

BILL ANALYSIS

C.S.H.B. 2166
By: Rose
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Water supply corporations are nonprofit organizations created under the Texas Non-Profit Corporation Act and Chapter 67 of the Water Code. Often, particularly in fast-growing areas of Texas, municipalities have experienced difficulties working with corporations located in their areas. These difficulties stem from a lack of accountability and open governance due to limited governmental or regulatory oversight and the unregulated rates and extension fees that can be imposed by corporations even within incorporated areas of municipalities.

C.S.H.B. 2166 authorizes a general-law municipality, under certain conditions, to appoint one director to serve as a nonvoting member of the board of the corporation and relates to the election of voting members of such a board.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2166 amends the Water Code to authorize a general-law municipality, by ordinance or resolution adopted at least 30 days before the date of the annual meeting of the members or shareholders of the corporation, if more than 50 percent of a nonprofit water supply or sewer service corporation's connections to provide water or sewer service are within the corporate limits of the municipality, to appoint one director to serve as a nonvoting member of the board of directors of the corporation. The bill specifies that an appointed director serves a two-year term. The bill grants all of the rights and responsibilities of an elected director to such an appointed director, except for voting authority.

C.S.H.B. 2166 requires a person, to be listed on the ballot as a candidate for election to a director's position, to file with the corporation an application that includes the person's written consent to serve, if elected; biographical information about the person; a statement of the person's qualifications, including a statement that the person is a qualified voter, and whether the person is a member of the corporation. The bill requires the application to be filed with the corporation not later than the 70th day before the date of the annual meeting. The bill requires the corporation to make director candidate application forms available at the main office of the corporation. The bill requires the secretary-treasurer of the board to have the names of all candidates for each director's position printed on the ballot and, not later than the 45th day before the date of the annual meeting, mail the ballot to each person who is a member or shareholder, along with a statement of the number of directors to be elected and the biographical information about each candidate, including the candidate's qualifications as provided by each candidate for director in the candidate's application. The bill authorizes a member or shareholder to vote in person at the annual meeting, by delivering a completed ballot to the member's proxy to submit at the annual meeting, by mailing a completed ballot postmarked not later than the sixth day before the date of the annual meeting to the office of the independent election auditor selected by

the members or shareholders at the preceding annual meeting, or by delivering a completed ballot to the main office of the corporation not later than noon of the day before the date of the annual meeting. The bill requires the corporation to place each such ballot received in a sealed envelope and to deliver the sealed envelopes to the independent election auditor at the annual meeting.

C.S.H.B. 2166 establishes that no person, including the corporation, may use any type of incentive to encourage a member or shareholder to authorize the corporation, a committee of the corporation, or another person to act as the member's proxy in casting the vote of the member in a director's election. The bill authorizes the corporation to provide incentives at an annual or special meeting of the members solely to encourage a sufficient number of members to participate in the meeting in person or by proxy so that the number of members needed for a quorum is present. The bill requires the independent election auditor to receive and count the ballots before the annual meeting is adjourned. The bill specifies that, for each director's position, the nominee who receives the highest number of votes is elected and requires, in the event of a tie for the highest number of votes, those candidates to draw lots under the direction of the independent election auditor to determine who is elected. The bill requires the independent election auditor to provide the board with a written report of the election results. The bill authorizes the board to adopt rules as needed to implement the bill's provisions, including rules to ensure the fairness, integrity, and openness of the voting process.

C.S.H.B. 2166 requires the board to adopt written procedures that include procedures for selecting an independent election auditor. The bill requires an independent auditor to be selected at each annual meeting for the following annual meeting at which one or more directors are scheduled to be elected. The bill establishes that the independent auditor is not required to be an experienced election judge or auditor and authorizes the independent auditor to serve as an unpaid volunteer. The bill prohibits the independent election auditor, at the time of selection and while serving in the capacity of independent auditor, from being associated with the corporation as an employee or independent contractor or a director or candidate for director.

C.S.H.B. 2166 specifies that provisions of the Water Code relating to the audit of districts applies in the same manner to a corporation with 500 or more members and, for this purpose, defines "board" and "district."

C.S.H.B. 2166 makes a water supply or sewer service corporation subject to the specified audit requirements beginning with the first fiscal year of the corporation that begins on or after September 1, 2009. The bill requires the board of directors of such a corporation to select an independent election auditor at least 30 days before the scheduled date of the 2010 annual meeting of the corporation.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2166 removes provisions included in the original relating to a municipal governing body's jurisdiction over rates, operations, and services provided by a water supply and sewer service corporation within the municipality and the Texas Commission on Environmental Quality's jurisdiction in certain matters.

C.S.H.B. 2166 adds provisions not included in the original relating to the appointment by a general-law municipality of a director to serve as a nonvoting member of the board of directors of a certain corporation and relating to the terms and responsibilities of such a director. The substitute differs from the original by requiring candidates for election to the director's position to file an application with the corporation, rather than with the secretary-treasurer of the board as

in the original. The substitute removes provisions included in the original requiring such an application to include a petition signed by at least 25 members or shareholders. The substitute adds a provision not included in the original requiring such an application to include whether the person is a member of the corporation.

C.S.H.B. 2166 differs from the original by specifying that the deadline for mailing a completed ballot is not later than the sixth day before the date of the annual meeting, rather than the fifth day as in the original, and by specifying that the deadline for delivering a completed ballot is not later than noon on the day before the annual meeting, rather than the fifth day before as in the original. The substitute removes a provision included in the original granting the option to deliver a ballot to the office of the independent election auditor. The substitute adds a provision not included in the original relating to placing each ballot in a sealed envelope and the manner in which the sealed envelope is to be delivered to the election auditor.

C.S.H.B. 2166 removes a provision included in the original defining "member." The substitute adds a provision not included in the original authorizing the corporation to provide incentives to encourage members to participate to ensure that a quorum is present. The substitute differs from the original by specifying that an independent auditor is selected at each annual meeting for the following annual meeting at which an election is scheduled, rather than at least 30 days before each annual meeting as in the original. The substitute adds a provision not included in the original authorizing the auditor to serve as an unpaid volunteer and establishing that the auditor is not required to be an experienced election judge. The substitute differs from the original by specifying that the application of provisions relating to district audits applies to a corporation with 500 or more members, whereas the original does not include that specification.

C.S.H.B. 2166 differs from the original in nonsubstantive ways to reflect certain bill drafting conventions.