

BILL ANALYSIS

Senate Research Center
81R31440 SGA-D

C.S.S.B. 1960
By: Wentworth
Natural Resources
5/7/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Water supply corporations (WSCs) are nonprofit organizations that perform many of the same functions as other districts under Chapter 49 (Provisions Applicable to All Districts), Texas Water Code, including setting rates. Many cities have raised concerns regarding the accountability and transparency of WSCs, including the potential for fiscal mismanagement and tendencies to control membership on the corporation's board through the use of prize incentives for proxy votes. S.B. 1960 addresses these and other issues regarding WSCs.

C.S.S.B. 1960 amends current law relating to increased oversight, openness, transparency, and accountability for water supply or sewer service corporations.

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 67.005, Water Code, by adding Subsection (g), as follows:

(g) Authorizes the municipality, if more than 50 percent of the water supply or sewer service corporation's (corporation) connections to provide water or sewer service are within the corporate limits of 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, to create a new position on the board of the corporation (board) and appoint a director to serve in that position as a nonvoting member of the board. Provides that an appointed director serves a two-year term. Provides that a director, except for voting authority, appointed under this subsection has all of the rights and responsibilities of an elected director.

SECTION 2. Amends Subchapter A, Chapter 67, Water Code, by adding Sections 67.0061-67.0063, as follows:

Sec. 67.0061. DIRECTOR NOMINATIONS. (a) 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 certain information.

(b) Requires that the application be filed with the corporation not later than the 70th day before the date of the annual meeting.

(c) Requires the corporation to make available director candidate application forms at the main office of the corporation.

Sec. 67.0062. BALLOT FOR ELECTION OF DIRECTORS. 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.

Sec. 67.0063. ELECTION OF DIRECTORS. (a) Authorizes a member or a shareholder to vote by certain methods.

(b) Requires the corporation to place each ballot received under Subsection (a)(4) (related to the delivery deadline of a completed ballot) in a sealed envelope and to deliver the sealed envelopes to the independent election auditor at the annual meeting.

(c) Prohibits a person, including the corporation, from using 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. Authorizes the corporation to provide incentives to obtain proxies or to encourage attendance at an annual or special meeting of the members solely for the purpose of establishing a quorum.

(d) Requires the independent election auditor to receive and count the ballots before the annual meeting is adjourned.

(e) Provides that for each director's position, the nominee who receives the highest number of votes is elected.

(f) Requires that, if two or more candidates for a director's position tie for the highest number of votes for that position, those candidates draw lots under the direction of the independent election auditor to determine who is elected.

(g) Requires the independent election auditor to provide board with a written report of the election results.

(h) Authorizes the board to adopt rules as needed to implement this section, including rules to ensure the fairness, integrity, and openness of the voting process.

SECTION 3. Amends Section 67.007, Water Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires the board to adopt certain written procedures for conducting an annual or special meeting of the members or shareholders, to include procedures for selecting an independent election auditor required by Section 67.0063. Makes nonsubstantive changes.

(d) Requires an independent election auditor to be selected at each annual meeting for the following annual meeting at which one or more directors are scheduled to be elected. Provides that the independent auditor is not required to be an experienced election judge or auditor and is authorized to serve as an unpaid volunteer. Prohibits the independent election auditor, at the time of selection and while serving in the capacity of an independent election auditor, from being associated with the corporation as an employee or independent contractor or a director or candidate for director.

SECTION 4. Amends Subchapter A, Chapter 67, Water Code, by adding Section 67.0085, as follows:

Sec. 67.0085. AUDIT REQUIREMENTS. Provides that Subchapter G (Audit of Districts), Chapter 49 (Provisions Applicable to All Districts), applies to a corporation with 500 or more members in the same manner that it applies to a district under that chapter. Defines "board" and "district" for purposes of applying that subchapter to a corporation.

SECTION 5. Provides that a water supply or sewer service corporation operating under Chapter 67, Water Code, is subject to the audit requirements of Section 67.0085, Water Code, as added

by this Act, beginning with the first fiscal year of the corporation that begins on or after September 1, 2009.

SECTION 6. Requires the board operating under Chapter 67 (Nonprofit Water Supply or Sewer Service Corporations), Water Code, to select an independent election auditor at least 30 days before the scheduled date of the 2010 annual meeting of the corporation.

SECTION 7. Effective date: September 1, 2009.