

By: Martinez Fischer

H.B. No. 4823

A BILL TO BE ENTITLED

AN ACT

relating to the Bexar Metropolitan Water District.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended to read as follows:

Sec. 8. (a) ~~[-]~~ The seven ~~[five (5)]~~ members of the Board of Directors are ~~[shall hereafter be]~~ elected to staggered two-year terms in an election held on the uniform election date in November.

Directors shall be elected from numbered single-member districts established by the Board. The Board shall revise each single-member district after each decennial census to reflect population changes and to conform with state law, the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.), and any

applicable court order ~~[for a term of six (6) years each, provided that an election for two (2) Directors for a term of six (6) years shall be held on the first Tuesday in April, 1954, the terms of three (3) members of the present Board shall be, and are, hereby, extended to the first Tuesday in April, 1957, and the present Directors shall determine such three (3) by lot. Three (3)~~

Directors shall be elected on the first Tuesday in April, 1957, and two (2) Directors and three (3) Directors, alternately, shall be elected each three (3) years thereafter on the first Tuesday in April as the six-year terms expire]. At an election of Directors,

the candidate from each single-member district who receives ~~[The~~

1 ~~two (2) or three (3) persons, respectively, receiving]~~ the greatest
2 number of votes shall be declared elected to represent that
3 single-member district. Each Director shall hold office until his
4 successor shall have been elected or appointed and shall have
5 qualified. A Director may not serve more than three terms.[+]

6 (b) Such [~~such~~] elections shall be called, conducted and
7 canvassed in the manner provided by the Election Code. [~~Chapter 25,~~
8 ~~General Laws of the Thirty-ninth Legislature, Regular Session,~~
9 ~~1925, and any amendments thereto,~~]

10 (c) The [~~the~~] Board of Directors shall fill all vacancies on
11 the Board by appointment and such appointees shall hold office for
12 the unexpired term for which they were appointed.[+]

13 (d) Any four [~~any three~~] members of the Board shall
14 constitute a quorum for the adoption of passage of any resolution or
15 order or the transaction of any business of the District.[+]

16 (e) A Director must [~~Directors succeeding the first Board,~~
17 ~~whether now or hereafter elected, shall]~~ be a qualified voter of the
18 single-member district from which the Director is elected [~~resident~~
19 ~~electors of Bexar County, Texas, and owners of taxable property~~
20 ~~within the area comprising said District, and shall organize in~~
21 ~~like manner]~~.

22 SECTION 2. Chapter 306, Acts of the 49th Legislature,
23 Regular Session, 1945, is amended by adding Sections 8A, 8B, 8C, 9A,
24 9B, 12A, 12B, 23A, 34, and 35 to read as follows:

25 Sec. 8A. (a) To be eligible to be a candidate for or elected
26 as a Director, a person must have:

27 (1) resided continuously in the single-member

1 district that the person seeks to represent for 12 months
2 immediately preceding the date of the regular filing deadline for
3 the candidate's application for a place on the ballot;

4 (2) viewed the open government training video provided
5 by the attorney general and provided to the Board a signed affidavit
6 stating that the candidate viewed the video;

7 (3) obtained 200 signatures from individuals living in
8 the District; and

9 (4) paid a filing fee of \$500 or filed a petition in
10 lieu of the filing fee that satisfies the requirements prescribed
11 by Section 141.062, Election Code.

12 (b) In this subsection, "political contribution" and
13 "specific-purpose committee" have the meanings assigned by Section
14 251.001, Election Code. A Director or a candidate for the office of
15 Director may not knowingly accept political contributions from a
16 person that in the aggregate exceed \$500 in connection with each
17 election in which the person is involved. For purposes of this
18 subsection, a contribution to a specific-purpose committee for the
19 purpose of supporting a candidate for the office of Director,
20 opposing the candidate's opponent, or assisting the candidate as an
21 officeholder is considered to be a contribution to the candidate.

22 Sec. 8B. (a) A person who is elected or appointed to and
23 qualifies for office as a Director on or after the effective date of
24 this section may not vote, deliberate, or be counted as a member in
25 attendance at a meeting of the Board until the person completes a
26 training program on District management issues. The training
27 program must provide information to the person regarding:

- 1 (1) the enabling legislation that created the
2 District;
- 3 (2) the operation of the District;
- 4 (3) the role and functions of the Board;
- 5 (4) the rules of the Board;
- 6 (5) the current budget for the Board;
- 7 (6) the results of the most recent formal audit of the
8 Board;
- 9 (7) the requirements of the:
- 10 (A) open meetings law, Chapter 551, Government
11 Code;
- 12 (B) open records law, Chapter 552, Government
13 Code; and
- 14 (C) administrative procedure law, Chapter 2001,
15 Government Code;
- 16 (8) the requirements of the conflict of interest laws
17 and other laws relating to public officials; and
- 18 (9) any applicable ethics policies adopted by the
19 Board or the Texas Ethics Commission.
- 20 (b) The Texas Commission on Environmental Quality may
21 create an advanced training program designed for a person who has
22 previously completed a training program described by Subsection (a)
23 of this section. If the commission creates an advanced training
24 program under this subsection, a person who completes that advanced
25 training program is considered to have met the person's obligation
26 under Subsection (a) of this section.
- 27 (c) Each Director who is elected or appointed on or after

1 the effective date of this section shall complete a training
2 program described by Subsection (a) or (b) of this section at least
3 once in each term the Director serves.

4 (d) The Board shall adopt rules regarding the completion of
5 the training program described by Subsection (a) or (b) of this
6 section by a person who is elected or appointed to and qualifies for
7 office as a Director before the effective date of this section. A
8 Director described by this subsection who does not comply with
9 Board rules shall be considered incompetent as to the performance
10 of the duties of a Director in any action to remove the Director
11 from office.

12 (e) A Director may not:

13 (1) accept or solicit a gift, favor, or service that:

14 (A) might reasonably influence the Director in
15 the discharge of an official duty; or

16 (B) the Director knows or should know is being
17 offered with the intent to influence the Director's official
18 conduct;

19 (2) accept other employment or engage in a business or
20 professional activity that the Director might reasonably expect
21 would require or induce the Director to disclose confidential
22 information acquired by reason of the official position;

23 (3) accept other employment or compensation that could
24 reasonably be expected to impair the Director's independence of
25 judgment in the performance of the Director's official duties;

26 (4) make personal investments that could reasonably be
27 expected to create a substantial conflict between the Director's

1 private interest and the interest of the District;

2 (5) intentionally or knowingly solicit, accept, or
3 agree to accept any benefit for having exercised the Director's
4 official powers or performed the Director's official duties in
5 favor of another; or

6 (6) have a personal interest in an agreement executed
7 by the District.

8 (f) Not later than April 30 each year, a Director shall file
9 with the Bexar County clerk a verified financial statement
10 complying with Sections 572.022, 572.023, 572.024, and 572.0252,
11 Government Code. A copy of a financial statement filed under this
12 section shall be kept in the main office of the District.

13 Sec. 8C. (a) A Director may be recalled for:

14 (1) incompetency or official misconduct as described
15 by Section 21.022, Local Government Code;

16 (2) conviction of a felony;

17 (3) incapacity;

18 (4) failure to file a financial statement as required
19 by Section 8B(f) of this Act;

20 (5) failure to complete a training program described
21 by Section 8B(a) or (b) of this Act; or

22 (6) failure to maintain residency in the District.

23 (b) If at least 10 percent of the voters in the District
24 submit a petition to the Board requesting the recall of a Director,
25 the Board, not later than the 10th day after the date the petition
26 is submitted, shall mail a written notice of the petition and the
27 date of its submission to each registered voter in the District.

1 (c) Not later than the 30th day after the date a petition
2 requesting the recall of a Director is submitted, the Board shall
3 order an election on the question of recalling the Director.

4 (d) A recall election under this section may be held on any
5 uniform election date.

6 (e) If a majority of the District voters voting at an
7 election held under this section favor the recall of the Director,
8 the Director is recalled and ceases to be a member of the Board.

9 (f) If a vacancy occurs on the Board after the recall of a
10 Director under this section, the remaining members of the Board
11 shall appoint a replacement. A Director appointed to fill a vacancy
12 under this subsection serves until the next regularly scheduled
13 Directors' election.

14 Sec. 9A. (a) The Board shall employ a general manager of
15 the District or contract with a person to perform the duties of a
16 general manager. The Board shall delegate to the general manager or
17 contractor full authority to manage and operate the affairs of the
18 District subject only to orders of the Board.

19 (b) The Board shall delegate to the general manager or
20 contractor the authority to employ persons necessary for the proper
21 handling of the business and operation of the District and to
22 determine the compensation to be paid to employees, other than the
23 general manager or contractor.

24 (c) The general manager or contractor annually shall
25 complete a training program on state and federal laws related to the
26 administration of the District. The training program must provide
27 information regarding:

- 1 (1) nepotism;
- 2 (2) conflicts of interest;
- 3 (3) criminal penalties related to the conduct of
4 elected officials;
- 5 (4) financial disclosure requirements;
- 6 (5) equal employment;
- 7 (6) disability accommodation;
- 8 (7) labor relations; and
- 9 (8) the acquisition and sale of property.

10 Sec. 9B. (a) The Board shall employ a chief financial
11 officer of the District or contract with a person to perform the
12 duties of a chief financial officer. The Board shall delegate to
13 the chief financial officer or contractor the authority necessary
14 to administer all financial affairs of the District, including:

- 15 (1) maintaining the general accounting system for the
16 District;
- 17 (2) certifying the availability of funds for all
18 proposed expenditures;
- 19 (3) submitting to the Board a monthly statement of all
20 receipts and disbursements in sufficient detail to show the
21 financial condition of the District; and
- 22 (4) preparing at the end of each fiscal year a complete
23 financial statement and report.

24 (b) The Board shall require the chief financial officer of
25 the District to furnish good and sufficient bond, payable to the
26 District, in an amount determined by the Board to be sufficient to
27 safeguard the District. The bond shall be conditioned on the

1 faithful performance of that person's duties and on accounting for
2 all funds and property of the District. The bond shall be signed or
3 endorsed by a surety company authorized to do business in the state.

4 Sec. 12A. (a) All Board reimbursements and expenditures
5 must be approved by the Board in a regularly scheduled meeting.

6 (b) At each regularly scheduled meeting of the Board, the
7 Board shall review all expenditures made by the general manager.

8 Sec. 12B. (a) The Board shall adopt an annual budget.

9 (b) The budget must contain:

10 (1) a message explaining the budget;

11 (2) an outline of the proposed financial policies of
12 the District for the next fiscal year, including any major changes
13 from the current fiscal year;

14 (3) a comparison of the actual and estimated revenue
15 and expenditures for the current fiscal year and actual and
16 estimated revenue for the two preceding fiscal years;

17 (4) a statement of the water rates and collections for
18 the preceding five years; and

19 (5) a complete financial statement, including a
20 statement of:

21 (A) the outstanding obligations of the District,
22 with a schedule of payments and maturities;

23 (B) the amount of cash on hand to the credit of
24 each fund of the District;

25 (C) the amount of money received by the District
26 from all sources during the preceding fiscal year, with notations
27 regarding each department, division, or office of the District;

1 (D) the amount of money available to the District
2 from all sources during the following fiscal year;

3 (E) the amount of the balances expected at the
4 end of the fiscal year for which the budget is being prepared;

5 (F) the estimated amount of revenue and balances
6 available to cover the proposed budget; and

7 (G) the estimated revenue from fees that will be
8 required.

9 (c) The Board shall conduct two public hearings not later
10 than the 30th day before the date of the public hearing at which the
11 Board will adopt the budget. At least one of the public hearings
12 must be held at a location other than the District office. Notice
13 of the hearings must be included in a water or sewer service bill of
14 each ratepayer mailed at least 30 days before the date of the first
15 hearing.

16 Sec. 23A. (a) The Board may not increase residential water
17 or sewer service rates by more than 10 percent unless the Board
18 holds a public hearing on the matter of the rate increase. The
19 hearing must be attended by the Board and, if the District employs a
20 general manager or chief financial officer, by the general manager
21 and the chief financial officer.

22 (b) The Board may increase residential rates by more than 10
23 percent only if approved by a unanimous vote of the Board after the
24 hearing held under Subsection (a).

25 (c) A motion by a Director to increase residential water or
26 sewer service rates by more than 10 percent must read as follows:

27 "I move that we increase residential (water or sewer, as

1 appropriate) rates by ___ percent. An average water bill in the
2 District is \$ ___ for ___ gallons. With this increase, the average
3 residential water bill will be \$ ___ for ___ gallons. We need to
4 increase the rates because of the following: (insert justification
5 for rate increase)."

6 Sec. 34. (a) After September 1, 2014, the Board annually
7 shall have an audit conducted of the District's books and records
8 that covers all matters relating to the fiscal affairs of the
9 District. The audit must be conducted by an independent auditor who
10 does not:

- 11 (1) otherwise maintain any District accounts;
12 (2) act as a financial advisor to the District; or
13 (3) have any financial interest in the District.

14 (b) The Board may not select the same auditor for more than
15 three consecutive annual audits.

16 Sec. 35. (a) As soon as practicable after the effective
17 date of this section, the Texas Commission on Environmental Quality
18 shall appoint a five-member panel to review the actions of the
19 Board. The commission by rule shall establish the qualifications
20 for the panel members.

21 (b) The District shall pay any costs reasonably incurred by
22 the panel or by a member of the panel in the performance of a duty
23 under this section.

24 (c) The Texas Commission on Environmental Quality shall
25 appoint one member of the panel as the presiding officer of the
26 panel. The presiding officer may reverse decisions made by the
27 Board or an employee of the District or act in the absence of action

1 by the Board or an employee of the District if:

2 (1) the matter is related to the administration of the
3 District;

4 (2) the action is not prohibited by other law; and

5 (3) the presiding officer determines that the Board or
6 an employee of the District is not in compliance with a request or
7 recommendation of the panel.

8 (d) Not later than June 1, 2010, the panel shall prepare a
9 report evaluating the distinct water systems that make up the
10 District and determine the following:

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

13 (2) the District's bonded debt and commercial paper
14 reasonably associated with or allocable to the infrastructure in
15 each water system;

16 (3) the adequacy of the source of the water supply
17 located in each water system's service area to supply the current
18 and projected demands generated in that service area;

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

22 (5) the adequacy of the distribution system located in
23 each water system's service area to supply the current and
24 projected demands generated in that service area; and

25 (6) the ability of the District to serve its customers
26 in a particular service area or a specific part of the service area
27 based on the infrastructure and capacity of the District in that

1 area.

2 (e) The panel shall submit the report to the governor, the
3 lieutenant governor, the speaker of the house of representatives,
4 the chair of each committee of the legislature having primary
5 jurisdiction over water districts, and the Texas Commission on
6 Environmental Quality.

7 (f) The panel shall develop bylaws for the District that
8 separate the administrative and technical functions of the
9 District. The Board shall consider and adopt rules and bylaws
10 consistent with the bylaws developed by the panel.

11 (g) The panel shall examine the service delivery in the
12 several service areas of the District to determine whether the
13 District is financially and practically able to provide continuous
14 quality service in each area at reasonable rates. For any area the
15 panel determines the District's ability to serve is inadequate or
16 impractical, the panel shall recommend that the District divest the
17 utility assets in that area.

18 (h) If the panel makes a recommendation under Subsection
19 (g), the panel shall appoint an agent to carry out the sale of the
20 utility assets in that area. The agent shall bring an action in a
21 district court in Bexar County for a determination of the fair
22 market value of the assets to be sold. The fair market value shall
23 be determined by a judge who was elected to that court from
24 competent evidence of the value introduced by the parties.
25 Competent evidence of value may include:

26 (1) expert opinion testimony;

27 (2) comparable sales;

1 (3) anticipated marketing time and holding costs;

2 (4) cost of sale; and

3 (5) the necessity and amount of any discount to be
4 applied to the future sales price or the cash flow generated by the
5 property to arrive at a fair market value as of the date of the sale.

6 (i) After the fair market value is determined under
7 Subsection (h), the agent shall sell the assets for not less than
8 the determined fair market value to an appropriate entity. The
9 agent shall conduct the sale in a manner consistent with the best
10 interests of the ratepayers. Proceeds from the sale of the assets
11 shall be applied to outstanding debt of the District, and if any
12 proceeds remain after the retirement of all the District's debt,
13 the remaining proceeds shall be distributed to the ratepayers as a
14 rebate.

15 (j) This section expires September 1, 2014.

16 SECTION 3. (a) Subject to approval by the Legislative
17 Audit Committee for inclusion in the annual audit plan, the state
18 auditor shall conduct an annual audit of the Bexar Metropolitan
19 Water District for the five years following the effective date of
20 this Act. The scope of the audit shall be determined by the state
21 auditor based on a risk assessment.

22 (b) The district shall reimburse the state auditor for the
23 cost of the audit.

24 SECTION 4. (a) Section 8, Chapter 306, Acts of the 49th
25 Legislature, Regular Session, 1945, as amended by this Act, applies
26 only to a member of the board of directors of the Bexar Metropolitan
27 Water District who is elected to the board on or after the effective

1 date of this Act.

2 (b) Section 8A, Chapter 306, Acts of the 49th Legislature,
3 Regular Session, 1945, as added by this Act, applies only to a
4 member of the board of directors of the Bexar Metropolitan Water
5 District who is elected to the board on or after the effective date
6 of this Act. A director who is elected before the effective date of
7 this Act is governed by the law in effect when the director was
8 elected, and the former law is continued in effect for that purpose.
9 A director elected to a six-year term before the effective date of
10 this Act shall serve out the term to which the director was elected.

11 (c) For a numbered single-member district director's
12 position that expires in 2010 or 2011, the district shall call and
13 hold an election on a uniform election date in that year to elect
14 the director for that position for a term that expires on the
15 uniform election date in November 2013.

16 SECTION 5. (a) The legal notice of the intention to
17 introduce this Act, setting forth the general substance of this
18 Act, has been published as provided by law, and the notice and a
19 copy of this Act have been furnished to all persons, agencies,
20 officials, or entities to which they are required to be furnished
21 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
22 Government Code.

23 (b) The governor, one of the required recipients, has
24 submitted the notice and Act to the Texas Commission on
25 Environmental Quality.

26 (c) The Texas Commission on Environmental Quality has filed
27 its recommendations relating to this Act with the governor, the

1 lieutenant governor, and the speaker of the house of
2 representatives within the required time.

3 (d) All requirements of the constitution and laws of this
4 state and the rules and procedures of the legislature with respect
5 to the notice, introduction, and passage of this Act are fulfilled
6 and accomplished.

7 SECTION 6. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2009.