

By: Uresti

S.B. No. 514

A BILL TO BE ENTITLED

1 AN ACT
2 relating to providing an oversight mechanism for the Bexar
3 Metropolitan Water District, including enforcement authority.

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

5 SECTION 1. LEGISLATIVE FINDINGS. The legislature finds
6 that:

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

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

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

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

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

1 within the district;

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

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

13 SECTION 2. CREATION OF CONSERVATORSHIP. Chapter 306, Acts
14 of the 49th Legislature, Regular Session, 1945, is amended by
15 adding Sections 33B, 33C, and 33D to read as follows:

16 Sec. 33B. CONSERVATOR. Not later than the 60th day after
17 the effective date of this Section, the Texas Commission on
18 Environmental Quality shall appoint as Conservator for the District
19 an individual who has demonstrated a high level of expertise in
20 water utility management.

21 Sec. 33C. POWERS AND DUTIES OF CONSERVATOR. (a) The Board
22 shall be subject to the authority of a conservator appointed under
23 this Act and shall work cooperatively with the Conservator in
24 rehabilitating the Board in its ability to manage and operate the
25 District in a professional manner. During the period of
26 conservatorship, the Conservator has all of the general authority
27 held by the Board immediately before the date conservatorship is

1 established.

2 (b) The Conservator shall:

3 (1) take possession and control of the books, records,
4 property, assets, and daily management of the District;

5 (2) take immediate action to ensure that the assets of
6 the District are protected and that the quality of service provided
7 to District customers is improved to the highest level reasonably
8 practicable under the circumstances;

9 (3) develop a comprehensive rehabilitation plan for
10 the District; and

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

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

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

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

22 (c) The comprehensive rehabilitation plan must:

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

26 (2) describe a standard of ethics, professionalism,
27 and openness expected of each member of the Board and employees of

1 the District and a mechanism for enforcing compliance with District
2 policies, including procurement policies;

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

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

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

11 (B) developing greater technical expertise on
12 the part of District employees;

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

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

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

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

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

26 (B) the District's bonded debt and commercial
27 paper reasonably associated with or allocable to the infrastructure

1 of each water system;

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

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

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

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

13 (1) the Conservator reports that the District has been
14 sufficiently rehabilitated to provide reliable, cost-effective,
15 quality service to its customers; and

16 (2) the Texas Commission on Environmental Quality,
17 after performing a confirmation review, concurs with the
18 Conservator's report that the District has been sufficiently
19 rehabilitated to ensure that it can serve its customers in a
20 professional manner and that conservatorship is no longer
21 necessary.

22 (e) When conservatorship is terminated under Subsection (d)
23 of this Section, the assets and management of the District return to
24 the control of the Board of Directors.

25 (f) Funding for the conservatorship shall be provided by the
26 District and approved by the Commission.

27 Sec. 33D. ADDITIONAL ENFORCEMENT AUTHORITY. (a)

1 Notwithstanding any other law, if the Texas Commission on
2 Environmental Quality determines that, after a reasonable period,
3 the District has not made satisfactory progress in rehabilitating
4 its management and related operations, the Commission may use the
5 auditing and enforcement authority provided to the Commission by
6 Chapters 36 and 49, Water Code, including dissolution, to address
7 deficiencies on the part of the District.

8 (b) If the Texas Commission on Environmental Quality
9 determines that, after a reasonable period, the Conservator has not
10 made satisfactory progress in implementing the comprehensive
11 rehabilitation plan and the Commission has not determined that the
12 District must be dissolved, the Commission shall appoint a new
13 Conservator.

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

17 SECTION 3. CREATION OF SUBSEQUENT CONSERVATORSHIP.
18 Effective June 1, 2011, Chapter 306, Acts of the 49th Legislature,
19 Regular Session, 1945, is amended by adding Section 33E to read as
20 follows:

21 Sec. 33E. SUBSEQUENT CONSERVATOR. (a) The Texas
22 Commission on Environmental Quality shall appoint a subsequent
23 Conservator for the District if the Commission determines that
24 after the termination of an earlier conservatorship under Section
25 33C of this Act, the District has:

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

1 (2) violated a final order of the Commission;

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

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

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

11 (6) engaged in a pattern of:

12 (A) noncompliance with laws or regulations; or

13 (B) unethical conduct and unprofessional
14 management practices;

15 (7) abandoned the operation of its facilities;

16 (8) had a majority of its Board of directors resign;

17 (9) demonstrated weak management;

18 (10) engaged in financial improprieties; or

19 (11) provided unreliable service that impairs the
20 quality of life of its customers or diminishes the prospects for
21 economic growth within the district.

22 (b) An individual appointed Conservator under this Section
23 must have demonstrated a high level of expertise in water utility
24 management and shall have all the powers and duties assigned to a
25 Conservator under Section 33C of this Act.

26 (c) For a conservatorship created under this Section, the
27 Texas Commission on Environmental Quality has the additional

1 enforcement authority assigned to it under Section 33D of this Act.

2 SECTION 4. OVERSIGHT COMMITTEE: COMPOSITION; REPORT.
3 Section 33A, Chapter 306, Acts of the 49th Legislature, Regular
4 Session, 1945, is amended by amending Subsection (c) and adding
5 Subsection (g) to read as follows:

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

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

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

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

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

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

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

1 (g) On or before December 31, 2010, the oversight committee
2 shall provide a report under Subsection (e) of this Section to the
3 82nd Legislature. The committee is abolished and this Section
4 expires on January 1, 2011.

5 SECTION 5. NOTICE. (a) The legal notice of the intention
6 to introduce this Act, setting forth the general substance of this
7 Act, has been published as provided by law, and the notice and a
8 copy of this Act have been furnished to all persons, agencies,
9 officials, or entities to which they are required to be furnished
10 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
11 Government Code.

12 (b) The governor, one of the required recipients, has
13 submitted the notice and Act to the Texas Commission on
14 Environmental Quality.

15 (c) The Texas Commission on Environmental Quality has filed
16 its recommendations relating to this Act with the governor, the
17 lieutenant governor, and the speaker of the house of
18 representatives within the required time.

19 (d) All requirements of the constitution and laws of this
20 state and the rules and procedures of the legislature with respect
21 to the notice, introduction, and passage of this Act are fulfilled
22 and accomplished.

23 SECTION 6. EFFECTIVE DATE. Except as otherwise provided by
24 this Act, this Act takes effect immediately if it receives a vote of
25 two-thirds of all the members elected to each house, as provided by
26 Section 39, Article III, Texas Constitution. If this Act does not
27 receive the vote necessary for immediate effect, this Act takes

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1 effect September 1, 2009, except as otherwise provided by this Act.