

BILL ANALYSIS

Senate Research Center

S.B. 341
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Natural Resources
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Bexar Metropolitan Water District (district) was created by the 49th legislature in 1945, to serve unexpected growth in Bexar County. From an initial account base of 4,765 primarily residential accounts, it has grown to more than 92,000 residential and commercial accounts today. Repeated and numerous customer complaints about inadequate service, unsafe water conditions, and excessive rates resulted in legislative intervention in 2007, with H.B. 1865, 80th Legislature, Regular Session, 2007, which created the Joint Committee on Oversight of the Bexar Metropolitan Water District (committee) to monitor operations, management, and governance of the district. The legislature also mandated operational and financial audits of the district by the state. The audits found a number of serious problems with the district, including financial improprieties, weak management, and a pattern of unethical conduct and unprofessional management practices by certain officials of the district. Attempts to put legislative remedies in place in 2009 were unsuccessful and oversight by the committee continued during the interim with findings that the district's board of directors is incapable of functioning as a policymaking body. The committee recommended that two bills be filed to address the district's situation. S.B. 341 would put a conservator in place at the district and would allow district customers who are registered voters to vote on dissolving the district and transferring its assets to the water utility owned by the municipality with a population of more than one million in the area served by the district in an election to be held in November 2011, or as soon as a Federal Voting Rights Act preclearance would allow.

As proposed, S.B. 341 amends current law relating to the appointment of a conservator for and authorizing the dissolution of the district.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, by adding Sections 1A, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43, as follows:

Sec. 1A. Defines "district," "board," "director," "commission," and "committee."

Sec. 34. (a) Requires the Texas Commission on Environmental Quality (TCEQ) to appoint as conservator for the Bexar Metropolitan Water District (district) an individual who, at the time of the individual's appointment:

- (1) has demonstrated a high level of expertise in water utility management;
- (2) is not a member of the district board of directors (board); and
- (3) has no financial interest in the district or in any non-governmental entity that has a contract with the district or that is likely to develop a contractual relationship with the district.

(b) Provides that the conservator's term expires on the earlier of:

(1) the date the conservatorship for which the conservator is appointed dissolves under Section 39; or

(2) the date on which TCEQ appoints a receiver in Section 41, following an election held under Section 40 in which a majority of the votes favor dissolution.

Sec. 35. (a) Provides that a conservator appointed under Section 34 is entitled to receive a salary for performing those duties.

(b) Requires the district to pay the compensation of the conservator.

Sec. 36. (a) Entitles a conservator appointed under Section 34 to reimbursement of the reasonable and necessary expenses incurred by the conservator in the course of performing duties under Section 37.

(b) Requires the district to pay any reasonable and necessary expenses incurred by the conservator.

Sec. 37. (a) Requires the conservator to advise the board on matters relating to the district's rehabilitation. Requires the board to work cooperatively with the conservator to improve the board's ability to oversee the management and operation of the district in a professional manner.

(b) Requires the conservator, in addition to the duties under Subsection (a), to:

(1) complete an inventory of and evaluate each distinct water system in the district to determine:

(A) the district's basis in or the intrinsic value of the infrastructure associated with that water system;

(B) the district's bonded debt and commercial paper reasonably associated with or allocable to the infrastructure in the water system; and

(C) the adequacy of the water supply sources, water storage facilities, distribution systems, and related infrastructure to supply current and projected demands in that service area;

(2) identify any district assets whose sale would be likely to improve the district's ability to serve its remaining customers; and

(3) develop a comprehensive rehabilitation plan for the district that:

(A) identifies strategies for restoring the district's financial integrity and developing a system of sound financial management;

(B) describes a standard of ethics, professionalism, and openness expected of each director and employee of the district;

(C) provides a mechanism to enforce compliance with district policies, including procurement policies;

(D) identifies ways to enhance the district's operational efficiency and improve the district's provision of redundancy in water services to its ratepayers; and

(E) provides for education the new board members and management personnel and continuing education for existing board and management personnel on improving management practices and complying with district policy and state and federal laws and regulations.

Sec. 38. Requires the conservator to report to TCEQ and the legislative oversight committee regularly on the progress the conservator has made in carrying out the duties under Section 37.

Sec. 39. Requires the conservator, after the election referenced in Section 40 has been held, and if the majority of the votes in the election do not favor dissolution, to:

(a) report to TCEQ and the Joint Committee on Oversight of the Bexar Metropolitan Water District (committee) on whether the district can be sufficiently rehabilitated to provide reliable, cost-effective, quality service to its customers, and TCEQ shall evaluate the condition of the district and determine whether:

(1) the district can be sufficiently rehabilitated to enable the district to provide reliable, cost-effective, quality service to its customers; and

(2) the conservatorship is still necessary.

(b) Authorizes TCEQ, after determining that the district can be sufficiently rehabilitated and the conservator is no longer necessary, to issue an order dissolving the conservatorship.

Sec. 40. (a) Requires an election, on the next uniform election date after passage of this bill, to be held in the district on the question of dissolving the district and disposing of the district's assets and obligations.

(b) Requires the dissolution election to take place on the next uniform election date following preclearance under Section 5 of the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973c) if a dissolution election were precluded from taking place due to preclearance under the Voting Rights Act.

(c) Requires the election in Subsection (a) to be conducted by each county in which the district has territory. Requires the district to reimburse each county for the reasonable and customary costs of holding the elections.

(d) Requires Bexar, Medina, and Atascosa counties to be responsible for coordinating the election and to issue the order calling the election in their respective counties.

(e) Requires the order calling the election to state certain language.

(f) Provides that Section 41.001(a) (relating to requiring general and special elections to be held on certain dates), Election Code, does not apply to an election ordered under this section.

(g) Requires Bexar, Medina, and Atascosa counties to give notice of an election under this section by publishing once a week for two consecutive weeks a substantial copy of the election order in a newspaper with general circulation in the district. Requires the first publication of the notice to appear not later than the 35th day before the date of the election.

(h) Requires the ballot for an election under this section to be printed or otherwise prepared to permit voting for or against the proposition: "The dissolution of the Bexar Metropolitan Water District."

(i) Requires the results of an election, if a majority of the votes in an election under this section favor dissolution, to be certified to the secretary of state no later than ten days after the canvass of the results of the election.

(j) Requires the election to be held on the next uniform election date following the 60th day after the date of preclearance of Subsection (a) to the extent that Subsection (a) of this section is subject to preclearance under Section 5 of the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973c) and Subsection (a) has not received the appropriate preclearance in time to allow the counties to call an election on the date specified in Subsection (a).

Sec. 41. (a) Provides that if a majority of the votes in the election held under section 40 favor dissolution, the term of each person who is serving as director of the district on the date of the canvass of the election expires on that date. Requires TCEQ, not later than the 60th day after the date of the canvass of the election, to appoint a receiver for the purposes described by this section.

(b) Requires the receiver, under TCEQ's and the committee's oversight, to transfer or assign the rights and duties of the district associated with certain provisions of water services. Requires the receiver to issue a rebate to the ratepayers in the district in an amount sufficient to deplete the remaining funds if any funds remain after the payment of all debts of the district.

(c) Requires the receiver, after the district has paid all its debts and has disposed of all its money and other assets as prescribed by this section, to file a written report with TCEQ and the committee summarizing the receiver's actions in dissolving the district.

(d) Requires TCEQ, not later than the 60th day after the date TCEQ receives the report and determines that the requirements of this section have been fulfilled, to enter an order dissolving the district and releasing the receiver from any further duty or obligation.

Sec. 42. Provides that if the majority of votes favor dissolution in an election held under Section 40, this Act expires on the date TCEQ enters an order dissolving the district.

Sec. 43. (a) Provides that if the majority of votes in an election held under Section 40 do not favor dissolution, the conservator appointed under Section 34 continues to serve until the conservatorship is dissolved under Section 39.

(b) Authorizes TCEQ, in the event that the election results from an election held under Section 40 are not in favor of dissolution of the district, to order the district to implement any part of the rehabilitation plan and other recommendations developed under Section 37.

(c) Authorizes TCEQ, notwithstanding any other law, to assess a penalty against the district under Section 13.4152 (Administrative Penalty), Water Code, if the district fails to comply with a commission order issued under Subsection (b).

SECTION 2. Provides that all requirements of the constitution and the laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 7. Effective date: upon passage or September 1, 2011.