

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 2552  
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Intergovernmental Relations  
5/3/2019  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 2552 is a local bill that relates to the board of directors and employees of the Agua Special Utility District (SUD) in the Rio Grande Valley. Changes are needed to protect taxpayers against conflicts of interest and to strengthen the transparency and accountability of Agua SUD board members and personnel.

S.B. 2552 would require that directors serving on the Agua SUD board of directors file financial statements and apply conflict of interest and nepotism laws to the directors. The bill would also provide the eligibility requirements for service as a director or general manager, including the disqualification of any person or his or her relative who owns or controls more than a 10 percent interest in the fair market value of a business that receives money from the Agua SUD.

S.B. 2552 details the prohibited conduct for directors and employees of the Agua SUD. Among its specifications, it provides that a director or employee may not have a personal interest in an agreement executed by the Agua SUD. The bill also provides the grounds for removal of a director from the board if a director does not complete training and education requirements, does not meet eligibility requirements for service, or participates in prohibited conduct under this bill. Additionally, the bill prohibits the general manager from being employed by or managing a company that receives money from the utility district and from owning or controlling more than 10 percent interest of a company that receives money from the district.

In an effort to be transparent and accountable to rate payers, S.B. 2552 would require the Agua SUD to prominently post on its website reports showing payments made by Agua SUD on a monthly basis. Minutes from board meetings would also have to be posted within 72 hours of their approval.

Committee Substitute:

The committee substitute changes the composition of the Agua SUD board by redistricting the boundaries and allowing for single-member districts to ensure equitable representation of ratepayers within the district. Agua SUD will continue to be governed by a board of seven elected directors, but each seat will represent an equal amount of district residents in compliance with all the requirements of the Election Code.

C.S.S.B. 2552 amends current law relating to the administration of the Agua Special Utility District and creates a criminal offense.

### **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 7201.0513(a), Special District Local Laws Code, to remove the specification that the first election of directors described under this section (Education Program) is provided under Section 7201.052 (Board of Directors) and makes no further changes.

SECTION 2. Amends Subchapter B, Chapter 7201, Special District Local Laws Code, by adding Section 7201.055, as follows:

Sec. 7201.055. COMPOSITION OF BOARD; TERMS. (a) Provides that the Agua Special Utility District (district) is governed by a board of seven directors (board; director), each of whom occupies a numbered position on the board and represents a unique subdistrict containing, as near as practicable, one-seventh of the total number of residents in the district.

(b) Requires a candidate for a position on the board to reside in the subdistrict represented by that position and be eligible to hold office under Section 141.001 (Eligibility Requirements For Public Office), Election Code.

(c) Requires the district to fill a vacancy on the board in accordance with Section 49.105 (Vacancies), Water Code

(d) Provides that directors serve staggered terms of four years and are prohibited from serving more than two consecutive terms.

(e) Provides that a person who has served as a member of the board of directors of the La Joya Water Supply Corporation is ineligible to serve as a district director.

(f) Prohibits the board, if a director is an employee of another taxing entity within the district, from employing as an employee, as a consultant, or on contract basis an elected official of the other taxing entity that employs the director or a person related to that elected official in the third degree of consanguinity or affinity as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code.

SECTION 3. Amends Subchapter B, Chapter 7201, Special District Local Laws Code, by adding Sections 7201.056, 7201.057, and 7201.058, as follows:

Sec. 7201.056. FILING OF FINANCIAL STATEMENT BY DIRECTOR. (a) Requires a member of the board to file the financial statement required of state officers under Subchapter B (Personal Financial Statement), Chapter 572, Government Code, with the Texas Ethics Commission.

(b) Provides that Subchapter B, Chapter 572, Government Code, applies to a director as if the director were a state officer and governs the contents, timeliness of filing, and public inspection of a statement filed under Subsection (a).

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

Sec. 7201.057. SUBSTANTIAL BUSINESS INTEREST. Provides that, for purposes of Chapter 171 (Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments), Local Government Code, a director, in connection with a vote or decision by the board, is considered to have a substantial interest in a business entity if a person related to the director within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest in the business entity.

Sec. 7201.058. GROUNDS FOR REMOVAL. Authorizes a director to be removed from the board if the director:

(1) does not have at the time of appointment the qualifications required by Sections 7201.055(b);

- (2) does not complete the initial board training required by Section 7201.0512 (Initial Board Training);
- (3) does not complete the education program required by Section 7201.054 (Education For Directors);
- (4) does not meet the eligibility requirements under Section 7201.072; or
- (5) fails to comply with Section 7201.071.

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

#### SUBCHAPTER B-1. DISTRICT ADMINISTRATION

Sec. 7201.071. PROHIBITED CONDUCT FOR DIRECTORS AND DISTRICT EMPLOYEES. Prohibits a director or district employee from accepting or soliciting certain gifts, other employment, compensation, or benefits, making certain personal investments, or having a personal interest in an agreement executed by the district.

Sec. 7201.072. ELIGIBILITY OF DIRECTOR AND GENERAL MANAGER. (a) Provides that a person is ineligible to serve as a director or general manager of the district if the person or the person's relative within the third degree by consanguinity or affinity, as determined by Chapter 573, Government Code, meets certain enumerated criteria.

(b) Requires a person applying to serve as general manager of the district to disclose any potential violations of Subsection (a) before accepting the position of general manager.

Sec. 7201.073. GENERAL MANAGER; DUTIES. (a) Requires the board to employ a person with prior experience and training as general manager.

(b) Provides that the duties of the general manager include certain enumerated tasks.

(c) Authorizes the board to assign the duties under Subsection (b) only to the general manager. Prohibits the board from assigning the duties to any other person.

(d) Provides that the general manager is an employee of the district. Provides that the general manager serves at the pleasure of and reports only to the board.

(e) Requires the board to determine the compensation and terms of employment for the general manager.

(f) Authorizes the board to 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.

(g) Prohibits the term of a contract, if the board enters into an employment contract with the general manager, from exceeding two years.

(h) Provides that it is a ground for termination of the general manager if the general manager fails to disclose any potential violations of Section 7201.072 as required by that section.

SECTION 5. Amends Subchapter C, Chapter 7201, Special District Local Laws Code, by adding Section 7201.104, as follows:

Sec. 7201.104. 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 the district expenditures and contracts. Requires the database to include the amount, date, description, payor, and payee of the expenditures, and, if applicable, parties to the contract.

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

(c) 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 6. Amends Section 7201.201, Special District Local Laws Code, by adding Subsection (c) to require the district, not later than the third day after the date the accountant finalizes the audit required by this section (Audit of District), to publish the audit on the district's Internet website.

SECTION 7. Amends Section 7201.204, Special District Local Laws Code, as follows:

Sec. 7201.204. NEWSLETTER, WEBSITE, AND ANNUAL FINANCIAL INFORMATION. (a) Creates this subsection from existing text and requires the district to maintain and update monthly an Internet website with current information concerning policies, monthly financial information concerning revenues and expenses, and monthly summaries, rather than requiring the district to maintain an Internet website with current information concerning agendas, minutes, policies, monthly financial information concerning revenues and expenses, and quarterly summaries.

(b) Requires the district, not later than 72 hours before a meeting held by the district, to publish on the district's Internet website the agenda for the meeting.

(c) Requires the district, not later than 72 hours after the date the district adopts the minutes of a meeting held by the district, to publish on the district's Internet website the minutes adopted by the district.

(d) Creates this subsection from existing text and makes no further changes.

SECTION 8. Repealer, effective December 31, 2019: Section 7201.051 (Appointment of Initial Directors), Special District Local Laws Code.

Repealer, effective December 31, 2019: Section 7201.052 (Board of Directors), Special District Local Laws Code.

SECTION 9. (a) Requires the board, not later than December 31, 2019, to determine each subdistrict in accordance with Section 7201.055, Special District Local Laws Code, as added by this Act, and in compliance with all applicable provisions of the Election Code.

(b) Requires the initial election for positions one, two, and three on the board to be held on the uniform election day in May 2020. Requires the initial election for positions four through seven to be held on the uniform election date in May 2022.

SECTION 10. Requires that, not later than January 1, 2020:

(1) a director file a financial statement as required by Section 7201.056, Special District Local Laws Code, as added by this Act; and

(2) the district establish and post on the district's Internet website a database of the district's check register reports as required by Section 7201.104, Special District Local Laws Code, as added by this Act.

SECTION 11. (a) Provides that the changes in law do not affect the entitlement of a director immediately before the effective date of this Act to continue to serve as a member of the board for the remainder of the member's term.

(b) Prohibits a member described by Subsection (a) of this section from serving more than two consecutive terms on the board even though one or more of those terms began before the effective date of this Act.

SECTION 12. Makes application of this Act in regard to a general manager prospective.

SECTION 13. Provides that 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 14. (a) Effective date, Section 2 of this Act: December 31, 2019.

(b) Effective date, except as provided by Subsection (a) of this section: September 1, 2019.