

By: Uresti

S.B. No. 2440

A BILL TO BE ENTITLED

1 AN ACT
2 relating to authorizing a dissolution election for the Bexar
3 Metropolitan Water District and providing an oversight mechanism
4 for the district, including enforcement authority.

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

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

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

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

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

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

22 (D) the district has demonstrated weak
23 management, engaged in financial improprieties, and provided
24 unreliable service, which threatens to impair the quality of life

1 of its customers and diminish the prospects for economic growth
2 within the district;

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

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

14 SECTION 2. DISSOLUTION. Chapter 306, Acts of the 49th
15 Legislature, Regular Session, 1945, is amended by adding Sections
16 33B, 33C, 33D, 33E, and 33F to read as follows:

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

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

25 Sec. 33D. APPOINTMENT OF CONSERVATOR; ADMINISTRATION OF
26 ASSETS. (a) If a majority of the votes in the election held under
27 Section 33B of this Act favor dissolution, a conservator shall be

1 appointed by the Texas Commission on Environmental Quality not
2 later than the 60th day after the date of the election.

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

6 Sec. 33E. SALE OR TRANSFER OF ASSETS AND LIABILITIES.

7 (a) Notwithstanding any other provision of this Act, the District
8 may not be dissolved unless the Conservator provides for the sale or
9 transfer of the District's assets and liabilities to another person
10 or entity or until all of the District's outstanding indebtedness
11 or contractual obligations have otherwise been repaid or discharged
12 in a manner consistent with Subsection (d) of this section.

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

20 (c) The sale or transfer of the District's assets and
21 liabilities must satisfy the debt, bond obligations, commercial
22 paper notes, or any other financial obligation of the District in a
23 manner that protects the interests of the residents of the
24 District, including the residents' collective property rights in
25 the District's assets. The District may not transfer or dispose of
26 the District's assets except for due compensation unless the
27 transfer is made to another governmental agency that serves the

1 District and the transferred assets are to be used for the benefit
2 of the residents of the District.

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

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

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

22 SECTION 3. CREATION OF CONSERVATORSHIP. Chapter 306, Acts
23 of the 49th Legislature, Regular Session, 1945, is amended by
24 adding Sections 34, 34A, and 34B to read as follows:

25 Sec. 34. CONSERVATOR. If a majority of the votes in the
26 election held under Section 33B of this Act do not favor
27 dissolution, not later than the 60th day after the date of this

1 election, the Texas Commission on Environmental Quality shall
2 appoint a conservator for the purpose of rehabilitating the
3 District. The individual appointed must have demonstrated a high
4 level of expertise in water utility management.

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

10 (b) The Conservator shall:

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

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

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

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

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

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

27 (C) the progress the Conservator has made towards

1 completion of the plan developed under Subdivision (3) of this
2 Subsection.

3 (c) The comprehensive rehabilitation plan must:

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

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

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

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

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

19 (B) developing greater technical expertise on
20 the part of District employees;

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

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

26 (7) ensure that any entity that acquires a District
27 asset is responsible for all transaction costs related to the

1 acquisition, including the cost of defending the State against
2 legal challenges to the disposition of the asset; and

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

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

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

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

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

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

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

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

23 (2) the Conservator reports that the District has been
24 sufficiently rehabilitated to provide reliable, cost-effective,
25 quality service to its customers, and the Texas Commission on
26 Environmental Quality, after performing a confirmation review,
27 concurs with the Conservator's report that the District has been

1 sufficiently rehabilitated to ensure that it can serve its
2 customers in a professional manner and that conservatorship is no
3 longer necessary.

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

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

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

9 (A) for operating District systems; or

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

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

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

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

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

27 (b) The Texas Commission on Environmental Quality shall

1 adopt rules providing for filling a vacancy in the position of
2 Conservator.

3 SECTION 4. CREATION OF SUBSEQUENT CONSERVATORSHIP.
4 Effective June 1, 2011, Chapter 306, Acts of the 49th Legislature,
5 Regular Session, 1945, is amended by adding Section 34C to read as
6 follows:

7 Sec. 34C. SUBSEQUENT CONSERVATOR. (a) The Texas
8 Commission on Environmental Quality shall appoint a subsequent
9 Conservator for the District if the Commission determines that
10 after the termination of an earlier conservatorship under Section
11 34A of this Act, the District has:

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

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

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

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

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

24 (6) engaged in a pattern of:

25 (A) noncompliance with laws or regulations; or

26 (B) unethical conduct and unprofessional
27 management practices;

- 1 (7) abandoned the operation of its facilities;
2 (8) had a majority of its Board of Directors resign;
3 (9) engaged in financial improprieties; or
4 (10) provided unreliable service that impairs the
5 quality of life of its customers or diminishes the prospects for
6 economic growth within the District.

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

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

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

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

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

26 (3) one member of the Senate Committee on Natural
27 Resources [~~with special expertise in the operation of public water~~

1 ~~utilities]~~ appointed by the Lieutenant Governor;

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

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

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

10 (g) On or before December 31, 2010, the oversight committee
11 shall provide a report under Subsection (e) of this Section to the
12 82nd Legislature. The committee is abolished and this Section
13 expires on January 1, 2011.

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

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

24 (c) The Texas Commission on Environmental Quality has filed
25 its recommendations relating to this Act with the governor, the
26 lieutenant governor, and the speaker of the house of
27 representatives within the required time.

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

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