

New Legislation Could Impact the Manner in Which PFB Water Utility Board Members Are Elected

Recently enacted law substantially limits the flexibility that public facilities boards previously enjoyed in electing their governing bodies. This new change affects many of the state's rural water utility companies that have been formed as public facilities boards.

Prior to the adoption of Act 544 of 2003, the state's Public Facilities Board Act provided that board directors and their successors could be chosen by whatever procedures were set forth in the bylaws or formation ordinance of the facilities board. Accordingly, a number of the state's facilities boards expressly tailored director elections to fit their particular needs, such as providing for ward voting or membership voting.

Act 544, however, changes the rules. Act 544 eliminates this flexibility and provides that successor board members can only be appointed by the sponsoring mayor or county judge after being nominated by a majority of the facilities board's board of directors.

Act 544 provides that the facilities board shall submit a written list of three successor nominees to the mayor or county judge at least 60 days before the expiration of their terms, and that the mayor or county judge shall then choose one of the nominees to serve as board member subject to confirmation by the governing municipality or county.

Failure by the board to submit a written list of nominees at least 60 days before expiration of a director's expiring term empowers the mayor or county judge to directly appoint a successor member without nomination or input from the board.

All facilities boards should clearly docket a date which is approximately 90 days prior to the expiration of their members' terms. Three successor nominees must then be submitted to the mayor or county judge in order to avoid the naming of a successor member who has not otherwise been initially approved by the facilities board.

Failure to strictly abide by this provision could result in the seating of a board member whose political affiliations may not necessarily conform to those of the facilities board.

Please contact Heartsill Ragon III of the law firm Gill Elrod Ragon Owen & Sherman, P.A., Little Rock, with any comments or questions that you might have regarding this new legislation. His phone number is 501-376-3800.

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