

## **BILL ANALYSIS**

C.S.S.B. 2440  
By: Uresti  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Bexar Metropolitan Water District (BexarMet) was created by the legislature in 1945 to serve expected growth in Bexar County. BexarMet's initial service area in 1945 contained 4,765 primarily residential accounts; today, it exceeds 85,000 residential and commercial accounts.

Due to numerous and repeated customer complaints about boil-water orders, low pressure, watering restrictions, and unresponsive management, H.B. 1565, Acts of the 80th Legislature, Regular Session, 2007, created the Bexar Metropolitan Water District Oversight Committee and mandated operational and financial audits of BexarMet by the state.

According to the audits of BexarMet performed by state agencies pursuant to H.B. 1565, certain officials of BexarMet have engaged in a pattern of unethical conduct and unprofessional management practices. The audits found that disagreements between BexarMet and other entities and distrust among key management personnel and members of the board have hampered efforts by BexarMet to improve services for existing customers and to meet water supply needs of growing populations within its service areas. The audits also found that BexarMet 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 BexarMet.

After 18 months of intense scrutiny of BexarMet, the oversight committee concluded that legislative action is necessary and recommended that a conservator be appointed to manage BexarMet.

C.S.S.B. 2440 sets up a mechanism to put a conservator in place at BexarMet in an effort to rehabilitate the district and provides for the dissolution of the district subject to the approval of district voters.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 2440 sets forth legislative findings relating to the governance and operation of the Bexar Metropolitan Water District and states that it is necessary to appoint a conservator to serve as an advisor to the board until the district has achieved sufficient rehabilitation to serve its customers in a professional, ethical, and reliable manner.

C.S.S.B. 2440 amends Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, to increase the number of members of the board of directors of the district from five to seven, to require that they be elected from numbered single-member districts established by the board to serve staggered two-year terms, and that the board member election be held on the uniform

election date in November, and makes conforming changes. The bill removes or updates other provisions relating to the terms and elections of directors. The bill prohibits a director from serving more than three terms and specifies that any four, rather than any three, directors constitutes a quorum for the adoption of passage of any resolution or order or the transaction of any business of the district. The bill requires a director to be a qualified voter of the single-member district from which the director is elected. The bill requires the district, for a single-member district director's position that expires in 2010 or 2011, to call and hold an election on a uniform election date in that year to elect the director for that position for a term that expires on the uniform election date in November 2013.

C.S.S.B. 2440 requires a person, in order to be eligible to be a candidate for or elected as a director of the board, to have resided continuously in the single-member district that the person seeks to represent for the 12 months immediately preceding the date of the regular filing deadline for the candidate's application for a place on the ballot, to have viewed the open government training video provided by the attorney general, and to have provided to the board a signed affidavit stating that the candidate viewed the video. The bill prohibits a director or a candidate for the office of director from knowingly accepting political contributions from a person that in the aggregate exceed \$500 in connection with each election in which the person is involved and specifies that a contribution to a specific-purpose committee supporting a candidate for director, opposing the candidate's opponent, or assisting the candidate as an officeholder is considered to be a contribution to a candidate. The bill prohibits a person who is elected or appointed to and qualifies for office as a director on or after the applicable effective date from voting, deliberating, or being counted as a member in attendance at a meeting of the board until the person completes a training program on district management issues and specifies the information that must be included in the training program. The bill authorizes the Texas Commission on Environmental Quality (TCEQ) to create an advanced training program designed for a person who has previously completed a training program and specifies that, if TCEQ creates an advanced training program, a person who completes that advanced training program is considered to have met the person's training program obligation. The bill requires each director who is elected or appointed on or after the applicable effective date to complete either the training program or advanced training program at least once in each term the director serves.

C.S.S.B. 2440 requires the board to adopt rules regarding the completion of such training programs by a person who is elected or appointed to and qualifies for office as a director before the effective date of the provision and specifies that a director who does not comply with board rules is considered incompetent as to the performance of the duties of a director in any action to remove the director from office. The bill prohibits a director from accepting or soliciting a gift, favor, or service that might reasonably influence the director in the discharge of an official duty or that the director knows or should know is being offered with the intent to influence the director's official conduct; accepting other employment or engaging in a business or professional activity that the director might reasonably expect would require or induce the director to disclose confidential information acquired by reason of the official position; accepting other employment or compensation that could reasonably be expected to impair the director's independence of judgment in the performance of the director's official duties; making personal investments that could reasonably be expected to create a substantial conflict between the director's private interest and the interest of the district; intentionally or knowingly soliciting, accepting, or agreeing to accept any benefit for having exercised the director's official powers or performed the director's official duties in favor of another; or having a personal interest in an agreement executed by the district. The bill requires a director, not later than April 30 each year, to file with the Bexar County clerk a verified personal financial statement complying with certain provisions of Texas ethics statutes, a copy of which is required to be kept in the main office of the district.

C.S.S.B. 2440 specifies that a director may be recalled for incompetency or official misconduct, conviction of a felony, incapacity, failure to file a required financial statement, failure to complete a training program, or failure to maintain residency in the district. The bill sets forth

provisions for a petition by district voters to recall a director and for a recall election. The bill requires the remaining members of the board to appoint a replacement to fill any vacancy that occurs after a recall to serve until the next regularly scheduled director's election.

C.S.S.B. 2440 requires the board to employ or contract with a person to perform the duties of a general manager of the district, who is delegated full authority to manage and operate the affairs of the district subject only to orders of the board, including the authority to hire necessary staff and determine their compensation. The bill requires the general manager or contractor annually to complete a training program on state and federal laws related to the administration of the district and specifies information that must be included in the training program. The bill requires the board to employ or contract with a person to perform the duties of a chief financial officer of the district, who is delegated the authority necessary to administer all financial affairs of the district. The bill requires the board to require the chief financial officer to furnish good and sufficient bond, payable to the district, in an amount determined by the board to be sufficient to safeguard the district, and requires the bond to be conditioned on the faithful performance of the chief financial officer's duties and on accounting for all funds and property of the district. The bill requires the bond to be signed or endorsed by a surety company authorized to do business in Texas.

C.S.S.B. 2440 requires all board reimbursements and expenditures to be approved by the board in a regularly scheduled meeting and requires the board to review all expenditures made by the general manager at each regularly scheduled meeting. The bill requires the board to adopt an annual budget and sets forth required contents of the budget. The bill sets forth provisions for the public hearings required to be held before the adoption of a budget. The bill prohibits the board from increasing residential water or sewer service rates by more than 10 percent unless the board holds a public hearing on the matter of the rate increase, which must be attended by the general manager and chief financial officer, if applicable. The bill authorizes the board to increase residential rates by more than 10 percent only if approved by a unanimous vote of the board after such a hearing. The bill provides the required language to be included in a motion for such a rate increase.

C.S.S.B. 2440 requires the state auditor, subject to approval by the Legislative Audit Committee for inclusion in the annual audit plan, to conduct an annual audit of the district, the scope of which will be determined by the auditor based on a risk assessment, for the five years following the effective date of the bill and requires the district to reimburse the state auditor for the cost of the audit. The bill requires the board, after September 1, 2014, to annually have an audit conducted of the district's books and records that covers all matters relating to the fiscal affairs of the district. The bill requires the audit to be conducted by an independent auditor who does not otherwise maintain any district accounts, act as a financial advisor to the district, or have any financial interest in the district. The bill prohibits the board from selecting the same auditor for more than three consecutive annual audits.

C.S.S.B. 2440 requires TCEQ to appoint as conservator for the district an individual who, at the time of the individual's appointment may be, but is not required to be, a TCEQ employee, has demonstrated a high level of expertise in water utility management, is not a director of the district, and has no financial interest in the district or any entity that has a contract with the district or that is likely to develop a contractual relationship with the district. The bill provides for the expiration of the conservator's term and for the appointment of a new conservator to serve for the remainder of the conservator's term if TCEQ determines satisfactory progress has not been made. The bill requires a conservator to appoint an agency review team to assist in carrying out the duties of the conservator. The bill requires a person appointed to the team to meet the same qualifications as those required for the conservator, and entitles a conservator and any person appointed by the conservator to receive a salary and reimbursement for reasonable expenses for performing those duties, paid by the district.

C.S.S.B. 2440 requires the conservator and the agency review team to advise the board on

matters relating to the district's rehabilitation and requires the board to work cooperatively with the conservator and the agency review team to improve the board's ability to manage and operate the district in a professional manner. The bill requires the agency review team, not later than June 1, 2010, to prepare a comprehensive report evaluating the distinct water systems that make up the district and make certain determinations relating to the district's facilities, finances, and services. The bill requires the conservator to submit the report to the governor, the lieutenant governor, the speaker of the house of representatives, the chair of each committee of the legislature having primary jurisdiction over water districts, and TCEQ.

C.S.S.B. 2440 requires the conservator and the agency review team to develop rules and bylaws for the district that separate the administrative and technical functions of the district and requires the board to consider and adopt rules and bylaws consistent with such bylaws.

C.S.S.B. 2440 requires the agency review team to examine the service delivery in the several service areas of the district to determine whether the district is financially and practically able to provide continuous quality service in each area at reasonable rates and, for any area the agency review team determines the district's ability to serve is inadequate or impractical, requires the agency review team to recommend that the district divest the utility assets in that area. The bill requires the conservator, if such a recommendation is made, to appoint an agent to carry out the sale of the utility assets in that area and sets forth the process for the determination of the fair market value of the assets, the sale of the assets, and the application of the proceeds. The bill specifies that provisions relating to the duties of the conservator and agency review team expire September 1, 2014.

C.S.S.B. 2440 requires TCEQ, when the conservator reports that the district has been sufficiently rehabilitated, to evaluate the condition of the district and determine whether the district has been sufficiently rehabilitated to enable the district to provide reliable, cost-effective, quality service to its customers and whether the conservatorship is no longer necessary. The bill authorizes TCEQ to issue an order dissolving the conservatorship if it determines the conservatorship is no longer necessary. The bill authorizes TCEQ to hold an election in the district on the question of dissolving the district and disposing of the district's assets and obligations if the conservator determines after an initial evaluation to be performed before the 60th day after the date of the effective date of the bill that the district cannot be rehabilitated and the dissolution of the district would be in the best interest of the ratepayers, or if the conservator reports to TCEQ at any time that the board is unable or unwilling to comply with a request or recommendation of the conservator or agency review team. The bill authorizes TCEQ to hold such an election on a uniform election date following the 60th day after the date of preclearance of all provisions of the bill that are subject to federal Voting Rights Act preclearance. The bill authorizes TCEQ, if it determines that such preclearance is not required, to hold the election on a uniform election date that falls at least 60 days after the date that determination is made. The bill specifies the information required to be stated in the order calling the election. The bill sets forth requirements for notice of the election and the language of the ballot.

C.S.S.B. 2440 requires the conservator, if a majority of the votes in the election favor dissolution, to report the result to TCEQ and requires TCEQ to find that the district is dissolved. The bill provides that the term of each person who is serving as a director on the date of the canvass of an election approving dissolution expires on that date. The bill requires the conservator, not later than the 60th day after the date of the canvass of the election, to assume all powers necessary to transfer or assign the rights and duties of the district associated with the provision of water services, including existing contracts, assets, and liabilities of the district, to one or more appropriate entities in such a manner that service to the existing customers of the district is not interrupted, and, after the district has paid all its debts and has disposed of all its money and other assets, to file a written report with TCEQ summarizing the conservator's actions in dissolving the district. The bill requires TCEQ, not later than the 10th day after receiving the report and determining that the such requirements have been fulfilled, to enter an order dissolving the district and releasing the conservator from any further duty or obligation.

C.S.S.B. 2440 provides that if a majority of votes favor dissolution in an election, the provisions of the bill expire on the date TCEQ enters an order dissolving the district, and provides that, if a majority of the votes in an election do not favor dissolution, the conservator continues to serve until the conservatorship expires.

C.S.S.B. 2440 defines "board," "commission," "director," "district," "political contribution," and "specific-purpose committee."

### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 2440 differs from the original by requiring the Texas Commission on Environmental Quality (TCEQ) to appoint a conservator to serve as an advisor to the board of directors of the Bexar Metropolitan Water District until the district has achieved sufficient rehabilitation to serve its customers in a professional, ethical, and reliable manner, whereas the original requires an election to be held on the appointment of a conservator for the purpose of dissolving the district if the election favors such dissolution, or, if the election does not favor dissolution by conservator, requires TCEQ to appoint a conservator to manage the district until it achieves sufficient rehabilitation. The substitute adds a provision not in the original authorizing TCEQ to hold an election in the district on the question of dissolving the district and disposing of the district's assets and obligations if the conservator determines that the district cannot be rehabilitated or that dissolution would better serve ratepayers, or the conservator reports at any time that the board is unwilling or unable to comply with the conservator or agency review team appointed by the conservator, and adds provisions relating to the dissolution duties of the conservator if a majority of votes favor dissolution. The substitute differs from the original by specifying the qualifications of the conservator in more detail.

The substitute differs from the original by specifying that salary and expense reimbursement of a conservator and any person appointed by the conservator are paid by the district, whereas the original provides that the district funds the conservatorship. The substitute adds provisions not in the original requiring the conservator to appoint an agency review team to assist the conservator in carrying out the duties of the conservator. The substitute differs from the original by omitting specified management duties of the conservator provided in the original and instead requires the conservator and agency review team to advise the district on matters relating to the district's rehabilitation. The substitute adds a provision not in the original requiring the conservator and agency review team to prepare and the conservator to submit to certain state officials a comprehensive report evaluating the district water systems. The substitute adds a provision not in the original requiring the conservator and agency review team to develop, and the board to adopt, rules and bylaws separating the administrative and technical functions of the district. The substitute sets forth provisions not in the original requiring the agency review team to examine district service areas to determine if an area should be sold and providing for the sale of the area, including provisions relating to the process to determine the fair market value of the service area and the distribution of proceeds from the sale of a service area.

C.S.S.B. 2440 differs from the original by providing that the term of the conservator expires on the earlier of the fifth anniversary of the date the conservator is appointed, the date TCEQ issues an order dissolving the conservatorship, or the date TCEQ enters an order dissolving the district, whereas the original provides that the term of the conservator continues until the earlier of the end of a period of 18 months or the conservator reports that the district has been sufficiently rehabilitated and TCEQ concurs.

C.S.S.B 2440 adds provisions not in the original increasing the number of members of the board, changing the terms of service and election date, and requiring the directors to be elected from single-member districts established by the board, and making conforming changes. The substitute adds provisions not in the original changing quorum requirements, setting forth eligibility requirements to be a candidate for or elected as a director, and establishing a training program requirement for a director and authorizing TCEQ to create an advanced training program. The substitute adds provisions not in the original setting forth prohibited actions of a director, requiring a director to file a verified financial statement with the Bexar County clerk, and establishing grounds for a director to be recalled, a recall election process, and filling of a vacancy created by a recall.

C.S.S.B. 2440 adds provisions not in the original requiring the board to employ or contract for a general manager of the district and a chief financial officer of the district. The substitute adds provisions not in the original relating to board approval and review of reimbursements and expenditures.

C.S.S.B. 2440 adds provisions not in the original requiring the board to adopt an annual budget and setting forth provisions for public hearings required to be held before adoption of an annual budget. The substitute adds provisions not in the original relating to the public hearing and approval required before the board is authorized to increase residential water or sewer service rates by more than 10 percent. The substitute adds provisions not in the original requiring the board to have the district's books and records audited annually by an independent auditor, establishing requirements relating to the auditor, and providing for the state auditor, subject to approval, to conduct an annual audit of the district. The substitute adds provisions not included in the original defining terms.

C.S.S.B. 2440 removes provisions in the original relating to specific details of the sale and transfer of district assets to be completed before the district is dissolved and provisions relating to the appointment of a subsequent conservator on determination of TCEQ that after the termination of an earlier conservator the district has failed to sufficiently serve its customers and conduct itself in a professional, ethical, and reliable manner. The substitute removes provisions in the original specifying actions that the conservator may not take. The substitute removes provisions in the original relating to the composition of the district oversight committee and the requirement that the committee provide a report to the 82nd Legislature.