

1-1 By: Uresti S.B. No. 2440  
1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read  
1-3 first time and referred to Committee on Natural Resources;  
1-4 April 30, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 10, Nays 0; April 30, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2440 By: Uresti

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to authorizing a dissolution election for the Bexar  
1-11 Metropolitan Water District and providing an oversight mechanism  
1-12 for the district, including enforcement authority.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. LEGISLATIVE FINDINGS. The legislature finds  
1-15 that:

1-16 (1) according to audits and evaluations of the Bexar  
1-17 Metropolitan Water District performed by state agencies under H.B.  
1-18 No. 1565, Acts of the 80th Legislature, Regular Session, 2007:

1-19 (A) certain officials of the district have  
1-20 engaged in a pattern of unethical conduct and unprofessional  
1-21 management practices;

1-22 (B) disagreements regarding jurisdiction within  
1-23 the district and between the district and other entities and  
1-24 distrust among key management personnel and members of the board  
1-25 have hampered efforts by the district to improve services for  
1-26 existing customers and to meet water supply needs of growing  
1-27 populations within its service areas;

1-28 (C) there has been a history of noncompliance on  
1-29 the part of the district; and

1-30 (D) the district has demonstrated weak  
1-31 management, engaged in financial improprieties, and provided  
1-32 unreliable service, which threatens to impair the quality of life  
1-33 of its customers and diminish the prospects for economic growth  
1-34 within the district;

1-35 (2) after 18 months of intense scrutiny by state  
1-36 agencies and the Bexar Metropolitan Water District Oversight  
1-37 Committee, which is composed of gubernatorial appointees,  
1-38 legislators, and a local representative of Bexar County, it is  
1-39 evident that further legislative action is necessary; and

1-40 (3) to ensure the reliability, sustainability,  
1-41 quality, and affordability of water supply services to the  
1-42 customers of the district, it is necessary to appoint a  
1-43 conservator, who shall manage the district until the district has  
1-44 achieved sufficient rehabilitation to serve its customers in a  
1-45 professional, ethical, and reliable manner.

1-46 SECTION 2. DISSOLUTION. Chapter 306, Acts of the 49th  
1-47 Legislature, Regular Session, 1945, is amended by adding Sections  
1-48 33B, 33C, 33D, 33E, and 33F to read as follows:

1-49 Sec. 33B. ELECTION ON DISSOLUTION AND CONSERVATORSHIP. An  
1-50 election on the appointment of a conservator for the purpose of  
1-51 dissolving the District shall be held on the uniform election date  
1-52 in November 2009.

1-53 Sec. 33C. BALLOT. The ballot for the election shall be  
1-54 printed to permit voting for or against the proposition: "The  
1-55 appointment of a conservator for the Bexar Metropolitan Water  
1-56 District for the purpose of dissolving the District."

1-57 Sec. 33D. APPOINTMENT OF CONSERVATOR; ADMINISTRATION OF  
1-58 ASSETS. (a) If a majority of the votes in the election held under  
1-59 Section 33B of this Act favor dissolution, a conservator shall be  
1-60 appointed by the Texas Commission on Environmental Quality not  
1-61 later than the 60th day after the date of the election.

1-62 (b) The Conservator shall administer the property, assets,  
1-63 and debts until all funds have been disposed of and all District

2-1 debts have been paid or settled.

2-2 Sec. 33E. SALE OR TRANSFER OF ASSETS AND LIABILITIES.

2-3 (a) Notwithstanding any other provision of this Act, the District  
2-4 may not be dissolved unless the Conservator provides for the sale or  
2-5 transfer of the District's assets and liabilities to another person  
2-6 or entity or until all of the District's outstanding indebtedness  
2-7 or contractual obligations have otherwise been repaid or discharged  
2-8 in a manner consistent with Subsection (d) of this section.

2-9 (b) The dissolution of the District and the sale or transfer  
2-10 of the District's assets or liabilities may not contravene a trust  
2-11 indenture or bond resolution relating to the outstanding bonds of  
2-12 the District. The dissolution and sale or transfer does not  
2-13 diminish or impair the rights of a holder of an outstanding bond,  
2-14 warrant, commercial paper note, or other obligation of the  
2-15 District.

2-16 (c) The sale or transfer of the District's assets and  
2-17 liabilities must satisfy the debt, bond obligations, commercial  
2-18 paper notes, or any other financial obligation of the District in a  
2-19 manner that protects the interests of the residents of the  
2-20 District, including the residents' collective property rights in  
2-21 the District's assets. The District may not transfer or dispose of  
2-22 the District's assets except for due compensation unless the  
2-23 transfer is made to another governmental agency that serves the  
2-24 District and the transferred assets are to be used for the benefit  
2-25 of the residents of the District.

2-26 (d) The sale or transfer of the District's assets and  
2-27 liabilities does not impair, affect the validity of, or modify the  
2-28 terms of any contract to which the District is a party, and the  
2-29 acquiring entity of a District asset, or any assignee-in-interest  
2-30 to the asset, assumes the terms, benefits, and obligations of a  
2-31 contract related to that asset, as if the entity or assignee were  
2-32 the District.

2-33 Sec. 33F. REPORT; DISSOLUTION ORDER. (a) After the  
2-34 District has paid all its debts and has disposed of all its assets  
2-35 and funds as prescribed by this Act, the Conservator shall file a  
2-36 written report with the Texas Commission on Environmental Quality  
2-37 summarizing the Conservator's actions in dissolving the District.

2-38 (b) Not later than the 10th day after the date the Texas  
2-39 Commission on Environmental Quality receives the report and  
2-40 determines that the requirements of this Act as they relate to  
2-41 dissolution have been fulfilled, the Commission shall enter an  
2-42 order confirming the dissolution of the District and ordering the  
2-43 termination of conservatorship established under Section 33E of  
2-44 this Act, as applicable.

2-45 SECTION 3. CREATION OF CONSERVATORSHIP. Chapter 306, Acts  
2-46 of the 49th Legislature, Regular Session, 1945, is amended by  
2-47 adding Sections 34, 34A, and 34B to read as follows:

2-48 Sec. 34. CONSERVATOR. If a majority of the votes in the  
2-49 election held under Section 33B of this Act do not favor  
2-50 dissolution, not later than the 60th day after the date of this  
2-51 election, the Texas Commission on Environmental Quality shall  
2-52 appoint a conservator for the purpose of rehabilitating the  
2-53 District. The individual appointed must have demonstrated a high  
2-54 level of expertise in water utility management.

2-55 Sec. 34A. POWERS AND DUTIES OF CONSERVATOR. (a) If a  
2-56 conservator is appointed under Section 34 or 34B of this Act, the  
2-57 Board shall work cooperatively with the Conservator in  
2-58 rehabilitating the Board in its ability to manage and operate the  
2-59 District in a professional manner.

2-60 (b) The Conservator shall:

2-61 (1) supervise the daily management of the District;

2-62 (2) take immediate action to ensure that the assets of  
2-63 the District are protected and that the quality of service provided  
2-64 to District customers is improved to the highest level reasonably  
2-65 practicable under the circumstances;

2-66 (3) develop a comprehensive rehabilitation plan for  
2-67 the District; and

2-68 (4) report monthly to the Texas Commission on  
2-69 Environmental Quality and to any committee with direct oversight

3-1 authority over the District regarding:  
3-2 (A) the financial, managerial, technical, and  
3-3 operational status of the District under the conservatorship;  
3-4 (B) the actions the Conservator has taken to  
3-5 ensure that the District complies with the plan developed under  
3-6 Subdivision (3) of this Subsection; and  
3-7 (C) the progress the Conservator has made towards  
3-8 completion of the plan developed under Subdivision (3) of this  
3-9 Subsection.  
3-10 (c) The comprehensive rehabilitation plan must:  
3-11 (1) identify strategies for restoring the District's  
3-12 financial integrity and for developing a system of sound financial  
3-13 management;  
3-14 (2) describe a standard of ethics, professionalism,  
3-15 and openness expected of each member of the Board and employees of  
3-16 the District and a mechanism for enforcing compliance with District  
3-17 policies, including procurement policies;  
3-18 (3) address ways to enhance the District's operational  
3-19 efficiency;  
3-20 (4) as an integral part of rehabilitating the  
3-21 District, devise a program for:  
3-22 (A) educating the Board of Directors and key  
3-23 management personnel on improving management practices, on  
3-24 complying with Board policy and applicable laws and regulations,  
3-25 and on implementing needed reforms for the District; and  
3-26 (B) developing greater technical expertise on  
3-27 the part of District employees;  
3-28 (5) identify District assets that, if sold, would  
3-29 likely improve the District's ability to serve its remaining  
3-30 customers;  
3-31 (6) ensure that any assets identified in Subdivision  
3-32 (5) of this Subsection that are sold are sold at fair market value;  
3-33 (7) ensure that any entity that acquires a District  
3-34 asset is responsible for all transaction costs related to the  
3-35 acquisition, including the cost of defending the State against  
3-36 legal challenges to the disposition of the asset; and  
3-37 (8) inventory and evaluate the discrete water systems  
3-38 that the District comprises and determine:  
3-39 (A) the District's basis in or the intrinsic  
3-40 value of the infrastructure associated with each water system;  
3-41 (B) the District's bonded debt and commercial  
3-42 paper reasonably associated with or allocable to the infrastructure  
3-43 of each water system;  
3-44 (C) the adequacy of the source of the water  
3-45 supply, such as wells, located in each water system's service area  
3-46 to supply the current and projected demands generated in that  
3-47 service area;  
3-48 (D) the adequacy of the water storage facilities  
3-49 located in each water system's service area to supply the current  
3-50 and projected demands generated in that service area; and  
3-51 (E) the adequacy of the distribution system  
3-52 located in each water system's service area to supply the current  
3-53 and projected demands generated in that service area.  
3-54 (d) The term of the Conservator continues until the earlier  
3-55 of:  
3-56 (1) the end of a period of 18 months; or  
3-57 (2) the Conservator reports that the District has been  
3-58 sufficiently rehabilitated to provide reliable, cost-effective,  
3-59 quality service to its customers, and the Texas Commission on  
3-60 Environmental Quality, after performing a confirmation review,  
3-61 concurs with the Conservator's report that the District has been  
3-62 sufficiently rehabilitated to ensure that it can serve its  
3-63 customers in a professional manner and that conservatorship is no  
3-64 longer necessary.  
3-65 (e) Funding for the conservatorship shall be provided by the  
3-66 District and approved by the Commission.  
3-67 (f) The Conservator may not take any action that:  
3-68 (1) will impair the District's ability to collect  
3-69 revenues, fees, or charges:

4-1 (A) for operating District systems; or  
4-2 (B) necessary for the payment of any bonds,  
4-3 commercial paper notes, or any other financial obligation; or  
4-4 (2) would cause an event of default under any  
4-5 provision of any indenture, contract, order, or other financial  
4-6 instrument creating any such obligation.

4-7 (g) The appointment of the Conservator is not conditioned on  
4-8 or a result of an insolvency or bankruptcy proceeding or an  
4-9 inability of the District to pay its debts.

4-10 (h) The Conservator may not be a receiver, trustee,  
4-11 custodian, or liquidator of the District's system or other  
4-12 property.

4-13 Sec. 34B. APPOINTMENT OF NEW CONSERVATOR. (a) If the  
4-14 Texas Commission on Environmental Quality determines that, after a  
4-15 reasonable period, the Conservator has not made satisfactory  
4-16 progress in implementing the comprehensive rehabilitation plan,  
4-17 the Commission shall appoint a new Conservator.

4-18 (b) The Texas Commission on Environmental Quality shall  
4-19 adopt rules providing for filling a vacancy in the position of  
4-20 Conservator.

4-21 SECTION 4. CREATION OF SUBSEQUENT CONSERVATORSHIP.  
4-22 Effective June 1, 2011, Chapter 306, Acts of the 49th Legislature,  
4-23 Regular Session, 1945, is amended by adding Section 34C to read as  
4-24 follows:

4-25 Sec. 34C. SUBSEQUENT CONSERVATOR. (a) The Texas  
4-26 Commission on Environmental Quality shall appoint a subsequent  
4-27 Conservator for the District if the Commission determines that  
4-28 after the termination of an earlier conservatorship under Section  
4-29 34A of this Act, the District has:

4-30 (1) obstructed the Commission's authority to supervise  
4-31 the District;

4-32 (2) violated a final order of the Commission;

4-33 (3) caused a potential health hazard by failing to  
4-34 provide appropriate water or wastewater treatment to District  
4-35 customers;

4-36 (4) caused a potential health hazard, extended  
4-37 outages, or repeated service interruptions by failing to adequately  
4-38 maintain District facilities;

4-39 (5) displayed a pattern of hostility towards the  
4-40 Commission or repeatedly failed to respond to the Commission or to  
4-41 District customers;

4-42 (6) engaged in a pattern of:

4-43 (A) noncompliance with laws or regulations; or

4-44 (B) unethical conduct and unprofessional  
4-45 management practices;

4-46 (7) abandoned the operation of its facilities;

4-47 (8) had a majority of its Board of Directors resign;

4-48 (9) engaged in financial improprieties; or

4-49 (10) provided unreliable service that impairs the  
4-50 quality of life of its customers or diminishes the prospects for  
4-51 economic growth within the District.

4-52 (b) An individual appointed Conservator under this Section  
4-53 must have demonstrated a high level of expertise in water utility  
4-54 management and shall have all the powers and duties assigned to a  
4-55 Conservator under Section 34A of this Act.

4-56 SECTION 5. OVERSIGHT COMMITTEE: COMPOSITION; REPORT.  
4-57 Section 33A, Chapter 306, Acts of the 49th Legislature, Regular  
4-58 Session, 1945, is amended by amending Subsection (c) and adding  
4-59 Subsection (g) to read as follows:

4-60 (c) The oversight committee is comprised of five [5] members  
4-61 appointed as follows [~~to represent the following members~~]:

4-62 (1) a [~~the~~] Senator who represents a Senate district  
4-63 that includes territory within the District, [~~sponsor of this Act,~~  
4-64 ~~or, in the event this Senator cannot serve, a Senator~~] appointed by  
4-65 the Lieutenant Governor;

4-66 (2) a Representative who represents a [~~the~~] House  
4-67 district that includes territory within the District, [~~author of~~  
4-68 ~~this Act, or, in the event this Representative cannot serve, a~~  
4-69 ~~Representative~~] appointed by the Speaker of the Texas House of

5-1 Representatives;

5-2 (3) one member of the Senate Committee on Natural

5-3 Resources [with special expertise in the operation of public water

5-4 utilities] appointed by the Lieutenant Governor;

5-5 (4) one member of the House Committee on Natural

5-6 Resources appointed by the Speaker of the Texas House of

5-7 Representatives; and

5-8 (5) one member appointed by the Governor to represent

5-9 the public[, ~~and~~

5-10 [~~(5) a member of the Bexar County Commissioners Court~~

5-11 ~~who represents a precinct in which customers of the District~~

5-12 ~~reside]~~.

5-13 (g) On or before December 31, 2010, the oversight committee

5-14 shall provide a report under Subsection (e) of this Section to the

5-15 82nd Legislature. The committee is abolished and this Section

5-16 expires on January 1, 2011.

5-17 SECTION 6. NOTICE. (a) The legal notice of the intention

5-18 to introduce this Act, setting forth the general substance of this

5-19 Act, has been published as provided by law, and the notice and a

5-20 copy of this Act have been furnished to all persons, agencies,

5-21 officials, or entities to which they are required to be furnished

5-22 under Section 59, Article XVI, Texas Constitution, and Chapter 313,

5-23 Government Code.

5-24 (b) The governor, one of the required recipients, has

5-25 submitted the notice and Act to the Texas Commission on

5-26 Environmental Quality.

5-27 (c) The Texas Commission on Environmental Quality has filed

5-28 its recommendations relating to this Act with the governor, the

5-29 lieutenant governor, and the speaker of the house of

5-30 representatives within the required time.

5-31 (d) All requirements of the constitution and laws of this

5-32 state and the rules and procedures of the legislature with respect

5-33 to the notice, introduction, and passage of this Act are fulfilled

5-34 and accomplished.

5-35 SECTION 7. EFFECTIVE DATE. Except as otherwise provided by

5-36 this Act, this Act takes effect immediately if it receives a vote of

5-37 two-thirds of all the members elected to each house, as provided by

5-38 Section 39, Article III, Texas Constitution. If this Act does not

5-39 receive the vote necessary for immediate effect, this Act takes

5-40 effect September 1, 2009, except as otherwise provided by this Act.

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