

**SUBJECT:** Changing the BexarMet board and oversight committee

**COMMITTEE:** Natural Resources — favorable, without amendment

**VOTE:** 8 ayes — Ritter, Beck, Hopson, Keffer, Larson, Lucio, Martinez Fischer, D. Miller

1 nay — T. King

2 absent — Creighton, Price

**SENATE VOTE:** On final passage, March 16 — 30-0

**WITNESSES:** No public hearing

**BACKGROUND:** Ch. 306, Acts of the 49th Legislature, Regular Session, 1945 governs the Bexar Metropolitan Water District (BexarMet). BexarMet provides water service to about 91,000 residential and commercial accounts in seven districts primarily in Bexar County, and in neighboring Comal, Medina, and Atascosa counties. BexarMet is governed by seven elected board members. Since 1996, ongoing court orders have amended the composition of the board, but none of them have been placed in statute.

Due to concerns about the management of BexarMet, the 80th Legislature in 2007 created the Joint Committee on Oversight of the Bexar Metropolitan Water District, which is charged with monitoring operations, management, and governance of BexarMet and providing reform recommendations to the Senate and House Natural Resources committees.

The current composition of the oversight committee includes one senator and one representative, one member with public water utility expertise, one member appointed by the governor to represent the public, and a member of the Bexar County Commissioners Court who represents a precinct where customers of BexarMet live.

The oversight committee's report to the 82nd Legislature recommends that

the Legislature allow BexarMet's customers to vote to dissolve the district and place it in conservatorship before the actual election was held.

DIGEST:

SB 271 would make several statutory changes to the BexarMet board. It would prescribe certain board of director eligibility and ethics requirements, and would require directors to complete a training program and file annual financial statements.

**Statutory changes to the composition of the board.** SB 271 would statutorily increase the BexarMet board of directors from five to seven members elected from single-member districts and would change the length of terms from six years each to staggered two-year terms in a uniform election in November 2011. These elections would be called, conducted, and canvassed according to the Election Code.

The board of directors would be required to revise each district after each census to reflect population changes and to conform with state law, the federal Voting Rights Act, and any applicable court order.

For two of the director's positions that would expire in 2012, BexarMet would be required to hold an election on a uniform election date in that year to elect the directors for those positions for terms that would expire on the uniform election date in November 2013. For the other two director's positions that would expire in 2012, BexarMet would be required to hold an election on the same uniform election date in that year to elect the directors for those positions for terms that expire on the uniform election date in November 2014. BexarMet would have to determine by lot which districts would elect directors to serve one-year terms and which would elect directors to serve two-year terms.

The bill would limit directors to three terms or a total of seven years of service. Vacancies on the board of directors would have to be filled by appointment until a successor was elected at the next scheduled election date.

Any four members of the board of directors would be a quorum.

A payment to a director for fees of office could not be made for a meeting that occurred in a different fiscal year from the one in which payment is

made.

**Board of director qualifications and requirements.** A director would have to be a qualified voter of the single-member district from which he or she was elected and would have to reside in that district for 12 continuous months immediately before the election filing deadline.

A candidate would have to:

- provide an affidavit stating that he or she viewed the attorney general's open government training video;
- obtain 200 signatures from individuals living in the district; and
- pay a \$250 filing fee or file a petition in lieu of the filing fee.

A director or candidate would not be able to accept a political contribution over \$500 in connection with each election.

A person elected or appointed as a director would have to complete a training program containing certain information on BexarMet management issues before he or she could vote, deliberate, or be counted as a member in attendance at a board meeting. The board of directors would be required to adopt rules regarding the completion of the training program. Failure to comply with these rules could result in removal from office.

A director would not be allowed to:

- accept or solicit a gift, favor, or service valued over \$50 that could influence him or her or that the director knew was being offered with the intent to influence;
- accept other employment or engage in a professional activity that would require or induce the disclosure of confidential information;
- accept other employment or compensation that could impair independent judgment;
- make personal investments that could conflict with the interests of the district;
- solicit, accept, or agree to accept any benefit for exercising official powers or performing an official duty in favor of another;
- have a personal interest in an agreement executed by BexarMet.

A director would have to file a financial statement with the Bexar County clerk by April 30th of each year. BexarMet would have to keep copies of these financial statements in its main office.

A director could be recalled for:

- incompetency or official misconduct;
- felony conviction;
- incapacity;
- failure to file a financial statement;
- failure to complete the training program; or
- failure to maintain residency within BexarMet.

If at least 10 percent of district voters submitted a petition requesting the recall of a director, the board would be required to mail a written notice of the petition and the date of its submission to each registered voter in the district within 10 days of the petition. The board would be required to order an election on the question of recalling the director within 30 days of the petition. A recall election could be held on any uniform election day.

All board reimbursements and expenditures would have to be approved by the board in a regularly scheduled meeting. The board could not select the same auditor to conduct an audit for more than three consecutive annual audits.

These requirements would apply to a member of the board of directors elected to the board on or after the effective date of the bill.

**Bexar Metropolitan Water District Oversight Committee.** SB 271 would expand the oversight committee from five to seven members, including:

- two senators, rather than one, appointed by the lieutenant governor, representing districts that included territory within BexarMet;
- two representatives, rather than one, appointed by the speaker, representing districts that included territory within BexarMet.

The oversight committee would be required to provide a report to the Legislature by December 31, 2012. The oversight committee would be abolished on January 1, 2013.

**Effective date.** The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS  
SAY:

BexarMet's troubles 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.

Water service is vital to the economic development of a community. The BexarMet board has repeatedly made decisions and acted in ways that run counter to the best interests of the community. Recent audits have revealed financial improprieties, weak management, and a pattern of unethical conduct, including campaign violations and unprofessional management practices by certain officials of the district.

Attempts to implement legislative remedies in 2009 were unsuccessful, and oversight by the BexarMet Oversight Committee continued during the interim with findings that the district's board of directors was incapable of functioning as a policymaking body. SB 271 would address board governance issues for the district by requiring term limits, continued oversight by the BexarMet Oversight Committee, board candidate qualifications, political contribution limits, board training requirements, ethics provisions, and board member recall provisions. It also would reflect a court ruling required an increase in the BexarMet board from five to seven members.

OPPONENTS  
SAY:

CSSB 341 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. BexarMet recently 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 practices of the utility and that goes above and beyond standard practices 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 for only a few years, which is not long enough to address the numerous problems resulting from past mismanagement. The first priority of the

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 making changes that would punish a reformed board and ultimately hurt the ratepayers.

SB 271 would require term limits for the board members of three terms or a total of seven years of service. The terms would be changed to staggered two-year terms. These terms are too short and would result in too much turnover at once. Further, it would trigger more elections, which can be costly. These elections costs would be passed on to ratepayers.