

## **BILL ANALYSIS**

H.B. 310  
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Natural Resources  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Water supply corporations are nonprofit organizations created under state law to provide retail water and sewer service. The law requires these entities to establish written procedures for holding elections but does not specify many parameters for doing so. Some corporations have been accused of adopting a process whereby current directors hand pick a person they would like to serve on the board and then control the election by obtaining proxies, and others have relied on proxy voting because the corporation is otherwise unable to obtain a quorum due to voter apathy. A corporation is unable to hold a valid election without a quorum and therefore has to repeat the election process, sometimes without success.

H.B. 310 imposes specific procedures on water supply corporations that would require an open election process in which any qualified member may run for the board and each member would have the opportunity to vote the member's own ballot either by absentee voting or by voting in person. Proxy voting would no longer be allowed. An independent election auditor would oversee the election process and count ballots. The bill assists these corporations by providing that a quorum is established based on a majority of those who participate so that elections conducted in accordance with the law will be valid, regardless of how many members chose to participate.

### **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**

H.B. 310 amends the Water Code to require a person to be 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable, and to be a member or shareholder of the corporation in order to be qualified for election or appointment as a member of the board of directors of a water supply or sewer service corporation. The bill disqualifies a person from serving as a director if the person has been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote or if the person has been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities. The bill requires the board, if the board determines that a person serving as a director does not have the prescribed qualifications and not later than the 60th day after the date the board makes that determination, to remove the director and fill the vacancy by appointing a person who has the prescribed qualifications.

H.B. 310 requires a person, to be listed on the ballot as a candidate for a director's position, to file an application with the corporation that includes the following: the director's position sought, including any position number or other distinguishing number; a petition signed by the lesser of 25 members or shareholders or five percent of the members or shareholders, requesting that the person's name be placed on the ballot as a candidate for that position; the person's written consent to serve, if elected; biographical information about the person; and a statement of the

person's qualifications, including a statement that the person has the prescribed qualifications. The bill requires the application to be filed with the corporation not later than the 45th day before the date of the annual meeting. The bill requires the corporation to make available director candidate application forms at the corporation's main office and to provide application forms by mail or electronically on request.

H.B. 310 requires the corporation, not later than the 30th day before the date of an annual meeting, to mail to each member or shareholder of record written notice of the meeting, the election ballot, and a statement of each candidate's qualifications, including biographical information as provided in each candidate's application. The bill requires the election ballot to include the number of directors to be elected and the names of the candidates for each position.

H.B. 310 authorizes a member or shareholder to vote as follows: in person at the annual meeting; by mailing a completed ballot to the office of the independent election auditor selected under the bill's provisions or to the corporation's main office, which ballot must be received by the corporation not later than noon on the business day before the date of the annual meeting; or by delivering a completed ballot to the office of the independent election auditor or to the corporation's main office not later than noon on the business day before the date of the annual meeting. The bill requires the independent election auditor to receive and count the ballots before the annual meeting is adjourned. The bill provides that for each director's position, the candidate who receives the highest number of votes is elected. The bill requires candidates for the same position who tie for the highest number of votes for that position to draw lots 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 necessary rules or bylaws to implement these provisions relating to the election procedures, including rules or bylaws to ensure the fairness, integrity, and openness of the voting process.

H.B. 310 provides that a quorum for the transaction of business at an annual or special meeting of the members or shareholders is a majority of the members and shareholders present. The bill provides that, in determining whether a quorum is present, all members and shareholders who mailed or delivered ballots to the independent election auditor or the corporation on a matter submitted to a vote at the meeting are counted as present. The bill specifies that the written procedures for conducting an annual or special meeting of the members or shareholders required to be adopted by the board be in accordance with provisions relating to such a meeting and provisions relating to ballot applications, ballots, and election procedures as added by the bill. The bill revises the required composition of the procedures by removing the establishment of a quorum consisting of proxies and the votes of members or shareholders present, by removing nomination and election procedures and adding director election procedures, including candidate application procedures, and by removing language referring to proxies.

H.B. 310 requires the board to select an independent election auditor not later than the 30th day before the scheduled date of the annual meeting. The bill provides that the independent election auditor is not required to be an experienced election judge or auditor and may serve as an unpaid volunteer. The bill 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, a director or candidate for director, or an independent contractor engaged by the corporation as part of the corporation's regular course of business.

#### **EFFECTIVE DATE**

September 1, 2011.