

1-1 By: Fraser S.B. No. 333
1-2 (In the Senate - Filed January 12, 2011; February 2, 2011,
1-3 read first time and referred to Committee on Natural Resources;
1-4 March 9, 2011, reported favorably by the following vote: Yeas 10,
1-5 Nays 0; March 9, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to election procedures and qualifications of members of
1-9 boards of directors for water supply or sewer service corporations.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subchapter A, Chapter 67, Water Code, is amended
1-12 by adding Sections 67.0051, 67.0052, 67.0053, and 67.0054 to read
1-13 as follows:

1-14 Sec. 67.0051. QUALIFICATIONS FOR ELECTION OR APPOINTMENT AS
1-15 DIRECTOR. (a) To be qualified for election or appointment as a
1-16 director, a person must be:

1-17 (1) 18 years of age or older on the first day of the
1-18 term to be filled at the election or on the date of appointment, as
1-19 applicable; and

1-20 (2) a member or shareholder of the corporation.

1-21 (b) In addition to the qualifications prescribed by
1-22 Subsection (a), a person is not qualified to serve as a director if
1-23 the person:

1-24 (1) has been determined by a final judgment of a court
1-25 exercising probate jurisdiction to be:

1-26 (A) totally mentally incapacitated; or

1-27 (B) partially mentally incapacitated without the
1-28 right to vote; or

1-29 (2) has been finally convicted of a felony from which
1-30 the person has not been pardoned or otherwise released from the
1-31 resulting disabilities.

1-32 (c) If the board determines that a person serving as a
1-33 director does not have the qualifications prescribed by Subsections
1-34 (a) and (b), the board shall, not later than the 60th day after the
1-35 date the board makes that determination, remove the director and
1-36 fill the vacancy by appointing a person who has the qualifications
1-37 prescribed by those subsections.

1-38 Sec. 67.0052. BALLOT APPLICATION. (a) To be listed on the
1-39 ballot as a candidate for a director's position, a person must file
1-40 an application with the corporation that includes:

1-41 (1) the director's position sought, including any
1-42 position number or other distinguishing number;

1-43 (2) a petition, signed by the lesser of 25 members or
1-44 shareholders or five percent of the members or shareholders,
1-45 requesting that the person's name be placed on the ballot as a
1-46 candidate for that position;

1-47 (3) the person's written consent to serve, if elected;

1-48 (4) biographical information about the person; and

1-49 (5) a statement of the person's qualifications,
1-50 including a statement that the person has the qualifications
1-51 prescribed by Section 67.0051.

1-52 (b) The application must be filed with the corporation not
1-53 later than the 45th day before the date of the annual meeting.

1-54 (c) The corporation shall make available director candidate
1-55 application forms at the corporation's main office and shall
1-56 provide application forms by mail or electronically on request.

1-57 Sec. 67.0053. BALLOT. (a) Not later than the 30th day
1-58 before the date of an annual meeting, the corporation shall mail to
1-59 each member or shareholder of record:

1-60 (1) written notice of the meeting;

1-61 (2) the election ballot; and

1-62 (3) a statement of each candidate's qualifications,
1-63 including biographical information as provided in each candidate's
1-64 application.

(b) The election ballot must 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) A member or shareholder may 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 must 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) The independent election auditor shall receive and count the ballots before the annual meeting is adjourned.

(c) For each director's position, the candidate who receives the highest number of votes is elected.

(d) If two or more candidates for the same position tie for the highest number of votes for that position, those candidates shall draw lots to determine who is elected.

(e) The independent election auditor shall provide the board with a written report of the election results.

(f) The board may 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. Section 67.007, Water Code, is amended by adding Subsections (a-1) and (d) and amending Subsections (b) and (c) to read as follows:

(a-1) A quorum for the transaction of business at a meeting of the members or shareholders is a majority of the members and shareholders present. 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) The board shall 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. The procedures~~[, which]~~ shall include the following:

(1) notification to eligible members or shareholders of the proposed agenda, location, and date of the meeting;

(2) director ~~[establishment of a quorum consisting of proxies and the votes of members or shareholders present,~~

~~[(3) nomination and]~~ election procedures, including candidate application procedures;

(3) ~~[(4)]~~ approval of the ~~[proxy and]~~ ballot form to be used; and

(4) ~~[(5)]~~ validation of eligible voters, ~~[proxies,~~ ballots, and election results.

(c) The board shall adopt an official ~~[proxy and]~~ ballot form to be used in conducting the business of the corporation at any annual or special meeting. No other ~~[proxy or]~~ ballot form will be valid. Ballots ~~[Proxies and ballots]~~ from members or shareholders are confidential and are exempted from disclosure by the corporation until after the date of the relevant election.

(d) The board shall select an independent election auditor not later than the 30th day before the scheduled date of the annual meeting. The independent election auditor is not required to be an experienced election judge or auditor and may serve as an unpaid volunteer. At the time of selection and while serving in the capacity of an independent election auditor, the independent election auditor may not be associated with the corporation as:

(1) an employee;

(2) a director or candidate for director; or

(3) an independent contractor engaged by the corporation as part of the corporation's regular course of business.

SECTION 3. The changes in law made by this Act in the

3-1 qualifications of directors of a water supply or sewer service
3-2 corporation do not affect the entitlement of a director serving on
3-3 the board of directors immediately before the effective date of
3-4 this Act to continue to carry out the board's functions for the
3-5 remainder of the director's term. The changes in law apply only to
3-6 a director elected or appointed on or after the effective date of
3-7 this Act. This Act does not prohibit a person who is a member of the
3-8 board of directors on the effective date of this Act from being
3-9 reelected or reappointed to the board of directors if the person has
3-10 the qualifications required for a director under Section 67.0051,
3-11 Water Code, as added by this Act.

3-12 SECTION 4. This Act takes effect September 1, 2011.

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