

NOW

BGR's Spotlight on Local Government Issues

City Council Members Should Regulate, Not Govern, S&WB

April 9, 2018

On April 3, the Louisiana Senate unanimously approved Senate Bill 227 (SB 227) that would, among other things, allow a member of the New Orleans City Council to sit on the Sewerage & Water Board (S&WB). Proponents of the bill assert that council representation on the S&WB will increase public accountability for the struggling utility. However, a similar structure was in place just five years ago and proved inadequate.

As policymakers and the public search for solutions to direct the S&WB toward daily reliability and eventual excellence, City Council presence on the S&WB is not the answer. BGR strongly endorses the goal of greater accountability, but a single council member's presence on the board could create a false sense of security about the City Council's knowledge, oversight and regulation of the agency. It would introduce conflicts of interest for the council member serving on the S&WB. It would provide a conduit for bringing council politics back into S&WB deliberations. This was a key reason for removing council members from the board in 2013. It also would displace a S&WB member from the Board of Liquidation, City Debt, the independent body that manages the S&WB's debt.

For these reasons, discussed more fully below, BGR opposes the change in board composition for the S&WB and urges instead that policymakers immediately focus on improving City Council oversight and regulation of the S&WB within the existing structure. In the longer term, stronger council oversight and

regulation may not be sufficient to address the multitude of organizational and technical problems plaguing the S&WB. However, it is a better interim approach than changing the board's composition until policymakers can determine the best long-term solutions to the S&WB's problems.

As of today, SB 227 awaits consideration by the House Committee on Municipal, Parochial and Cultural Affairs.

Background

State law establishes the S&WB to construct, control, maintain and operate the city's water, sewerage and major drainage systems. The S&WB has significant, but not complete, independence from the City of New Orleans government (City). It has sole responsibility for and control over its budget, management and operations. However, it has limited control over its funding. The City Council approves the S&WB's water and sewer rates and levies its drainage taxes.

Currently, the S&WB's governing board has 11 members. One is the mayor, who is ex-officio board president. Two are members of the Board of Liquidation, City Debt, which controls the issuance and repayment of the S&WB's bonded debt. The mayor appoints those members based on the Board of Liquidation's recommendation. The other eight members are private citizens, appointed by the mayor with the approval of the City Council. The mayor chooses the citizen appointees from names submitted by an independent nominating committee.

As approved by the Senate, SB 227 would retain the 11-member board, but change its composition. It would eliminate one of the Board of Liquidation seats and replace it with a new seat that could be filled by a City Council member, among others. The bill is somewhat vague in this regard. It appears to allow any of the following individuals to fill the seat: (1) the chair of the "public works committee," pre-

sumably the City Council’s; (2) a “member” selected by the chair of the public works committee; or (3) a “member” selected – by whom, it is unclear – upon the recommendation of the independent nominating committee.

The board composition is set forth in both state law and the City of New Orleans’ Home Rule Charter, so any change requires action by the Legislature and New Orleans voters, respectively. SB 227 conditions its proposed changes to the board composition on voter approval of a charter amendment.

In addition, SB 227 would expand the quarterly reporting by the S&WB to the City Council. Current state law, adopted with the 2013 board changes, requires the S&WB to provide substantial documentation on its contracts and operations on a quarterly basis. Notably, SB 227 would clarify the deadline for submitting each quarterly report. It would require the S&WB executive director to appear before the council to explain any failure to submit the report in a timely manner. It would further require the mayor or the chief administrative officer and the S&WB’s executive director to present the quarterly reports at a council meeting dedicated to public works. SB 227 conditions the new reporting measures on passage of the charter amendment.

Analysis

The Legislature and New Orleans voters approved the current board structure in 2013. Previously, the board consisted of 13 members, including three members of the City Council. Lawmakers reduced the size from 13 to 11 by removing all council members and adding a citizen member. These governance changes, which required a charter amendment, sought to de-politicize the board and increase board member qualifications.

Citizens and elected officials have criticized the loss of council representation since thousands of homes and businesses flooded in severe rainstorms in the summer of 2017. They ob-

serve that ineffective board oversight contributed to the S&WB's failure to properly maintain and operate its drainage system to prevent the flooding. Some contend that council members – as independent members not subject to mayoral appointment – might have raised concerns about the drainage system's power and pump station problems sooner. They reason that restoring a council seat would provide a valuable check on the agency's future decision making and increase accountability to voters.

BGR strongly endorses the goal of greater accountability. But a single council member's presence on the board could create a false sense of security that this revised structure is a solution. Indeed, this structure has failed in the past. Before the 2013 charter amendment, council representation on the board did little to strengthen accountability. The council members generally had weak attendance at monthly board meetings. Their attendance at S&WB committee meetings, where critical finance, operations and infrastructure issues were discussed, was even worse.

Further, while the council has significant responsibility regarding S&WB rates and taxes, it does not maintain regulatory staff, advisors or structure beyond periodic meetings of its public works committee. This contrasts with its intensive regulation of Entergy New Orleans. The complexity of the S&WB's operations and infrastructure, and the rates and taxes that support them, demands a more careful, coordinated watch than can be provided by a single council member with competing interests, constituencies and demands.

The council member on the S&WB would also face a conflict of interest from serving on the board of an entity that the City Council as a whole must regulate. Every S&WB member must act in the best interests of the agency and should not have divided loyalties. But City Council members must oversee and regulate the actions of the S&WB. This dynamic would become particularly problematic if the chair of the public works committee served on

the S&WB, as SB 227 would authorize. The chair of the public works committee would be responsible for overseeing actions personally taken as a member of the S&WB. This conflict of interest would undermine the independence of the council's oversight and regulatory function.

Additionally, council representation on the S&WB would reintroduce council politics in board deliberations. As BGR detailed in its [2011 report on S&WB governance](#), *Making the Waterworks Work: Fixing the Sewerage & Water Board's Governance Problems*, elected officials serving on the board have on multiple occasions over the years objected to new rate and tax proposals. Their objections discouraged proposals from coming forward or foreshadowed the outcome of a council vote, short-circuiting the process before it even began. This contributed to the S&WB's history of chronic underfunding and deferred investment in infrastructure. With the S&WB facing significant system needs, the council's role in evaluating and approving funding requests must be independent.

Finally, SB 227 would offset the addition of the new seat by eliminating a seat held by a member of the Board of Liquidation. The S&WB would thus lose a member with financial expertise and a direct concern about the utility's financial stability.

Instead of changing the S&WB's board composition, the Legislature should support the development of a comprehensive regulatory process by the City Council. A [news report](#) last year chronicled the council's failure to enforce the S&WB's reporting requirements that accompanied the 2013 changes to the board structure. While the type of new reporting requirements contained in SB 227 are a good first step toward improved oversight and regulation, the City Council should take action to design a regulatory process and assemble the staff and advisors it may need. The process should include receiving and reviewing the S&WB's strategic and financial plans and

reports, monitoring its performance on a regular basis, and evaluating specific requests for rates, taxes or fees that may come to the council. At a minimum, those evaluations should provide for independent analysis of the funding request, appropriate opportunities for public comment, and clear timelines for review and approval. A well-developed regulatory process would keep the City Council – and the public – properly informed of the needs, conditions and performance of the S&WB and provide a better context for dealing with its funding requests.

In the longer term, stronger City Council oversight and regulation may not be sufficient to address the multitude of organizational and technical problems plaguing the S&WB. However, it is a better interim approach than changing the board’s composition until policymakers can determine the best long-term solutions to the S&WB’s problems.

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