

By: Uresti

S.B. No. 2440

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, and  
4 authorizing a dissolution election.

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, 33F, and 33G to read as follows:

17 Sec. 33B. ELECTION ON DISSOLUTION AND CONSERVATORSHIP.

18 (a) Not later than October 1, 2009, the Board shall order an  
19 election on the appointment of a conservator for the purpose of  
20 dissolving the District.

21 (b) The election shall be held not later than the 60th day  
22 after the date the election is ordered.

23 (c) The order calling the election must state:

24 (1) the nature of the election, including the  
25 proposition that is to appear on the ballot;

26 (2) the date of the election;

27 (3) the hours during which the polls will be open; and

1           (4) the location of the polling places.

2           (d) Section 41.001(a), Election Code, does not apply to an  
3 election ordered under this Section.

4           Sec. 33C. NOTICE OF ELECTION. The Board shall give notice  
5 of the election by publishing a substantial copy of the election  
6 order in a newspaper with general circulation in the District once a  
7 week for two consecutive weeks. The first publication must appear  
8 at least 35 days before the date set for election.

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

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

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

21           Sec. 33F. SALE OR TRANSFER OF ASSETS AND LIABILITIES.  
22 (a) Notwithstanding any other provision of this Act, the District  
23 may not be dissolved unless the Conservator provides for the sale or  
24 transfer of the District's assets and liabilities to another person  
25 or entity or until all of the District's outstanding indebtedness  
26 or contractual obligations have otherwise been repaid or  
27 discharged.

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

8       (c) The sale or transfer of the District's assets and  
9 liabilities must satisfy the debt, bond obligations, commercial  
10 paper notes, or any other financial obligation of the District in a  
11 manner that protects the interests of the residents of the  
12 District, including the residents' collective property rights in  
13 the District's assets. The District may not transfer or dispose of  
14 the District's assets except for due compensation unless the  
15 transfer is made to another governmental agency that serves the  
16 District and the transferred assets are to be used for the benefit  
17 of the residents of the District.

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

23       (b) Not later than the 10th day after the date the Texas  
24 Commission on Environmental Quality receives the report and  
25 determines that the requirements of this Act as they relate to  
26 dissolution have been fulfilled, the Commission shall enter an  
27 order confirming the dissolution of the District and ordering the

1 termination of conservatorship established under Section 33E of  
2 this Act, as applicable.

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

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

13 Sec. 34A. POWERS AND DUTIES OF CONSERVATOR. (a) The Board  
14 shall be subject to the authority of a conservator appointed under  
15 Section 34 of this Act and shall work cooperatively with the  
16 Conservator in rehabilitating the Board in its ability to manage  
17 and operate the District in a professional manner. During the  
18 period of conservatorship, the Conservator has all of the general  
19 authority held by the Board immediately before the date  
20 conservatorship is established.

21 (b) The Conservator shall:

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

24 (2) take immediate action to ensure that the assets of  
25 the District are protected and that the quality of service provided  
26 to District customers is improved to the highest level reasonably  
27 practicable under the circumstances;

1           (3) develop a comprehensive rehabilitation plan for  
2 the District; and

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

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

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

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

14           (c) The comprehensive rehabilitation plan must:

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

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

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

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

26                           (A) educating the Board of Directors and key  
27 management personnel on improving management practices, on

1 complying with Board policy and applicable laws and regulations,  
2 and on implementing needed reforms for the District; and

3 (B) developing greater technical expertise on  
4 the part of District employees;

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

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

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

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

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

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

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

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

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

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

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

8                 (2) the Texas Commission on Environmental Quality,  
9 after performing a confirmation review, concurs with the  
10 Conservator's report that the District has been sufficiently  
11 rehabilitated to ensure that it can serve its customers in a  
12 professional manner and that conservatorship is no longer  
13 necessary.

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

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

19           (g) The Conservator may not take any action that:

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

22                         (A) for operating District systems; or

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

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



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

4       (i) Except as provided by Subsection (j) of this Section,  
5 the Conservator may not be a receiver, trustee, custodian, or  
6 liquidator of the District's system or other property.

7       (j) If a majority of the voters approve the dissolution of  
8 the District in an election held under Section 35 of this Act, the  
9 Conservator may use any authority provided by this Act as necessary  
10 to accomplish the dissolution.

11       Sec. 34B.                   ADDITIONAL           ENFORCEMENT           AUTHORITY.

12 (a) Notwithstanding any other law, if the Texas Commission on  
13 Environmental Quality determines that, after a reasonable period,  
14 the District has not made satisfactory progress in rehabilitating  
15 its management and related operations, the Commission may use the  
16 auditing and enforcement authority provided to the Commission by  
17 Chapters 36 and 49, Water Code, to address deficiencies on the part  
18 of the District or may recommend dissolution as provided by Section  
19 35 of this Act.

20       (b) If the Texas Commission on Environmental Quality  
21 determines that, after a reasonable period, the Conservator has not  
22 made satisfactory progress in implementing the comprehensive  
23 rehabilitation plan and the Commission has not determined that the  
24 District must be dissolved, the Commission shall appoint a new  
25 Conservator.

26       (c) The Texas Commission on Environmental Quality shall  
27 adopt rules providing for filling a vacancy in the position of

1 Conservator.

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

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

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

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

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

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

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

23 (6) engaged in a pattern of:

24 (A) noncompliance with laws or regulations; or

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

27 (7) abandoned the operation of its facilities;

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

2           (9) demonstrated weak management;

3           (10) engaged in financial improprieties; or

4           (11) 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           (c) For a conservatorship created under this Section, the  
12 Texas Commission on Environmental Quality has the additional  
13 enforcement authority assigned to it under Section 34B of this Act.

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

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

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

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

1 Representatives;

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

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

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

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

13 (g) On or before December 31, 2010, the oversight committee  
14 shall provide a report under Subsection (e) of this Section to the  
15 82nd Legislature. The committee is abolished and this Section  
16 expires on January 1, 2011.

17 SECTION 6. DISSOLUTION BY ELECTION AFTER FAILED  
18 REHABILITATION. Chapter 306, Acts of the 49th Legislature, Regular  
19 Session, 1945, is amended by adding Section 35 and Sections 35A  
20 through 35E to read as follows:

21 Sec. 35. RECOMMENDATION OF DISSOLUTION; ELECTION. (a) If  
22 the Texas Commission on Environmental Quality makes an affirmative  
23 determination under Subsection (a), Section 34B of this Act, the  
24 Commission may recommend that the District be dissolved, in which  
25 case the Conservator shall order an election on the proposed  
26 dissolution.

27 (b) The District may be dissolved only on approval of a

1 majority of the voters voting in an election held for that purpose.

2 (c) The election shall be held not later than the 60th day  
3 after the date the election is ordered.

4 (d) The order calling the election must state:

5 (1) the nature of the election, including the  
6 proposition that is to appear on the ballot;

7 (2) the date of the election;

8 (3) the hours during which the polls will be open; and

9 (4) the location of the polling places.

10 (e) Section 41.001(a), Election Code, does not apply to an  
11 election ordered under this Section.

12 Sec. 35A. NOTICE OF ELECTION. The Conservator shall give  
13 notice of the election by publishing a substantial copy of the  
14 election order in a newspaper with general circulation in the  
15 District once a week for two consecutive weeks. The first  
16 publication must appear at least 35 days before the date set for  
17 election.

18 Sec. 35B. BALLOT. The ballot for the election shall be  
19 printed to permit voting for or against the proposition: "The  
20 dissolution of the Bexar Metropolitan Water District."

21 Sec. 35C. ADMINISTRATION OF ASSETS. If a majority of the  
22 votes in the election ordered under Section 35 of this Act favor  
23 dissolution, the Conservator shall administer the property,  
24 assets, and debts until all funds have been disposed of and all  
25 District debts have been paid or settled.

26 Sec. 35D. SALE OR TRANSFER OF ASSETS AND LIABILITIES.

27 (a) Notwithstanding any other provision of this Act, the District

1 may not be dissolved unless the Conservator provides for the sale or  
2 transfer of the District's assets and liabilities to another person  
3 or entity or until all of the District's outstanding indebtedness  
4 or contractual obligations have otherwise been repaid or  
5 discharged.

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

13 (c) The sale or transfer of the District's assets and  
14 liabilities must satisfy the debt, bond obligations, commercial  
15 paper notes, or any other financial obligation of the District in a  
16 manner that protects the interests of the residents of the  
17 District, including the residents' collective property rights in  
18 the District's assets. The District may not transfer or dispose of  
19 the District's assets except for due compensation unless the  
20 transfer is made to another governmental agency that serves the  
21 District and the transferred assets are to be used for the benefit  
22 of the residents of the District.

23 Sec. 35E. REPORT; DISSOLUTION ORDER. (a) After the  
24 District has paid all its debts and has disposed of all its assets  
25 and funds as prescribed by this Act, the Conservator shall file a  
26 written report with the Texas Commission on Environmental Quality  
27 summarizing the Conservator's actions in dissolving the District.

1       (b) Not later than the 10th day after the date the Texas  
2 Commission on Environmental Quality receives the report and  
3 determines that the requirements of this Act as they relate to  
4 dissolution have been fulfilled, the Commission shall enter an  
5 order confirming the dissolution of the District and ordering the  
6 termination of conservatorship established under Section 34, 34B,  
7 or 34C of this Act, as applicable.

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

15       (b) The governor, one of the required recipients, has  
16 submitted the notice and Act to the Texas Commission on  
17 Environmental Quality.

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

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

26       SECTION 8. EFFECTIVE DATE. Except as otherwise provided by  
27 this Act, this Act takes effect immediately if it receives a vote of

1 two-thirds of all the members elected to each house, as provided by  
2 Section 39, Article III, Texas Constitution. If this Act does not  
3 receive the vote necessary for immediate effect, this Act takes  
4 effect September 1, 2009, except as otherwise provided by this Act.