

- SUBJECT:** Changing the BexarMet Water District's powers and governing structure
- COMMITTEE:** Natural Resources — committee substitute recommended
- VOTE:** 6 ayes — Puente, Hamilton, Creighton, Gallego, Hilderbran, O'Day  
0 nays  
3 absent — Gattis, Guillen, Laubenberg
- WITNESSES:** For — Norman T. Dugas Jr., Real Estate Council of San Antonio; Vincent Jaskinia, Quintana Neighborhood Association; Michael Moore, Greater San Antonio Builders Association; Richard Perez, Kevin Wolff, San Antonio City Council; Sergio Chico Rodriguez, Bexar County Commissioners Court; Nelson Wolff, Bexar County Judge; (*Registered but did not testify*: Joe Aceves, Melissa Castro Killen, Bexar County; Larry G. Heimer, Martha Mangum, Real Estate Council of San Antonio; Scott Norman, Texas Association of Builders)
- Against — T. J. Connolly, Michael Morrison, Gil Olivares, Abel Ruiz, Adolfo Ruiz, Bexar Metropolitan Water District; and five others; (*Registered but did not testify*: Bert Bryan, Freddy Carrasco, Janie Carrasco, James Clement, Patricia Gonzalez, Guy E. Landez, Gloria Soto, Laura Stryjewski, Nancy L. Tribby, Brenda Walton, Edna Wigfall Crute, Bexar Metropolitan Water District)
- On — W. E. West Jr., Guadalupe Blanco River Authority
- BACKGROUND:** Ch. 306, Acts of the 49th Legislature, Regular Session, 1945 governs the Bexar Metropolitan Water District (BexarMet). BexarMet provides water service to approximately 80,000 residential and commercial accounts in seven non-contiguous districts primarily in Bexar County, although some accounts also exist in neighboring Comal, Medina, and Atascosa counties. BexarMet currently is governed by seven board members elected by owners of taxable property in the district.
- DIGEST:** CSHB 1565 would eliminate BexarMet's current governing structure. Under the bill, BexarMet would be governed by the Bexar County Commissioners Court, whose five members would serve as *ex officio*

directors of the district, meaning their status as board members would be by virtue of their membership on the commissioners court. For election purposes, the district's boundaries would be limited by the boundaries of Bexar County. BexarMet's board would not be entitled to receive fees of office.

The bill would eliminate from BexarMet's powers the authority to store, control, or conserve river and stream flood water or to prevent the escape of such water. The bill also would eliminate BexarMet's power to develop drainage systems to control storm and flood waters.

The bill would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

By transferring governance of BexarMet to the Bexar County Commissioners Court, CSHB 1565 would professionalize and improve governance of the troubled water district. The experience and resources offered by the commissioners court would enable improved service for customers who have endured problems with their water service for years.

BexarMet's troubles in recent years have been well documented. BexarMet customers have had to deal with low water pressure, high bills, harsh drought restrictions, and poor water quality. In addition, the former leadership at BexarMet drove the district deep into debt as it imprudently expanded its service area, leading to many of the organization's current difficulties. The utility's troubles also have stifled development in Bexar County, as developers have reported difficulty in providing new subdivisions with water hookups. The district has struggled with supply to the extent that water had to be delivered by trucks to some customers last summer. BexarMet needs the leadership and resources offered by the Bexar County Commissioners Court in order to effectively address these serious issues for their customers.

The Bexar County Commissioners Court possesses the institutional capacity to manage BexarMet effectively. The commissioners court is an established, professionalized public organization with the ability to cooperate with other interests in the area, specifically other water providers. The commissioners court possesses the experience necessary to develop and implement the types of cooperative, inter-local arrangements that will be necessary to ameliorate BexarMet's many problems.

Many water suppliers are governed entirely by unelected boards, such as the city of Austin's water utility, which is governed by a board of directors appointed by the Austin City Council. By contrast, the elected Bexar County Commissioners would be accountable to the vast majority of people living in BexarMet's service area.

The Bexar County Commissioners Court fully is capable of effectively running BexarMet. There is no requirement in current law that a water utility's governing members have experience related to their role. In fact, many current BexarMet board members had little to no experience running a water utility prior to their election. The elected members of the Bexar County Commissioners Court have a demonstrated commitment to public service. Among its members is a former state representative, state senator, San Antonio city council member, and San Antonio mayor. In addition, the current head of infrastructure services for Bexar County formerly was director of the San Antonio Water Service.

Although supporters of the existing BexarMet board are asking for additional time to fix problems with the utility, the Legislature has been more than patient while historical problems remain unaddressed. As recently as last summer, BexarMet customers again were forced to live with water quality and supply problems just as they have for years. While the utility has adopted a capital infrastructure plan, very little progress has been made to implement the plan, which likely will leave BexarMet struggling to deal with such conditions again this summer. It has become clear that the significant problems that must be tackled are too much for the existing board, and it is past time to make a change at BexarMet.

Doubt has been cast on the accounting practices used to justify BexarMet's \$8 million profit in 2006. Critics have charged that BexarMet has included as profit impact fees that by law cannot be used for repair or replacement of existing infrastructure. Increased revenue in 2006 largely was the result of increased fees and penalties related to higher usage during a period of very low rainfall, a questionable basis for asserting the utility's financial health.

Understandably, many of BexarMet's current employees are concerned about job security should the Bexar County Commissioners Court obtain control of the water district. However, representatives of the court publicly have expressed their intent to maintain as many of BexarMet's current employees as possible. Certainly some of the upper management may be

held responsible for any mismanagement, but mid-level and direct service employees have no reason to fear for their jobs. The commissioners court would not become involved in the day-to-day operations of the utility and instead would focus on financial and policy issues that require attention from the governing board.

Objections to CSHB 1565 based on voting rights considerations are off-base. Minority influence in BexarMet elections has been undermined due to low voter turnout. Consequently, in past BexarMet elections, minority-preferred candidates actually have lost in majority-minority districts. While the BexarMet board consists of four minority-preferred districts out of seven, the Bexar County Commissioners Court consists of four minority-preferred districts out of five. Thus, minority voters in BexarMet's service area actually could see their voice in BexarMet's management strengthened, conforming with federal Voting Rights Act provisions governing retrogression or dilution of minority voting strength.

The vast majority of BexarMet's users — approximately 80,000 — exist inside the Bexar County limits. For the very small number of users (fewer than 2,000) located outside of Bexar County, several options could be pursued. Those systems could be sold to water utilities operating in their areas, so that those users could receive service superior to that received from BexarMet to date. Alternately, those users could choose to remain part of BexarMet under an arrangement similar to one enjoyed by customers of a municipal water utility who live outside the incorporated area of the city providing water service. The commissioners court has expressed a willingness to work with those communities to determine the best course of action for their users.

**OPPONENTS  
SAY:**

CSHB 1565 would short-circuit a process of internal reform at BexarMet that has led to an overhauled and financially healthy utility. In recent years, many reform-minded candidates have been elected to BexarMet's governing board based on promises to get the district's financial house in order. This reform board has made good on these commitments, turning around a utility that lost more than \$900,000 in 2005 but yielded an \$8 million profit in 2006. The new board has overseen an improved bond rating for the organization, approved a \$30 million capital improvements budget, and developed a plan for improving infrastructure and securing a diverse supply of long-term water sources.

BexarMet has commissioned and released an independent audit demonstrating the utility's financial strength. This report has been made widely available to the public, demonstrating a confidence and openness that stands in marked contrast to past practice of the utility and that goes above and beyond standard practice of other utilities in the state.

Critics of BexarMet are letting historical problems with the utility cloud their judgment of the current board's performance, which has exceeded reasonable expectations. BexarMet's current board has been in place only for a few years, which is not enough time to address the numerous problems resulting from past mismanagement. The first priority of the reform board was to deal with the utility's financial problems. Now that these issues have been addressed, the board has demonstrated a commitment to address infrastructure and supply needs that have caused problems for BexarMet customers. The Legislature should remain patient as BexarMet improves its operations and refrain from truncating what so far has been a successful reform process.

CSHB 1565 would establish Bexar County as the only one in Texas to manage a water district, an unprecedented and potentially risky arrangement. The Bexar County Commissioners Court has no experience running a water utility, a challenging and demanding activity that requires full attention from the governing board.

The current board of directors is elected directly and exclusively by BexarMet's users, a valid system of oversight that has enabled the defeat of ineffective board members in the past. Direct election of board members by BexarMet users is the only way to ensure effective representation of all BexarMet's customers. In addition, minority voters currently are able to exert substantial influence in BexarMet's elections. Were BexarMet transferred to the Bexar County Commissioners Court, serious concerns would arise related to protection of minority voting rights and Voting Rights Act compliance.

No county has authority outside its boundaries, so there are substantial questions about the court's ability to manage areas of BexarMet existing outside the district. Under CSHB 1565, BexarMet water users in Comal, Medina, and Atascosa counties would be subject to the authority of a governing body over which they had no influence. These users would be placed in an unfair position compared to users in Bexar county, an

arrangement that could lead to neglect of users outside of Bexar county by the commissioners court.

NOTES:

While both versions of HB 1565 would place governance of the district under the Bexar County Commissioners Court, the committee substitute specifies that the commissioners would serve *ex officio* as the board of directors.