follows:

Sec. 7201.059. DISQUALIFICATION OF DIRECTORS. Provides that a director is disqualified from serving as a director if:

- (1) the director is a member or is appointed or elected as a member of the governing body of another political subdivision;
- (2) the director does not:
 - (A) meet the eligibility requirements under Section 7201.072 (Eligibility of Director and General Manager);
 - (B) file a campaign treasurer appointment form required under Section 7201.055(b)(3); or
 - (C) file each report required under Section 7201.055(b)(4); or
- (3) the board determines a relationship or employment exists to which Section 49.052 (Disqualification of Directors), Water Code, applies.

SECTION 4. Amends Subchapter B-1, Chapter 7201, Special District Local Laws Code, by adding Section 7201.075, as follows:

Sec. 7201.075. PUBLIC ACCESS TO DIRECTOR REPORTS. (a) Requires the district to post to the district's Internet website and make publicly available each report required to be filed with TEC under Title 15 (Regulating Political Funds and Campaigns), Election Code, by:

- (1) a director;
 - (2) a candidate for the board; or
 - (3) a specific-purpose committee responsible for supporting, opposing, or assisting a director or candidate for the board.
- (b) Requires the district to make available a report under Subsection (a) not later than the fifth business day after the date the report is filed with the board.
- (c) Prohibits this section from being construed to limit public access to information in a report described by Subsection (a) through other electronic or print distribution.
- (d) 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 member, candidate, or committee before posting a report on the district's Internet website. Requires that the information remain available in a copy of the report maintained in the district's office.

SECTION 5. Amends Chapter 7201, Special District Local Laws Code, by adding Subchapter E, as follows:

SUBCHAPTER E. RECEIVERSHIP OF DISTRICT; ENFORCEMENT

Sec. 7201.301. DEFINITIONS. Defines "agent" and "commission."

Sec. 7201.302. APPOINTMENT OF RECEIVER. (a) 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 if the district:

- (1) received three consecutive audit reports with anything other than an unqualified or clean opinion;
- (2) completed five consecutive fiscal years at a net loss;
- (3) has defaulted on one or more financial debt obligations;
- (4) has a director or 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
- (5) violates a final judgment issued by a district court in an action brought by the attorney general under:
 - (A) Chapter 7201 (Agua Special Utility District);
 - (B) Chapter 7 (Enforcement), 13 (Water Rates and Services), 49 (Provisions Applicable to All Districts), or 65 (Special Utility Districts), Water Code;
 - (C) Chapter 341 (Minimum Standards of Sanitation and Health Protection Measures), Health and Safety Code;
 - (D) laws governing the selection, monitoring, or review and evaluation of professional services, vendors, or contractors for construction or improvement projects; or
 - (E) a rule adopted or order issued under any statute listed in this subdivision.

(b) Requires the court to appoint a receiver if an appointment is necessary to:

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

Sec. 7201.303. POWERS AND DUTIES OF RECEIVER. (a) 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.

(b) Requires the receiver to take possession of the assets of the district specified by the court after appointment and execution of bond.

(c) 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 to strictly observe the final order involved.

(d) Provides that the receiver has the powers and duties necessary to ensure the continued operation of the district and the provision of continuous and adequate services, including:

- (1) meter reading;
- (2) billing for services;
- (3) collecting revenue;
- (4) disbursing funds;
- (5) accessing all system components; and
- (6) requesting rate increases.

Sec. 7201.304. DISSOLUTION OF RECEIVERSHIP. 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 dissolution of the receivership.

Sec. 7201.305. EFFECT ON COMMISSION ENFORCEMENT AUTHORITY. Provides that this section does not affect the authority of TCEQ to pursue an enforcement action against the district or an affiliated person.

SECTION 6. Requires the board, not later than the 30th day after the effective date of this Act, to adopt or update procedures for the removal of a director under Section 7201.058, Special District Local Laws Code, as amended by this Act.

SECTION 7. Effective date: September 1, 2023.