

Regular Session, 2010

HOUSE BILL NO. 278

BY REPRESENTATIVE LEGER

SEWERAGE/NO WATER BD: Provides relative to the sewerage and water board of New Orleans

1 AN ACT

2 To amend and reenact R.S. 33:4071 and to repeal R.S. 33:4072, relative to the sewerage and  
3 water board of New Orleans; to provide for organization, membership, terms, board  
4 responsibilities, meetings, procedure, attendance, removal of members, and conflicts  
5 of interest; to provide for implementation; and to provide for related matters.

6 Notice of intention to introduce this Act has been published  
7 as provided by Article III, Section 13 of the Constitution of  
8 Louisiana.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 33:4071 is hereby amended and reenacted to read as follows:

11 §4071. Creation and organization of sewerage and water board

12 ~~A.(1) The public water system, the public sewerage system, and the public~~  
13 ~~drainage system of the city of New Orleans shall be constructed, controlled,~~  
14 ~~maintained, and operated by a sewerage and water board to be composed as follows:~~

- 15 ~~(a) The mayor;~~
- 16 ~~(b) The two at large members of the council;~~
- 17 ~~(c) One of the district councilmen selected by the council;~~
- 18 ~~(d) Two members of the board of liquidation, city debt, to be appointed by~~  
19 ~~the mayor on the recommendation of the board of liquidation, city debt, and~~

1           ~~(e) Seven citizens, to be appointed by the mayor, with the advice and consent~~  
2           ~~of the city council, as follows:~~

3           ~~(i) Two from the city at large and~~

4           ~~(ii) One from each of the five councilmanic districts of the city.~~

5           ~~(2) The terms of office of board members shall be nine years. However, the~~  
6           ~~citizens who are members of the board on July 31, 1984, shall retain their~~  
7           ~~membership until the expiration of their terms unless sooner vacated by resignation~~  
8           ~~or otherwise.~~

9           ~~B. Each of the citizen members must be a registered voter in the area from~~  
10          ~~which he is appointed, and he must have been a resident of the area for two years~~  
11          ~~previous to his appointment.~~

12          ~~C.(1) All vacancies occurring in the membership of the board under~~  
13          ~~appointment by the mayor shall be filled in the manner prescribed by this Part for the~~  
14          ~~original appointment.~~

15          ~~(2) In the event any appointed member of the sewerage and water board is~~  
16          ~~elected to any office or removes his residence from the area from which he was~~  
17          ~~appointed, his membership on the board shall be ipso facto vacated, and his~~  
18          ~~successor shall be immediately appointed.~~

19          ~~(3) Should councilmanic redistricting occur as required by the city charter~~  
20          ~~which results in more than one appointed member or no appointed member residing~~  
21          ~~in a councilmanic district, the existing members, regardless of the district in which~~  
22          ~~they reside, shall retain their membership until expiration of their terms unless~~  
23          ~~sooner vacated by resignation or otherwise.~~

24          ~~D. No person who is a stockholder or bondholder in any sewerage or~~  
25          ~~waterworks company or who holds any public office yielding emoluments to the~~  
26          ~~holder other than those specified in this Part shall be eligible for appointment to the~~  
27          ~~board.~~

28          ~~E. The board shall make rules fixing its own meetings and procedure, and~~  
29          ~~these rules may be changed only by a vote of nine members at a regular meeting.~~

1           A. Board composition. The public water system, the public sewerage  
2           system, and the public drainage system of the city of New Orleans shall be  
3           constructed, controlled, maintained, and operated by a sewerage and water board,  
4           referred to in this Part as the "board", to be composed of the following members:

5                   (1) The mayor.

6                   (2) The two at-large members of the city council.

7                   (3) One of the district councilmen selected by the city council.

8                   (4) Two members of the board of liquidation, city debt, to be appointed by  
9           the mayor on the recommendation of the board of liquidation, city debt.

10                   (5) Seven citizens (collectively citizen board members) consisting of the  
11           following:

12                           (a) Two from the city at large.

13                           (b) One from each of the five councilmanic districts of the city.

14           B. Professional requirements for citizen board members. The citizen board  
15           members shall be appointed pursuant to a nominating committee process, defined in  
16           this Section, and shall satisfy the following individual and compositional  
17           professional requirements:

18                   (1) Three members who each qualify as any one of the following:

19                           (a) A licensed civil engineer who has worked as a civil engineer for five  
20           years.

21                           (b) A professional in the field of hydrological or environmental science,  
22           chemistry, or a closely related discipline who has worked in such discipline for five  
23           years.

24                           (c) An architect or commercial general contractor who is licensed and has  
25           worked in such field for five years.

26                   (2) One member who is an accounting, finance, or audit professional who  
27           has worked in such field for five years.

28                   (3) One member who is a licensed Louisiana attorney who has practiced law  
29           for five years.

1           (4) Two other members.

2           C. Transitional provision for citizen board members. Immediately prior to  
3           July 1, 2010, the board shall include citizen board members who were appointed  
4           pursuant to a process that did not require the above professional requirements.  
5           Citizen board members validly appointed to a term on the board before July 1, 2010,  
6           may fulfill their current terms notwithstanding the individual or collective inability  
7           of the citizen board members to satisfy the professional requirements, or such board  
8           members may resign to permit the immediate implementation of the professional  
9           requirements. In the event that fewer than all citizen board members resign,  
10           vacancies shall be filled pursuant to the professional requirements such that the  
11           citizen board members, and their collective composition, shall satisfy the  
12           professional requirements once all citizen board members have been appointed  
13           pursuant to this Section's nominating committee process. In the event all citizen  
14           board members resign, the nominating committee shall fill such vacancies pursuant  
15           to the professional requirements provided in Subsection B of this Section.

16           D. Nominating committee composition. The nominating committee shall  
17           consist of eleven members, referred to in this Section as the "nominating committee",  
18           and shall be composed of the following members:

19                   (1) The chancellor of the University of New Orleans, or his designee.

20                   (2) The president of Dillard University, or his designee.

21                   (3) The president of Tulane University, or his designee.

22                   (4) The president of Loyola University, or his designee.

23                   (5) The president of Xavier University of Louisiana, or his designee.

24                   (6) The president of Our Lady of Holy Cross College, or his designee.

25                   (7) The chancellor of Southern University at New Orleans, or his designee.

26                   (8) The director of the Tulane/Xavier Center for Bioenvironmental Research,  
27           or his designee.

28                   (9) Two industry group presidents in the field of engineering or science,  
29           designated by the city attorney, or their designees.

1           (10) An industry group president in the field of construction, designated by  
2           the city attorney, or his designee.

3           E. Nominating committee right to proceed. If any member of the nominating  
4           committee is unable or unwilling to serve on or name a designee to serve on the  
5           nominating committee, the nominating committee may, by majority vote of the entire  
6           membership, elect to proceed with a vacancy or fill the seat with an alternate  
7           member.

8           F. Nominating committee process. The nominating committee process shall  
9           be as follows:

10           (1) The city attorney's office for the city of New Orleans shall be the  
11           custodian of records for the nominating committee.

12           (2) Not later than July 11, 2010, the city attorney or his designee from within  
13           the city attorney's office, referred to in this Subsection and in Subsection I of this  
14           Section as the "city attorney", shall advise each nominating committee member, in  
15           writing, of his pending statutory appointments to the nominating committee and his  
16           right to participate or appoint a designee.

17           (3) Not later than July 31, 2010, the city attorney shall complete all of the  
18           following:

19           (a) Ascertain the number of citizen board member vacancies, if any.

20           (b) Finalize the names of all nominating committee members, indicating  
21           designees where applicable.

22           (c) Prepare and send written notice of nominating committee statutory  
23           appointments and include in the notice a copy of this Section and the number of  
24           citizen board member vacancies subject to the nominating committee process.

25           (d) Appoint an interim nominating committee chairperson, referred to in this  
26           Section as the "interim chairperson", who shall preside until the election of officers  
27           at the initial nominating committee meeting.

28           (4) When the city attorney has effected the nominating committee  
29           appointments, the nominating committee shall exist for a period of twelve months;

1 however, a nominating committee member may, at his discretion, change his  
2 designee. Upon the expiration of the twelve-month period or the occurrence of a  
3 citizen board member vacancy, the city attorney shall reconstitute the nominating  
4 committee.

5 (5) Within thirty days after any citizen board member vacancy, if a  
6 nominating committee is not presently in existence, the city attorney shall  
7 reconstitute the nominating committee in the manner described in this Section.

8 (6) The interim chairperson shall call and convene the initial nominating  
9 committee meeting. Such meeting shall occur not later than sixty days after the date  
10 on which the city attorney issues the written notice required by Subparagraph (3)(c)  
11 of this Subsection. At such meeting, the nominating committee shall elect, by  
12 majority vote of the entire nominating committee membership, a chairperson, vice  
13 chairperson, and secretary.

14 (7) The nominating committee shall advertise for qualified citizen board  
15 member candidates in the official journal of the parish of Orleans. Such  
16 advertisement shall be published at least twice within the thirty days after the initial  
17 meeting of the nominating committee and shall expressly reference the professional  
18 and any residential requirements applicable to the vacant position. The advertising  
19 fees, if any, shall be paid by the board. At its option, the nominating committee may  
20 pay the advertising fees, subject to reimbursement by the board.

21 (8) The nominating committee shall consider each name submitted to the  
22 nominating committee from whatever source. The nominating committee members  
23 may nominate persons to be considered. The nominating committee shall present a  
24 questionnaire to candidates regarding, among other matters, eligibility requirements  
25 and conflicts of interest. The questionnaire shall require the candidate to certify that  
26 he is not aware of any conflicts of interest that prohibit board service.

27 (9) The nominating committee shall nominate, by majority vote of the entire  
28 nominating committee membership, two eligible persons for each citizen board  
29 member vacancy.

1           (10) Within sixty days after the initial nominating committee meeting, the  
2           nominating committee shall complete its nomination process and submit to the  
3           mayor the names of all of its nominees, clearly identified according to the  
4           professional and residential requirements for which they are nominated.

5           G. Mayoral appointment process for citizen board members. The mayor  
6           shall appoint citizen board members within sixty days after his receipt of  
7           nominations from the nominating committee. The mayor shall select one appointee  
8           from the two nominations provided by the nominating committee for each vacancy.

9           H. Citizen board member appointments by operation of law. If the mayor  
10          fails to appoint a citizen board member within the prescribed period for doing so, the  
11          first person listed by the nominating committee for each vacancy shall be deemed  
12          appointed by operation of law. The nominating committee shall present nominations  
13          in such a manner to ensure the professional and residential requirements are satisfied  
14          in the event of an appointment by operation of law.

15          I. Notice of appointment. Within ten days after the appointment of a citizen  
16          board member, whether by the mayor or by operation of law, the city attorney shall  
17          notify, in writing, the appointee of his appointment to the board and advise him of  
18          the date and location of the next board meeting.

19          J.(1) Board members appointed pursuant to this Section shall serve four-year  
20          terms, unless a term is shortened to achieve staggered terms as authorized by  
21          Paragraph (2) of this Subsection. The transitional provisions of Subsection C of this  
22          Section shall govern terms of board members appointed for a term beginning before  
23          July 1, 2010.

24          (2) The board may shorten terms for citizen board members in order to  
25          stagger them as it deems appropriate to ensure continuity of the board's function  
26          relative to the expiration dates of citizen board member terms.

27          (3) If a board member is appointed to fill the remainder of an unexpired  
28          term, that appointment shall be for the remainder of the term of the vacated seat;  
29          however, this provision shall apply only to vacated board seats that are filled

1 pursuant to this Section for an initial term of four years or less, where a shortened  
2 term may apply.

3 (4) No member of the board of directors may serve more than two  
4 consecutive terms. An abbreviated term, whether because of shortening terms to  
5 stagger them or the appointment of a board member to fill the remainder of an  
6 unexpired term, shall not count toward the two-term limit.

7 K. Board responsibilities. (1) The board shall at all times abide by the  
8 fiduciary duties of care and loyalty attendant to board service and shall act solely in  
9 the best interests of the collective citizenry the board is mandated to serve. Board  
10 members shall act in good faith, with due care, and on a reasonably informed basis.  
11 Considering the magnitude of the financial and operational responsibility vested in  
12 the board, there shall be a heightened vigilance and self-policing among board  
13 members for breaches of fiduciary duty, whether by negligence or willful  
14 misconduct.

15 (2) The board shall at all times represent and serve the collective citizenry.  
16 Board members shall refrain from territorial representation that promotes the  
17 interests of any particular district or locale. Board members shall refrain from using  
18 the board for the advancement of any political party, faction, candidate, platform, or  
19 issue.

20 L.(1) Conflicts of interests prohibited. To protect against the appearance and  
21 existence of conflicts of interest, and in addition to any state or local law governing  
22 ethics and conflicts of interest, the following prohibitions apply to board members  
23 or, where specified, certain categories of such board members. For the purpose of  
24 this Subsection, the term "board member" shall include the individual board  
25 members, their spouses, relatives of board members and their spouses to the third  
26 degree, and any business enterprise or entity owned by them, in whole or in part,  
27 directly or indirectly.

28 (a) Board members shall not be a party to, bid on, or enter into any contract  
29 to which the sewerage and water board is a party.



1           (b) Board members shall not have any direct or indirect financial interest or  
2           part in any business, company, or entity conducting business of any kind with the  
3           sewerage and water board.

4           (c) Board members shall not have any benefit or have any expectation of  
5           receiving any benefit, compensation, or remuneration, whether monetary or in-kind,  
6           from any business, company, or entity conducting business of any kind with the  
7           sewerage and water board.

8           (d) Citizen board members shall not, during board service, serve in any  
9           elected capacity or on any other city or state board or commission, unless such  
10          service on that board or commission is unpaid public service.

11          (2) Board members shall disclose to the board, at the next board meeting,  
12          whether regular or special, any potential or actual conflicts of interest of any board  
13          member or members, including themselves, which may arise. Any board member  
14          with a potential or actual conflict of interest shall resign or, where practicable and  
15          with the approval of a majority of the board membership, recuse himself from all  
16          board action related to the subject matter of his conflict of interest.

17          M. Board meetings and procedure. The board shall have at least one  
18          regularly scheduled meeting per month. Unless exceptional circumstances exist, the  
19          failure of the board to hold its regularly scheduled monthly meeting is deemed a  
20          derogation of statutory duty. By majority vote of the board membership, the board  
21          may make rules fixing all other meetings and setting its procedure.

22          N. Board meeting attendance. Board members shall attend and participate  
23          in board meetings. If a board member fails without good cause to attend three  
24          successive regular meetings of the board or three successive regular meetings of any  
25          board committee on which he serves, the board shall vote on whether the board  
26          member shall be removed from the board for neglect of duty. If a majority of the  
27          board membership votes in favor of removal, the board member shall be removed  
28          from the board, and the vacancy shall be filled pursuant to the procedures provided  
29          in this Section.

1           O. Conformance with city charter. This Section is to be interpreted as  
2           consistent with and effectuating the New Orleans city charter provisions establishing  
3           the board. In the event of a city charter amendment that restructures the board and  
4           increases the number of citizen board members to more than seven, the provisions  
5           of Subsection B of this Section relative to citizen board members shall remain  
6           applicable. The appointment of additional citizen board members shall be required  
7           to satisfy a category of the professional requirements contained in Subsection B of  
8           this Section, but in no event shall the appointment of additional citizen board  
9           members expand any category of professional requirements beyond one additional  
10           member. Each additional citizen board member shall be appointed pursuant to  
11           different categories of professional requirements.

12           P. Councilmanic redistricting. Should councilmanic redistricting occur, as  
13           required by the city charter, and such redistricting results in more than one citizen  
14           board member residing in a councilmanic district, the existing members, regardless  
15           of the district in which they reside, shall retain their membership until expiration of  
16           their terms.

17           Section 2. R.S. 33:4072 is hereby repealed in its entirety.

18           Section 3. This Act shall become effective on July 1, 2010; if vetoed by the governor  
19 and subsequently approved by the legislature, this Act shall become effective on July 1,  
20 2010, or on the day following such approval by the legislature, whichever is later.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Leger

HB No. 278

**Abstract:** Relative to the New Orleans sewerage and water board, provides for board membership, qualifications, terms, responsibilities, meetings, and procedures. Establishes a nomination process for citizen members of such board.

Present law (R.S. 33:4071) establishes the sewage and water board of the city of New Orleans. Provides for the composition of the board as follows:

- (1) The mayor.

- (2) Two at-large members of the city council.
- (3) One district councilman selected by the council.
- (4) Two members of the board of liquidation, city debt.
- (5) Seven citizens, appointed by the mayor, two at large and five from council districts.

Proposed law retains present law but relative to citizen members, provides that such members will be nominated by a nominating committee. (See below.)

Present law provides that each citizen member must be a registered voter in the area from which he is appointed and shall have been a resident for at least two years.

Present law provides for the filling of vacancies occurring on the board.

Present law prohibits a board member from holding any stocks or bonds in any sewerage or waterworks company or holding a public office.

Present law provides that the board shall make rules of procedure.

Proposed law removes present law.

Proposed law provides for the qualifications of the citizen board members as follows:

- (1) Three members who each qualify as one of the following:
  - (a) A licensed civil engineer who has worked as a civil engineer for five years.
  - (b) A professional in the field of hydrological or environmental science, chemistry, or a closely related discipline who has worked in such discipline for five years.
  - (c) An architect or commercial general contractor who is licensed and has worked in such field for five years.
- (2) One member who is an accounting finance, or audit professional, who has worked in such field for five years.
- (3) One member who is a licensed La. attorney who has practiced law for five years.
- (4) Two other members.

Proposed law includes transitional provisions for replacing existing board members upon their resignation or completion of their terms, whichever occurs first.

Proposed law provides that the nominating committee for nominating citizen board members shall be composed of the following or their designees: the chancellor of the University of New Orleans; the president of Dillard University; the president of Tulane University; the president of Loyola University; the president of Xavier University of La.; the president of Our Lady of Holy Cross College; the chancellor of Southern University at New Orleans; the director of the Tulane/Xavier Center for Bioenvironmental Research; two industry group presidents in the field of engineering or science designated by the city attorney; and an industry group president in the field of construction designated by the city attorney. Provides for constituting the initial nominating committee by not later than July 31, 2010, and for certain procedures and notice by the city attorney. Requires that the initial meeting of the committee occur not later than 60 days after the city attorney provides notice of nominating committee appointments.

Proposed law provides that in the event of a vacancy on the nominating committee, the committee may either proceed, or fill the vacancy. Provides for the nominating committee to exist for 12 months. Provides for reconstructing the committee. Provides relative to procedure for the nominating committee. Provides for nominations of two persons for each vacancy after advertisement for candidates. Provides that the mayor shall appoint one of the two nominees for each position within 60 days of receipt of nominations. Provides that if the mayor fails to do so, the person at the top of the nomination list for each vacancy will be appointed by operation of law.

Present law provides for nine-year terms for board members.

Proposed law instead provides that board members shall serve four-year terms. Provides for staggering of terms by the board and appointment to unexpired terms. Provides that no member shall serve more than two consecutive terms.

Proposed law provides that the board shall have fiduciary responsibility to act in the best interests of the citizenry, and that the board shall serve the citizenry as a whole, and refrain from territorial representation.

Proposed law prohibits certain conflicts of interest of the board members, their spouses, and relatives to the third degree and entities they own in whole or in part. Requires the board members to disclose potential and actual conflicts of interest. Provides for resignation in case of a conflict of interest, or with board approval, recusal. Provides for the following:

- (1) Board members shall not be a party to, bid on, or enter into any contract to which the sewerage and water board is a party.
- (2) Board members shall not have any direct or indirect financial interest or part in any business, company, or entity conducting business of any kind with the sewerage and water board.
- (3) Board members shall not have any benefit or any expectation of receiving any benefit, compensation, or remuneration, whether monetary or in kind, from any business, company, or entity conducting business of any kind with the sewerage and water board.
- (4) Citizen board members shall not, at the same time as board service, serve in any elected capacity or on any other city or state board or commission, unless such service on that board or commission is unpaid public service.

Proposed law provides that the board shall meet once a month. Requires board members to attend meetings and provides for removal by a vote of the board of any board member who fails to attend three consecutive meetings.

Proposed law is to be interpreted to conform to and effectuate the city charter of New Orleans. Provides for additional members if the city charter is amended to increase citizen board membership and provides for such members to be appointed pursuant to the categories of professional requirements provided in proposed law.

Proposed law provides that in the event of redistricting, the existing board members shall serve the remainder of their terms.

Effective July 1, 2010.

(Amends R.S. 33:4071; Repeals R.S. 33:4072)