

BILL ANALYSIS

C.S.S.B. 447
By: Fraser
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2011, the Texas Legislature enacted S.B. 333, which imposed specific procedures on water supply and sewer service corporations to allow for a more transparent and open election process for boards of directors for those entities. C.S.S.B. 447 is a clean-up bill that will allow for more efficient implementation of S.B. 333.

As proposed, C.S.S.B. 447 amends current law relating to annual and special meetings of and election procedures for members of boards of directors for water supply or sewer service corporations.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the board of directors of a water supply or sewer service corporation in SECTION 4 (Section 67.0055, Water Code) of this bill.

ANALYSIS

SECTION 1. Amends Section 67.0052, Water Code, by amending Subsection (a) and (b) and adding Subsection (d), as follows:

- (a) Requires a person, to be listed on the ballot as a candidate for a position on a board of directors for a water supply or sewer service corporation, to file an application with the corporation that meets certain requirements, including, if the corporation has 1,500 or more members or shareholders, a petition signed by 20 members or shareholders requesting that the person's name be placed on the ballot as a candidate for that position, rather than including a petition signed by the lesser of 20 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.
- (b) Requires that the application be filed with the corporation not later than the 45th day before the date of the annual meeting. Requires the corporation to notify the members or shareholders of the application deadline not later than the 30th day before the deadline.
- (d) Provides that this section applies only to a corporation that provides retail water or sewer service.

SECTION 2. Amends Section 67.0053, Water Code, by adding Subsection (c), to provide that this section applies only to a corporation that provides retail water or sewer service and does not apply to an election in relation to a candidate for a director's position for which the board has adopted a resolution under Section 67.0055.

SECTION 3. Amends Section 67.0054, Water Code, by amending Subsection (c) and adding Subsection (g), as follows:

- (c) Provides that for each director's position, the candidate who receives the highest number of votes or who is the subject of a resolution described by Section 67.0055, rather than who receives the highest number of votes alone, is elected.

(g) Provides that this section applies only to a corporation that provides retail water or sewer service.

SECTION 4. Amends Subchapter A, Chapter 67, Water Code, by adding Section 67.0055, as follows:

Sec. 67.0055. ELECTION OF UNOPPOSED CANDIDATE. (a) Provides that this section applies only to an election for a director's position on a board of a corporation that provides retail water or sewer service in which a candidate who is to appear on the ballot for the position is unopposed.

(b) Authorizes the board, by resolution, to declare a candidate elected to a director's position if the board certifies in writing that the candidate is unopposed for the position. Requires that a copy of the resolution be posted at the corporation's main office.

(c) Provides that if a declaration is made under Subsection (b), the election for that position is not held.

(d) Requires that the text of the declaration described by Subsection (b) be read into the record at the annual meeting, if the election for the unopposed candidate would have been held with an annual meeting of the members or shareholders of the corporation.

(e) Requires that the ballots used at a separate election that is held at the same time as an election for an unopposed candidate would have been held include after measures or contested races the position and name of a candidate declared elected under this section, under the heading "Unopposed Candidates Declared Elected."

(f) Prohibits a person from influencing or attempting to influence, by intimidation or by means of coercion, a person to withdraw as a candidate or not to file an application for a place on the ballot so that an election may be canceled.

(g) 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 process.

SECTION 5. Amends the heading to Section 67.007, Water Code, to read as follows:

Sec. 67.007. ANNUAL OR SPECIAL MEETING OF RETAIL CORPORATION, rather than ANNUAL OR SPECIAL MEETING.

SECTION 6. Amends Section 67.007, Water Code, by adding Subsection (e), to provide that this section applies only to a corporation that provides retail water or sewer service.

SECTION 7. Amends Subchapter A, Chapter 67, Water Code, by adding Section 67.0075, as follows:

Sec. 67.0075. ANNUAL OR SPECIAL MEETING OF OTHER CORPORATION. Requires a corporation to which Section 67.007 does not apply to comply with the annual meeting and director election provisions prescribed by Chapter 22 (Nonprofit Corporations), Business Organizations Code.

SECTION 8. Provides that the change in law made by this Act applies only to an annual or special meeting or a director election held on or after the 75th day after the effective date of this Act, rather than on or after the effective date of this Act alone. Provides that a meeting or an election held before the 75th day after the effective date of this Act, rather than before the effective date of this Act, is governed by the law in effect when the meeting or election was held, and that law is continued in effect for that purpose.

SECTION 9. Provides for the effective date of this Act.

EFFECTIVE DATE

This Act takes effect on September 1, 2013.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B. 447 differs from the original by adding a provision stating that the corporation shall notify the members or shareholders of the application deadline not later than the 30th day before the deadline, whereas the original did not include this provision.

C.S.S.B. 447 differs from the original by stating that the change in law made by this Act applies only to an annual or special meeting or a director election held on or after the 75th day after the effective date of this Act, whereas the original stated that the change in law made by this Act applies only to an annual or special meeting or a director election held on or after the effective date of this Act.

C.S.S.B. 447 differs from the original by stating that a meeting or an election held before the 75th day after the effective date of this Act is governed by the law in effect when the meeting or election was held, whereas the original stated that a meeting or an election held before the effective date of this Act is governed by the law in effect when the meeting or election was held.