

BILL ANALYSIS

S.B. 333
By: Fraser
Natural Resources
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Water supply corporations (WSCs) are nonprofit organizations created under the Business Organizations Code and Chapter 67 (Nonprofit Water Supply or Sewer Service Corporations), Texas Water Code to provide retail water and sewer service. Chapter 67 requires these entities to establish written procedures for holding elections, but does not specify many parameters for doing so. Some systems have adopted procedures that result in a "closed" process whereby current directors hand pick who they would like to serve on the board and then control the election by obtaining proxies. Some systems have relied on proxy voting because they are otherwise unable to obtain a quorum due to voter apathy. Without a quorum, a corporation is unable to hold a valid election and therefore has to repeat the election process, sometimes without success a second time.

S.B. 333 would impose specific procedures on water supply corporations which would allow for a more open election process.

As proposed, S.B. 333 amends current law relating to election procedures and qualifications of members of boards of directors 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.

ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 67, Water Code, by adding Sections 67.0051, 67.0052, 67.0053, and 67.0054, as follows:

Sec. 67.0051. QUALIFICATIONS FOR ELECTION OR APPOINTMENT AS DIRECTOR. (a) Requires a person, to be qualified for election or appointment as a member of the board of directors of a water supply or sewer service corporation board (director; board), 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 a member or shareholder of the corporation.

(b) Provides that in addition to the qualifications prescribed by Subsection (a), a person is not qualified to serve as a director if the person:

(1) 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

(2) has been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities.

(c) Requires the board, if the board determines that a person serving as a director does not have the qualifications prescribed by Subsections (a) and (b), 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 qualifications prescribed by those subsections.

Sec. 67.0052. BALLOT APPLICATION. (a) Requires a person, to be listed on the ballot as a candidate for a director's position, to file an application with the water supply or sewer service corporation operating under this chapter (corporation) that includes:

- (1) the director's position sought, including any position number or other distinguishing number;
- (2) 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;
- (3) the person's written consent to serve, if elected;
- (4) biographical information about the person; and
- (5) a statement of the person's qualifications, including a statement that the person has the qualifications prescribed by Section 67.0051.

(b) Requires that the application be filed with the corporation not later than the 45th day before the date of the annual meeting.

(c) 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.

Sec. 67.0053. BALLOT. (a) 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:

- (1) written notice of the meeting;
- (2) the election ballot; and
- (3) a statement of each candidate's qualifications, including biographical information as provided in each candidate's application.

(b) Requires that the election ballot include:

- (1) the number of directors to be elected; and
- (2) the names of the candidates for each position.

Sec. 67.0054. ELECTION PROCEDURES. (a) Authorizes a member or shareholder to vote:

- (1) in person at the annual meeting;
- (2) by mailing a completed ballot to the office of the independent election auditor selected under Section 67.007(d) or to the corporation's main office which ballot is required be received by the corporation not later than noon on the business day before the date of the annual meeting; or
- (3) 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.

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

- (c) Provides that for each director's position, the candidate who receives the highest number of votes is elected.
- (d) Requires candidates to draw lots to determine who is elected, if two or more candidates for the same position tie for the highest number of votes for that position.
- (e) Requires the independent election auditor to provide the board with a written report of the election results.
- (f) Authorizes the board to adopt necessary rules or bylaws to implement this section, including rules or bylaws to ensure the fairness, integrity, and openness of the voting process.

SECTION 2. Amends Section 67.007, Water Code, by adding Subsections (a-1) and (d) and amending Subsections (b) and (c), as follows:

(a-1) Provides that a quorum for the transaction of business at a meeting of the members or shareholders is a majority of the members and shareholders present. 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.

(b) Requires the board to adopt written procedures for conducting an annual or special meeting of the members or shareholders in accordance with this section and Sections 67.0052, 67.0053, and 67.0054. Requires that the procedures include the following:

- (1) notification to eligible members or shareholders of the proposed agenda, location, and date of the meeting;
- (2) director election procedures, including candidate application procedures, rather than establishment of a quorum consisting of proxies and the votes of members or shareholders present, nomination and election procedures;
- (3) approval of the ballot form, rather than the proxy and ballot form, to be used; and
- (4) validation of eligible voters, ballots, and election results, rather than voters, proxies, ballots, and election results.

Makes nonsubstantive changes.

(c) Requires the board to adopt an official ballot form, rather than an official proxy and ballot form, to be used in conducting the business of the corporation at any annual or special meeting. Provides that no other ballot form will be valid. Provides that ballots from members or shareholders are confidential and are exempted from disclosure by the corporation until after the date of the relevant election. Makes conforming changes.

(d) Requires the board to select an independent election auditor not later than the 30th day before the scheduled date of the annual meeting. Provides that the independent election 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, a director or candidate for director, or an independent contractor engaged by the corporation as part of the corporation's regular course of business.

SECTION 3. Provides that the changes in law made by this Act in the qualifications of directors of a corporation do not affect the entitlement of a director serving on the board of directors immediately before the effective date of this Act to continue to carry out the board's functions for the remainder of the director's term. Provides that the changes in law apply on to a director elected or appointed on or after the effective date of this Act. Provides that this Act does not

prohibit a person who is a member of the board of directors on the effective date of this Act from being reelected or reappointed to the board of directors if the person has the qualifications required for a director under Section 67.0051, Water Code, as added by this Act.

SECTION 4. Provides for the effective date of this Act.

EFFECTIVE DATE

This Act takes effect September 1, 2011.