

SUBJECT: Dissolution of the Hidalgo County Water Improvement District No. 3

COMMITTEE: Border and Intergovernmental Affairs — committee substitute recommended

VOTE: 6 ayes — V. Gonzales, Alonzo, Farrar, L. Gonzales, Phillips, Simpson
1 nay — Hardcastle
2 absent — Weber, Riddle

SENATE VOTE: On final passage, April 7 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 1828:*)
For — Tony Aguirre, Charles Amos, Ernie Williams, McAllen Public Utility Board; Marcus Barrera, Snapper Carr, Richard Cortez, Mike R. Perez, Martin Rochelle, City of McAllen; Steve Ahlenius, McAllen Chamber of Commerce; Kevin Pagan, City of McAllen, McAllen Public Utility Board; Nedra Kinerk, Futuro McAllen Citizen Advocacy Group; George Townsend, Tavamaso Inc. and Virginia Townsend; (*Registered, but did not testify:* Greg Townsend, Tavamaso Inc. and Virginia Townsend)

Against — Othal Brand, Frank Ferris, R. Glenn Jarvis, Hidalgo County Water Improvement District No. 3; John David Franz, City of Hidalgo; Wayne Halbert, Harlingen Irrigation District, Texas Irrigation Council, Valley Manager's Association; Timothy McDaniel, Hidalgo County Farm Bureau; Tito Nieto, United Irrigation District of Hidalgo County; Jimmie Steldinger, Donna Irrigation District; Jo Jo White, Hidalgo and Cameron Counties Irrigation District No. 9, Mercedes Irrigation District; (*Registered, but did not testify:* Troy Allen, Delta Lake Irrigation District; Joe Barrera III, Brownsville Irrigation District; Sonny Hinojosa, Hidalgo County Irrigation District No. 2; Billy Howe, Texas Farm Bureau; Sonia Lambert, Cameron County Irrigation District No. 2; Rusty McDaniel, Hidalgo County Irrigation District No. 1; Jason Skaggs, Texas and Southwestern Cattleraisers Association; Eddie Zamora)

DIGEST:

CSSB 978 would dissolve the Hidalgo County Water Improvement District No. 3 on September 1, 2011, or the date a transfer ordinance was adopted and took effect under the bill, whichever was later.

At a regularly scheduled meeting of the city council, the city of McAllen could propose an ordinance allowing it to accept a transfer of the obligations, liabilities, and assets of the Hidalgo County Water Improvement District No. 3 if the city council found that as of the date of the meeting:

- at least 80 percent of the raw water diverted by the district in the preceding 12 months was diverted for use by the city;
- the city was capable of assuming all rights and obligations of the district;
- the city was capable of assuming responsibility for operating the district's facilities to benefit the district's existing customers and performing the services and functions performed by the district;
- dissolution of the district would result in an overall cost savings to city residents; and
- dissolution of the district would result in a more stable water supply for residents of the city and surrounding communities.

Before McAllen could propose a transfer ordinance, it would have to conduct a public hearing on the issue with notice posted in accordance with laws that applied to regular meetings of the council. After the public hearing, the city council could adopt an ordinance that would allow the city to accept a transfer of the district's obligations, liabilities, and assets. The ordinance would have to contain provisions that:

- eliminated the required payment of any flat tax or assessments paid to the district by landowners in the district;
- ensured that all water rights were held in trust by the city for the uses previously adjudicated;
- ensured that all individual water users were entitled to continue to use or have access to the same amount of water they were entitled to before the dissolution of the district;
- required the city to perform all the functions of the district, including the provision of services; and
- ensured delivery of water to landowners at or below the lowest comparable delivery charge imposed by any other irrigation district in Hidalgo County.

The ordinance would take effect only if two-thirds of the city council voted in favor of it.

On or before the effective date of the ordinance, the district board would have to provide the district's management and operational records to McAllen to ensure the orderly transfer of management and operational responsibility to the city.

Without the consent of a majority of the members of city council, the district could not:

- sell, transfer, or encumber any district asset;
- issue debt or acquire additional obligations; or
- default on or fail to honor financial, legal, or other obligations of the district.

Unless a majority of the members of city council agreed otherwise, the district would have to:

- maintain assets of the district in an appropriate condition reflective of good stewardship and proper repair; and
- preserve district records, including information maintained by the district in electronic format.

The voters of the district and of McAllen could object to the ordinance by filing a petition with the secretary of the city. The petition would have to be signed by at least 5 percent of the combined total of registered voters who resided in the city or any part of the district outside the city and would have to be filed no later than the 30th day after the city council voted in favor of the transfer ordinance.

The city secretary would have to verify the signatures on the petition and present the verified petition to the city council at its next scheduled meeting. On receipt of the petition, the city council would have to suspend the ordinance, and the city could not take action under the ordinance unless it was approved by the voters.

The city council would have to reconsider the suspended ordinance at its next scheduled meeting. If the city council did not repeal the transfer ordinance, the council would have to submit a proposition for or against enactment of the ordinance to the voters at an election held jointly by the

city and the district on the next uniform election date. The transfer ordinance would take effect if a majority of the voters voted in favor of the transfer.

On or before the effective date of the transfer ordinance, the district would have to:

- transfer the ownership of any water rights and certificates of adjudication to the city;
- transfer the assets, debts, and contractual rights and obligations of the district to the city; and
- provide notice and make recordings of the transfers as required by the Water Code and other law.

On receipt of notice of the transfer of a district certificate of adjudication, the Texas Commission on Environmental Quality (TCEQ) would have to note in its records that the certificate of adjudication was owned and held by the city. TCEQ would have to transfer the district's certificate to the city as a ministerial act without further application, notice, or hearing. A person or other legal entity would not have a right to object or request an administrative review of a transfer made under the bill.

The transfer of the district's water rights and any certificate of adjudication to the city would not affect or impair the priority, extent, validity, or purpose of the water rights or certificate.

CSSB 978 would expire January 1, 2016.

The bill would take immediate effect if finally passed by a two-thirds record vote by the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS
SAY:**

SB 978 is a local bill pertaining to one water district in Hidalgo County and to the city of McAllen. Water District No. 3 was created nearly 100 years ago to serve what was an agricultural interest. However, the water district since has become obsolete, serving very few agricultural landowners. The city of McAllen currently constitutes 94 percent of the total revenues paid to the district and 80 percent of the district's water supply. Without this revenue from McAllen taxpayers, the water district could not operate.

Water District No. 3 has been operating in violation of the Texas Water Code. Although Texas law requires that no less than one-third of the estimated maintenance and operating expenses come from the flat fee charged to landowners, currently less than 2 percent of the water district's budget comes from landowners. The only way the water district could comply with state law would be to charge the landowners 17 times the amount they currently are charged.

The water district has engaged in numerous financial abuses, such as charging the city of McAllen excessive crossover fees, some as high as \$30,000. The water district charges higher rates than any other district in the Valley region, and has required McAllen to purchase land for outrageous sums instead of granting an easement for a minimal fee, as is common practice.

SB 978 would provide benefits and protections for agricultural water users. The bill would ensure that all users' water rights were protected, and the city would simply hold those rights in trust. The flat tax charged to landowners would be eliminated, and agricultural landowners would be guaranteed the same amount of water that they currently receive. Residential and agricultural landowners would receive the lowest rates of any district in the Valley region.

SB 978 would save taxpayers money by eliminating a layer of government bureaucracy that is no longer serving a purpose.

This legislation is not setting a precedent because the bill is not unique. This session alone, at least one other bill was aimed at dissolving a water district, and legislation dissolving water districts has been passed in previous sessions. Additionally, the Hidalgo County Water District No. 3 originally was established by the Legislature, so it would be appropriate for the Legislature to dissolve it.

There is precedent in Texas law that water districts may outlive their intended purpose. The Water Code provides a process for the dissolution of a water district and transfer of rights. However, the process in statute could be improved upon because it would require owners' water rights to go to the state. Since that process would create a hardship for taxpayers and water users, SB 978 appropriately would dissolve the district and transfer its obligations, liabilities, and assets to the city of McAllen.

Under SB 978, voters would be able to petition against the city of McAllen's taking over the water district's role. If 5 percent of the voters signed a petition, there would be an election on the issue.

Many of the initial concerns with the bill have been worked out in the committee substitute.

**OPPONENTS
SAY:**

The Hidalgo County Water District No. 3 has been in operation for nearly 100 years to serve the water needs of agricultural water users, and currently serves about 15 active farmers, many of whom oppose SB 978.

The water district has been stable and reliable and should continue to operate. The city of McAllen would not have the expertise to take over the role of the water district since it has not been focused on the relevant responsibilities. There is no need to transfer the obligations, liabilities, and assets of the district to the city of McAllen.

SB 978 would set a bad precedent. Local issues involving the dissolution of a water district should not be settled by the Legislature.

SB 978 is not necessary because there are already provisions in state law that provide for the dissolution of a water district.

NOTES:

The House committee substitute differs from the Senate-passed version by referring to the ordinance as a transfer ordinance rather than a dissolution ordinance; requiring the voters' petition objecting to the ordinance to be signed by at least 5 percent of the voters in the city or any part of the district outside of the city; requiring a petition filing deadline; and requiring the election for reconsideration of the ordinance to be held jointly by the city and the district on the next uniform election date.

The companion bill, HB 1828 by V. Gonzales, was considered in a public hearing on March 14 by the House Border and Intergovernmental Affairs Committee and left pending.