

BILL ANALYSIS

Senate Research Center

S.B. 2185
By: Hinojosa
Local Government
6/4/2021
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 2185 is a local bill and only applies to Hidalgo County Water Improvement District No. 3 (district) and is bracketed to apply only to the City of McAllen.

The district was formed in 1921 for the purposes of providing water to serve agricultural interests. This entity is a political subdivision of the State of Texas and a public body with statutory duties. Today, 97 percent of the water the district pumps and delivers is to the City of McAllen, including a small handful of citizens and fewer than ten (10) of the limited number of farmers in the territory that still flood irrigate. The City of McAllen accounts for approximately 84.7 percent of the district's operating revenue. The district has outlived its purpose and is driving up the cost of supplying water to citizens and businesses. It is costing taxpayers of the City of McAllen over \$1 million per year for a layer of government that is no longer necessary for a growing city in 2021.

The bill sets forth an option for the City of McAllen to dissolve the district and upon dissolution take over its obligations, rights, operation, and responsibilities. The City of McAllen is positioned to continue to serve those few agricultural customers without any disruption of services. The bill also contains safeguards to ensure that all current customers and farmers of the district continue receiving services. Further, the bill eliminates any flat tax paid by farmers if the district is dissolved.

The district has a long history of mismanagement, as was identified by the State Auditor's Office in a report published in 2012. That report found that services were provided by businesses that were owned or operated by the individual who is both general manager of the district and president of the board of directors for the district. This is a conflict of interest and should not be permitted for any governmental entity. Not much improvement has been made since 2012. In 2019, the annual audit of the district again identified issues with procurement, including several purchases made without written approval. The general manager and the board of directors continue failing in their responsibility to follow procurement policies for contracts and remain inconsistent with handling matters regarding potential conflicts of interest.

Year after year the citizens of McAllen support an obsolete, burdensome, and unnecessary layer of government. The district has outlived its purpose, lacks proper oversight, and is an unnecessary waste of taxpayer funds.

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

S.B. 2185 amends current law relating to restrictions on certain special districts.

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. Defines "district."

SECTION 2. GENERAL MANAGER. Requires the general manager to be an employee of the Hidalgo County Water Improvement District No. 3 (district). Provides that the general manager serves at the pleasure of and reports only to the board of directors of the district (board). Prohibits the general manager from serving as a director on the board.

SECTION 3. EDUCATION PROGRAM. (a) Requires the board to establish a program of education for the district's directors that includes information on the history of the district; the district's statutory authority; laws applicable to the district, including the requirements of Chapters 551 (Open Meetings) and 552 (Public Information), Government Code; relevant legal developments related to water district governance; the duties and responsibilities of the board; conflict of interest laws and other laws related to public officials; and any applicable ethics policies adopted by the Texas Commission on Environmental Quality (TCEQ) or the Texas Ethics Commission.

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

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

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

SECTION 4. EDUCATION FOR DIRECTORS. (a) Requires each director of the district to complete the education program established under Section 3 of this Act before the first anniversary of the date on which the director was appointed or elected. Requires a director serving on the board on the effective date of this Act to complete the education program not later than September 1, 2022.

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

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

SECTION 5. PROHIBITED CONDUCT FOR DIRECTORS AND DISTRICT EMPLOYEES. Prohibits a director of the district or a district employee from:

(1) accepting or soliciting any 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; or

(6) having a personal interest in an agreement executed by the district.

SECTION 6. SEARCHABLE DISTRICT EXPENDITURE DATABASE. (a) Requires the district to establish and post on the district's Internet website 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 salary or personal identifying information, as defined by Section 521.002 (Definitions), Business & Commerce Code.

(c) Requires the district to prominently display a link to the database established under this section on the district's Internet website. Requires that the information provided in the district check register reports be updated monthly.

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

SECTION 7. CONDUCT OF ELECTIONS. Requires the district to publish once before each election to elect members of the board the procedure for conducting an election to elect members of the board in a newspaper of general circulation in each municipality or county in which the district or a portion of the district is located.

SECTION 8. Amends Subchapter H, Chapter 49, Water Code, by adding Section 49.2127, as follows:

Sec. 49.2127. PIPELINE FEES AND REQUIREMENTS IMPOSED BY CERTAIN DISTRICTS. (a) Defines "retail public utility."

(b) Provides that this section applies only to a district whose territory is located wholly or partly in a county:

(1) located on the Gulf of Mexico and an international border; or

(2) adjacent to a county described by Subdivision (1).

(c) Provides that notwithstanding Section 49.002 (Applicability), this section prevails over a special law governing a district.

(d) Prohibits a district from imposing on a retail public utility that proposes to construct a water or sewer pipeline or associated infrastructure in the district's service area:

(1) requirements for constructing the pipeline that are unduly burdensome; or

(2) a fee that is greater than the actual, reasonable, and documented costs incurred by the district for review, legal services, engineering services, inspection, construction, and repair associated with the retail public utility construction, and any other related costs incurred by the district in association with the retail public utility construction.

SECTION 9. Effective date: September 1, 2021.