

- SUBJECT:** Procedures for water supply or sewer service corporation director elections
- COMMITTEE:** Natural Resources — favorable, without amendment
- VOTE:** 8 ayes — Ritter, T. King, Beck, Creighton, Hopson, Larson, D. Miller, Price
0 nays
3 absent — Keffer, Lucio, Martinez Fischer
- WITNESSES:** For — Brian Macmanus, Texas Rural Water Association, East Rio Hondo Water Supply Corporation; (*Registered, but did not testify:* Janet Adams, Fort Davis Water Supply Corporation; Shanna Igo, Texas Municipal League; Joe Morris, Aqua Water Supply Corporation)
Against — None
- BACKGROUND:** A water supply or sewer service corporation is a member-owned nonprofit corporation that provides water or sewer service. Current law requires such corporations to elect directors and to adopt written election procedures.
- DIGEST:** HB 310 would add specific requirements for the procedures governing elections of directors for water supply or sewer service corporations.
- Qualifications.** To qualify as a candidate for director, a person would have to be a member or shareholder of the corporation and at least 18 years old on the first day of the term being filled. A director would be disqualified if determined by a probate court to be totally mentally incapacitated or partially mentally incapacitated without the right to vote, or if convicted of a felony and not pardoned or released from any disabilities resulting from the conviction. If the corporation's board of directors determined that a director was disqualified, it would have 60 days after its decision to remove and replace the director with a person qualified under the requirements in the bill.
- Application.** A candidate for director would have to file an application with the corporation that included the following information:

- the particular director position sought, including any position number;
- a petition with the signatures of either 25 members or shareholders or 5 percent of the members or shareholders, whichever amount was smaller;
- the applicant's written consent to serve, if elected;
- the applicant's biographical information; and
- a statement detailing the applicant's qualifications, including a statement indicating compliance with the qualifications specified in the bill.

The candidate would have to file the application no later than 45 days before the annual meeting. The corporation would have to make applications available at its main office and provide applications electronically or by mail upon request.

Ballot. The corporation would have to mail the election ballot, written notice of the meeting, and a statement detailing each candidate's qualifications and biographical information to each member or shareholder no later than 30 days before the annual meeting at which directors would be elected.

Each election ballot would have to include the number of open director positions and the name of each candidate.

Election procedures. HB 310 would allow the corporation board to adopt rules or bylaws to ensure a fair and transparent election process. The board would have to choose an independent election auditor no later than 30 days before the annual meeting. The auditor would not have to be an experienced election judge or auditor and could be a volunteer, but could not be an employee, director or director candidate, or independent contractor hired by the corporation for its normal business.

Members or shareholders could vote in person at the annual meeting, by mail, or by hand-delivering the ballot. If voting by mail or hand-delivery, the completed election ballot would have to be received at the corporation's main office or the office of the independent election auditor by noon on the business day before the annual meeting.

The independent election auditor would have to receive and count the votes before the adjournment of the annual meeting, and would have to provide the board with a written account of the results.

For each director position, the candidate with the highest number of votes would be elected. If two or more candidates tied for the highest number of votes, the candidates would have to draw lots to determine the winner.

Meetings. To conduct business at a meeting, a majority of members and shareholders present would represent a quorum. The count of members and shareholders present would include all persons who had mailed or delivered election ballots to the election auditor or to the corporation.

The board would be required to amend its written procedures for holding annual or special meetings of the members or shareholders to comply with the changes made under the bill. The procedures would have to include the following information:

- notice of the proposed agenda, location, and date of the meeting to members or shareholders;
- procedures for the election of directors, including the application process for candidates;
- approval of the election ballot form that would be used at the meeting; and
- validation of eligible voters, ballots, and election results.

Proxy votes prohibited. Voting by proxy would no longer be allowed. The board would have to adopt an official ballot form that would be used at meetings. The adopted ballot form would be the only valid ballot used to conduct business at meetings.

Effective date. HB 310 would take effect September 1, 2011, and would not affect the term of a director who began serving on the board before that date. A director serving on the effective date could be reelected or reappointed as long as the director met the qualifications detailed in the bill.

SUPPORTERS
SAY:

HB 310 would ensure that elections of directors for water supply and sewer service corporations be conducted fairly and transparently by defining uniform election procedures. Current law does not adequately specify these procedures. The bill would prevent boards from hand-

picking candidates and then controlling elections with proxy votes. All elections would be supervised by an independent election auditor who had no conflict of interest with the corporation.

The bill also would encourage transparency by requiring the board to provide adequate notice of meetings and candidate information to the members and shareholders. All qualified members or shareholders would have the opportunity to be elected or appointed as a director, which would promote greater involvement of members and shareholders in elections.

All water supply and sewer service corporations would benefit from the efficient elections processes outlined in the bill. By redefining how a quorum was established, the bill would ensure timely elections that accurately reflected the ballots cast by individual members and shareholders rather than those cast by representative proxy votes. Currently, if a quorum is not established, the election process must be repeated, which incurs significant cost. This bill would cut costs by eliminating the frequent need for repeat elections.

OPPONENTS
SAY:

By prohibiting proxy voting, HB 310 would inflict rigid statewide requirements on all water supply and sewer service corporations. The additional requirements would impose unnecessary burdens on smaller water supply and sewer service corporations and those with no alleged elections abuse. Also, by requiring the selection of an independent election auditor, the bill would create yet another obligation with which the corporations would have to comply. The time and resources spent seeking and selecting an independent election auditor would be better spent elsewhere.

NOTES:

The Senate companion bill, SB 310 by Fraser, passed the Senate by 31-0 on the Local and Uncontested Calendar on March 24 and has been referred to the House Natural Resources Committee.