

Amend CSHB 3335 by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) The legislature finds that:

(1) according to audits and evaluations of the Bexar Metropolitan Water District performed by state agencies under H.B. No. 1565, Acts of the 80th Legislature, Regular Session, 2007:

(A) certain officials of the district have engaged in a pattern of unethical conduct and unprofessional management practices;

(B) disagreements regarding jurisdiction within the district and between the district and other entities and distrust among key management personnel and members of the board have hampered efforts by the district to improve services for existing customers and to meet water supply needs of growing populations within its service areas;

(C) there has been a history of noncompliance on the part of the district; and

(D) the district has demonstrated weak management, engaged in financial improprieties, and provided unreliable service, which threatens to impair the quality of life of its customers and diminish the prospects for economic growth within the district;

(2) after 18 months of intense scrutiny by state agencies and the Bexar Metropolitan Water District Oversight Committee, which is composed of gubernatorial appointees, legislators, and a local representative of Bexar County, it is evident that further legislative action is necessary; and

(3) to ensure the reliability, sustainability, quality, and affordability of water supply services to the customers of the district, it is necessary to appoint a conservator, who shall manage the district until the district has achieved sufficient rehabilitation to serve its customers in a professional, ethical, and reliable manner.

(b) Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 33B, 33C, 33D, 33E, and 33F to read as follows:

Sec. 33B. ELECTION ON DISSOLUTION AND CONSERVATORSHIP. An election on the appointment of a conservator for the purpose of dissolving the District shall be held on the uniform election date in November 2009.

Sec. 33C. BALLOT. The ballot for the election shall be printed to permit voting for or against the proposition: "The appointment of a conservator for the Bexar Metropolitan Water District for the purpose of dissolving the District."

Sec. 33D. APPOINTMENT OF CONSERVATOR; ADMINISTRATION OF ASSETS. (a) If a majority of the votes in the election held under Section 33B of this Act favor dissolution, a conservator shall be appointed by the Texas Commission on Environmental Quality not later than the 60th day after the date of the election.

(b) The Conservator shall administer the property, assets, and debts until all funds have been disposed of and all District debts have been paid or settled.

Sec. 33E. SALE OR TRANSFER OF ASSETS AND LIABILITIES. (a) Notwithstanding any other provision of this Act, the District may not be dissolved unless the Conservator provides for the sale or transfer of the District's assets and liabilities to another person or entity or until all of the District's outstanding indebtedness or contractual obligations have otherwise been repaid or discharged in a manner consistent with Subsection (d) of this section.

(b) The dissolution of the District and the sale or transfer of the District's assets or liabilities may not contravene a trust indenture or bond resolution relating to the outstanding bonds of the District. The dissolution and sale or transfer does not diminish or impair the rights of a holder of an outstanding bond, warrant, commercial paper note, or other obligation of the District.

(c) The sale or transfer of the District's assets and liabilities must satisfy the debt, bond obligations, commercial paper notes, or any other financial obligation of the District in a manner that protects the interests of the residents of the District, including the residents' collective property rights in the District's assets. The District may not transfer or dispose of the District's assets except for due compensation unless the

transfer is made to another governmental agency that serves the District and the transferred assets are to be used for the benefit of the residents of the District.

(d) The sale or transfer of the District's assets and liabilities does not impair, affect the validity of, or modify the terms of any contract to which the District is a party, and the acquiring entity of a District asset, or any assignee-in-interest to the asset, assumes the terms, benefits, and obligations of a contract related to that asset, as if the entity or assignee were the District.

Sec. 33F. REPORT; DISSOLUTION ORDER. (a) After the District has paid all its debts and has disposed of all its assets and funds as prescribed by this Act, the Conservator shall file a written report with the Texas Commission on Environmental Quality summarizing the Conservator's actions in dissolving the District.

(b) Not later than the 10th day after the date the Texas Commission on Environmental Quality receives the report and determines that the requirements of this Act as they relate to dissolution have been fulfilled, the Commission shall enter an order confirming the dissolution of the District and ordering the termination of conservatorship established under Section 33E of this Act, as applicable.

(c) Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 34, 34A, and 34B to read as follows:

Sec. 34. CONSERVATOR. If a majority of the votes in the election held under Section 33B of this Act do not favor dissolution, not later than the 60th day after the date of this election, the Texas Commission on Environmental Quality shall appoint a conservator for the purpose of rehabilitating the District. The individual appointed must have demonstrated a high level of expertise in water utility management.

Sec. 34A. POWERS AND DUTIES OF CONSERVATOR. (a) If a conservator is appointed under Section 34 or 34B of this Act, the Board shall work cooperatively with the Conservator in rehabilitating the Board in its ability to manage and operate the District in a professional manner.

(b) The Conservator shall:

(1) collectively coordinate the daily management of the District;

(2) work with the Board to ensure that the assets of the District are protected and that the quality of service provided to District customers is improved to the highest level reasonably practicable under the circumstances;

(3) develop and work to implement a comprehensive rehabilitation plan for the District; and

(4) report monthly to the Texas Commission on Environmental Quality and to any committee with direct oversight authority over the District regarding:

(A) the financial, managerial, technical, and operational status of the District under the conservatorship;

(B) the actions the Conservator has taken to ensure that the District complies with the plan developed under Subdivision (3) of this Subsection; and

(C) the progress the Conservator has made towards completion of the plan developed under Subdivision (3) of this Subsection.

(c) The comprehensive rehabilitation plan must:

(1) identify strategies for restoring the District's financial integrity and for developing a system of sound financial management;

(2) describe a standard of ethics, professionalism, and openness expected of each member of the Board and employees of the District and a mechanism for enforcing compliance with District policies, including procurement policies;

(3) address ways to enhance the District's operational efficiency;

(4) as an integral part of rehabilitating the District, devise a program for:

(A) educating the Board of Directors and key management personnel on improving management practices, on complying with Board policy and applicable laws and regulations, and on implementing needed reforms for the District; and

(B) developing greater technical expertise on

the part of District employees;

(5) identify District assets that, if sold, would likely improve the District's ability to serve its remaining customers;

(6) ensure that any assets identified in Subdivision (5) of this Subsection that are sold are sold at fair market value;

(7) ensure that any entity that acquires a District asset is responsible for all transaction costs related to the acquisition, including the cost of defending the State against legal challenges to the disposition of the asset; and

(8) inventory and evaluate the discrete water systems that the District comprises and determine:

(A) the District's basis in or the intrinsic value of the infrastructure associated with each water system;

(B) the District's bonded debt and commercial paper reasonably associated with or allocable to the infrastructure of each water system;

(C) the adequacy of the source of the water supply, such as wells, located in each water system's service area to supply the current and projected demands generated in that service area;

(D) the adequacy of the water storage facilities located in each water system's service area to supply the current and projected demands generated in that service area; and

(E) the adequacy of the distribution system located in each water system's service area to supply the current and projected demands generated in that service area.

(d) The term of the Conservator continues until the earlier of:

(1) the end of a period of 18 months; or

(2) the Conservator reports that the District has been sufficiently rehabilitated to provide reliable, cost-effective, quality service to its customers, and the Texas Commission on Environmental Quality, after performing a confirmation review, concurs with the Conservator's report that the District has been sufficiently rehabilitated to ensure that it can serve its customers in a professional manner and that conservatorship is no

longer necessary.

(e) Funding for the conservatorship shall be provided by the District and approved by the Commission.

(f) The Conservator may not take any action that:

(1) will impair the District's ability to collect revenues, fees, or charges:

(A) for operating District systems; or

(B) necessary for the payment of any bonds, commercial paper notes, or any other financial obligation; or

(2) would cause an event of default under any provision of any indenture, contract, order, or other financial instrument creating any such obligation.

(g) The appointment of the Conservator is not conditioned on or a result of an insolvency or bankruptcy proceeding or an inability of the District to pay its debts.

(h) The Conservator may not be a receiver, trustee, custodian, or liquidator of the District's system or other property.

Sec. 34B. APPOINTMENT OF NEW CONSERVATOR. (a) If the Texas Commission on Environmental Quality determines that, after a reasonable period, the Conservator has not made satisfactory progress in developing and working to implement the comprehensive rehabilitation plan, the Commission shall appoint a new Conservator.

(b) The Texas Commission on Environmental Quality shall adopt rules providing for filling a vacancy in the position of Conservator.

(d) Effective June 1, 2011, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 34C to read as follows:

Sec. 34C. SUBSEQUENT CONSERVATOR. (a) The Texas Commission on Environmental Quality shall appoint a subsequent Conservator for the District if the Commission determines that after the termination of an earlier conservatorship under Section 34A of this Act, the District has:

(1) obstructed the Commission's authority to supervise the District;

(2) violated a final order of the Commission;

(3) caused a potential health hazard by failing to provide appropriate water or wastewater treatment to District customers;

(4) caused a potential health hazard, extended outages, or repeated service interruptions by failing to adequately maintain District facilities;

(5) displayed a pattern of hostility towards the Commission or repeatedly failed to respond to the Commission or to District customers;

(6) engaged in a pattern of:

(A) noncompliance with laws or regulations; or

(B) unethical conduct and unprofessional management practices;

(7) abandoned the operation of its facilities;

(8) had a majority of its Board of Directors resign;

(9) engaged in financial improprieties; or

(10) provided unreliable service that impairs the quality of life of its customers or diminishes the prospects for economic growth within the District.

(b) An individual appointed Conservator under this Section must have demonstrated a high level of expertise in water utility management and shall have all the powers and duties assigned to a Conservator under Section 34A of this Act.

(e) Section 33A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by amending Subsection (c) and adding Subsection (g) to read as follows:

(c) The oversight committee is comprised of five [5] members appointed as follows [~~to represent the following members~~]:

(1) a [~~the~~] Senator who represents a Senate district that includes territory within the District, [~~sponsor of this Act, or, in the event this Senator cannot serve, a Senator~~] appointed by the Lieutenant Governor;

(2) a Representative who represents a [~~the~~] House district that includes territory within the District, [~~author of this Act, or, in the event this Representative cannot serve, a Representative~~] appointed by the Speaker of the Texas House of

Representatives;

(3) one member of the Senate Committee on Natural Resources [~~with special expertise in the operation of public water utilities~~] appointed by the Lieutenant Governor;

(4) one member of the House Committee on Natural Resources appointed by the Speaker of the Texas House of Representatives; and

(5) one member appointed by the Governor to represent the public [~~and~~

~~(5) a member of the Bexar County Commissioners Court who represents a precinct in which customers of the District reside~~].

(g) On or before December 31, 2010, the oversight committee shall provide a report under Subsection (e) of this Section to the 82nd Legislature. The committee is abolished and this Section expires on January 1, 2011.

(f) The legal notice of the intention to introduce this section, setting forth the general substance of this section, has been published as provided by law, and the notice and a copy of this section have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(g) The governor, one of the required recipients, has submitted the notice and section to the Texas Commission on Environmental Quality.

(h) The Texas Commission on Environmental Quality has filed its recommendations relating to this section with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(i) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this section are fulfilled and accomplished.

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