By:  Hinojosa S.B. No. 1056

(In the Senate - Filed February 21, 2023; March 3, 2023, read first time and referred to Committee on Local Government; April 24, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 0; April 24, 2023, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Bettencourt       X

Springer          X

Eckhardt          X

Gutierrez                   X

Hall              X

Nichols           X

Parker            X

Paxton            X

West              X

COMMITTEE SUBSTITUTE FOR S.B. No. 1056 By:  Eckhardt

A BILL TO BE ENTITLED

AN ACT

relating to the directors and administration of the Hidalgo County Water Improvement District No. 3; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

CHAPTER 9054. HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 3

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9054.0001.  DEFINITIONS. In this chapter:

(1)  "Board" means the district's board of directors.

(2)  "Commission" means the Texas Commission on Environmental Quality.

(3)  "Director" means a board member.

(4)  "District" means the Hidalgo County Water Improvement District No. 3.

Sec. 9054.0002.  NATURE OF DISTRICT. The 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 and 51, Water Code.

SUBCHAPTER B. ELECTIONS

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

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

(c)  Section 49.110, Water Code, does not apply to the district.

(d)  The exemptions provided by Section 49.111, Water Code, do not apply to the district.

Sec. 9054.0102.  ELIGIBILITY TO VOTE. To be eligible to vote in an election in the district, a person must be:

(1)  a qualified voter as defined by Section 11.002, 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) The district shall 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)  The district shall 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)  If county election officials are unable to verify whether a voter is eligible under Section 9054.0102, the voter may be accepted to vote only provisionally under Section 63.011, Election Code.

Sec. 9054.0104.  BOND AND CONTRACT ELECTIONS; NOVEMBER DATES. (a) A bond election held by the district must be held in accordance with Section 49.106, Water Code, except that the district may not hold 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.

(b)  A contract election held by the district must be held in accordance with Section 49.108, Water Code, except that the district may not hold 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) The district is governed by a board of five directors.

(b)  Directors serve staggered terms of four years and may not serve more than two consecutive terms.

Sec. 9054.0202.  VACANCIES. (a) The district shall fill a vacancy on the board in accordance with Sections 49.105(a)-(c), Water Code.

(b)  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, the board shall:

(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)  Section 49.105(d) does not apply to the board.

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

(1)  must be eligible to hold office under Section 141.001, Election Code, and Section 9054.0204; and

(2)  must:

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

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

(b)  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), Water Code.

(c)  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, 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, 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) The board shall 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 and 552, 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 commission or the Texas Ethics Commission.

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

(c)  The education program may include training provided by an organization offering courses that have been approved by the commission.

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

Sec. 9054.0206.  MANDATORY EDUCATION FOR DIRECTORS. (a) Each director shall 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)  The district shall reimburse a director for the reasonable expenses incurred by the director in attending the education program.

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

Sec. 9054.0207.  DIRECTORS' CONFLICTS OF INTEREST. A director is subject to the provisions of Chapters 171 and 176, Local Government Code, relating to the regulation of conflicts of interest of officers of local governments.

Sec. 9054.0208.  REMOVAL OF DIRECTOR. (a) A director may 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)  The board shall adopt procedures for the removal of a director under this section that are designed to provide due process to the director. Procedures adopted under this subsection must include reasonable notice and public hearing.

(c)  The board shall 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). On or before the 60th day after the date of the public hearing, the remaining board of directors shall make a determination on whether a violation under Subsection (a) occurred.

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

(e)  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) A director shall file the financial statement required of state officers under Subchapter B, Chapter 572, Government Code, with the Texas Ethics Commission.

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

Sec. 9054.0210.  SPECIAL DIRECTOR. (a) 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 may appoint a special director to the board. The governing body may 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)  Notwithstanding Section 51.072, 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)  A special director serves as a director only during the period a contract or agreement described by Subsection (a) is in effect. 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. The governing body of the municipality that appointed a special director shall fill a vacancy in the office of special director.

(d)  A special director may 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)  A matter on which a special director may vote requires at least four affirmative votes for passage.

SUBCHAPTER D. DISTRICT ADMINISTRATION

Sec. 9054.0301.  PROHIBITED CONDUCT FOR DIRECTORS AND DISTRICT EMPLOYEES. A director or a district employee may not:

(1)  accept or solicit 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)  accept other employment or engage 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)  accept 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)  make 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 solicit, accept, or agree 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)  have a personal interest in an agreement executed by the district; or

(7)  be employed by, participate in the management of, or have 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. If a director is an employee of another taxing entity or economic development corporation located in Hidalgo County, the board may not employ as an employee, as a consultant, or on a contract basis:

(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) The president is the chief executive officer of the district and presides at all meetings of the board. The president may execute documents on behalf of the district.

(b)  The vice president shall act as president in the absence or disability of the president.

Sec. 9054.0304.  GENERAL MANAGER. (a) The district shall employ a general manager.

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

(c)  The general manager may not serve as a director on the board of directors of the district.

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

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

(f)  The board shall determine the compensation and terms of employment for the general manager. The board may 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. If the board enters into an employment contract with the general manager, the term of the contract may not exceed two years.

(g)  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) The board may delegate duties to the general manager except as provided by Subsection (c). The board may not assign the general manager's duties to any other person.

(b)  The general manager shall:

(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)  The board may not authorize 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) This section applies to the exclusion of territory by the district under the authority of Subchapters J and J-1, Chapter 49, Water Code, and Subchapter O, Chapter 51, Water Code.

(b)  The district may 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, Tax Code.

(c)  The district may 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, Water Code.

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

(e)  The district may not exclude territory during the period of time between the first day that a candidate may file an application under Section 141.040, Election Code, and the day of the election in which that candidate appears on the ballot.

(f)  The board may not initiate 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. The district may not charge 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. The district may not annex or otherwise add territory to the district.

Sec. 9054.0403.  CONSTRUCTION OR EXPANSION OF WATER DELIVERY SYSTEM. The district may not construct or extend 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) The district shall maintain and update an Internet website.

(b)  The district shall 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, Local Government Code;

(2)  the annual audit report required by Section 49.191, Water Code, or the annual financial dormancy affidavit submitted under Section 49.197, Water Code;

(3)  budget information of the district described by Sections 26.18(4)-(8), Tax Code;

(4)  property tax rate information of the district described by Sections 26.18(9), (10), (12), and (13), Tax Code;

(5)  operating information of the district described by Sections 2051.202(d)(2)-(14), 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), Government Code.

(c)  The district shall 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)  Not later than the third day before the date a meeting is held by the district, the district shall publish on the district's Internet website the agenda for the meeting.

(e)  Not later than the third day after the date the district adopts the minutes of a meeting held by the district, the district shall publish on the district's Internet website the minutes adopted by the district.

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

(b)  The district may not include in the database developed under Subsection (a) a district employee's:

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

(2)  salary.

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

(d)  The information provided in the district check register reports must be updated monthly.

(e)  The district shall 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) 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. The district is not exempt under Section 49.198, Water Code, from the audit report unless the district has no outstanding debt obligation or has not issued a public security, as defined by Section 1201.002, Government Code, during the fiscal year.

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

(c)  The district shall 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)  The district shall prepare and present the commission's supplementary information schedules in the district's annual audit report. If the district generated more than 70 percent of its operating revenue for the delivery of raw water used for municipal purpose, the district may not claim in its annual audit report the exemption applicable to a district whose only purpose is to provide irrigation or navigation facilities or services.

(e)  The information required by this section must 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)  Not later than the third day after the date the accountant finalizes the audit required by this section, the district shall publish the audit on the district's Internet website.

Sec. 9054.0407.  REVIEW AND COMMENT ON BUDGET. The district shall 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. The district is subject to the requirements of Section 551.1283, Government Code.

SECTION 2.  (a) A person who has served as a director of the Hidalgo County Water Improvement District No. 3 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)  A director described by Subsection (a) of this section serving on the board of directors of the Hidalgo County Water Improvement District No. 3 immediately before the effective date of this Act may continue to serve as director of that district for the remainder of the director's term.

SECTION 3.  Not later than the 30th day after the effective date of this Act, the board of directors of the Hidalgo County Water Improvement District No. 3 shall 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.

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

SECTION 5.  (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b)  The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c)  The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d)  All 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.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.

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