

## **BILL ANALYSIS**

Senate Research Center

S.B. 2440  
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Natural Resources  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Bexar Metropolitan Water District (BexarMet) was created by the legislature in 1945 to serve expected growth in Bexar County. BexarMet's initial service area in 1945 contained 4,765 primarily residential accounts; today, it exceeds 85,000 residential and commercial accounts.

Due to numerous and repeated customer complaints about boil-water orders, low pressure, watering restrictions, and unresponsive management, H.B. 1565, 80th Legislature, Regular Session, 2007, created the Bexar Metropolitan Water District Oversight Committee (oversight committee), and mandated operational and financial audits of BexarMet by the state.

According to the audits of BexarMet performed by state agencies pursuant to H.B. 1565, certain officials of BexarMet have engaged in a pattern of unethical conduct and unprofessional management practices. The audits found that disagreements between BexarMet and other entities and distrust among key management personnel and members of the board have hampered efforts by BexarMet to improve services for existing customers and to meet water supply needs of growing populations within its service areas. The audits also found that BexarMet has demonstrated weak management, engaged in financial improprieties and provided unreliable service, which threatens to impair the quality of life of its customers and diminish the prospects for economic growth within BexarMet.

After 18 months of intense scrutiny of BexarMet, the oversight committee concluded that legislative action is necessary and recommended that a conservator be appointed to manage BexarMet. This bill sets up a mechanism to put a conservator in place at BexarMet and allows BexarMet customers who are registered voters to determine the purpose of the conservator in an election to be held in November, 2009.

As proposed, S.B. 2440 amends current law relating to providing an oversight mechanism for the Bexar Metropolitan Water District, including enforcement authority, and authorizing a dissolution election.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to Texas Commission on Environmental Quality in SECTION 3 (Section 34B, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. LEGISLATIVE FINDINGS. Provides that the legislature finds that:

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

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

(B) disagreements regarding jurisdiction within the district and between the district and other entities and distrust among key management personnel and members of the board of directors of the district (board) have hampered efforts by

the district to improve services for existing customers and to meet water supply needs of growing populations within its service areas;

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

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

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

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

**SECTION 2. DISSOLUTION.** Amends Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, by adding Sections 33B, 33C, 33D, 33E, 33F, and 33G, as follows:

**Sec. 33B. ELECTION ON DISSOLUTION AND CONSERVATORSHIP.** (a) Requires the board, not later than October 1, 2009, to order an election on the appointment of a conservator for the purpose of dissolving the district.

(b) Requires that the election be held not later than the 60th day after the date the election is ordered.

(c) Requires that the order calling the election state: the nature of the election, including the proposition that is to appear on the ballot; the date of the election; the hours during which the polls will be open; and the location of the polling places.

(d) Provides that Section 41.001(a) (relating to certain election dates), Election Code, does not apply to an election ordered under this section.

**Sec. 33C. NOTICE OF ELECTION.** Requires the board to give notice of the election by publishing a substantial copy of the election order in a newspaper with general circulation in the district once a week for two consecutive weeks. Requires that the first publication appear at least 35 days before the date set for election.

**Sec. 33D. BALLOT.** Requires the ballot for the election to be printed to permit voting for or against the proposition: "The appointment of a conservator for the Bexar Metropolitan Water District for the purpose of dissolving the district."

**Sec. 33E. APPOINTMENT OF CONSERVATOR; ADMINISTRATION OF ASSETS.** (a) Requires a conservator, if a majority of the votes in the election ordered under Section 33B of this Act favor dissolution, to be appointed by the Texas Commission on Environmental Quality (TCEQ) not later than the 60th day after the date of the election.

(b) Requires the conservator to administer the property, assets, and debts until all funds have been disposed of and all district debts have been paid or settled.

**Sec. 33F. SALE OR TRANSFER OF ASSETS AND LIABILITIES.** (a) Prohibits the district, notwithstanding any other provision of this Act, from being dissolved unless the conservator provides for the sale or transfer of the district's assets and liabilities to another person or entity or until all of the district's outstanding indebtedness or contractual obligations have otherwise been repaid or discharged.

(b) Prohibits the dissolution of the district and the sale or transfer of the district's assets or liabilities from contravening a trust indenture or bond resolution relating to the outstanding bonds of the district. Provides that the dissolution and sale or transfer does not diminish or impair the rights of a holder of an outstanding bond, warrant, commercial paper note, or other obligation of the district.

(c) Requires that the sale or transfer of the district's assets and liabilities satisfy the debt, bond obligations, commercial paper notes, or any other financial obligation of the district in a manner that protects the interests of the residents of the district, including the residents' collective property rights in the district's assets. Prohibits the district from transferring or disposing of the district's assets except for due compensation unless the transfer is made to another governmental agency that serves the district and the transferred assets are to be used for the benefit of the residents of the district.

Sec. 33G. REPORT; DISSOLUTION ORDER. (a) Requires the conservator, after the district has paid all its debts and has disposed of all its assets and funds as prescribed by this Act, to file a written report with TCEQ summarizing the conservator's actions in dissolving the district.

(b) Requires TCEQ, not later than the 10th day after the date TCEQ receives the report and determines that the requirements of this Act as they relate to dissolution have been fulfilled, to enter an order confirming the dissolution of the district and ordering the termination of conservatorship established under Section 33E of this Act, as applicable.

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

Sec. 34. CONSERVATOR. Requires TCEQ, if a majority of the votes in the election ordered under Section 33B of this Act do not favor dissolution, not later than the 60th day after the date of this election, to appoint a conservator for the district. Requires the individual appointed to have demonstrated a high level of expertise in water utility management.

Sec. 34A. POWERS AND DUTIES OF CONSERVATOR. (a) Requires the board to be subject to the authority of a conservator appointed under Section 34 of this Act and requires the board to work cooperatively with the conservator in rehabilitating the board in its ability to manage and operate the district in a professional manner. Provides that the conservator, during the period of conservatorship, has all of the general authority held by the board immediately before the date conservatorship is established.

(b) Requires the conservator to take possession and control of the books, records, property, assets, and daily management of the district; take immediate action to ensure that the assets of the district are protected and that the quality of service provided to district customers is improved to the highest level reasonably practicable under the circumstances; develop a comprehensive rehabilitation plan for the district; and report monthly to TCEQ and to any committee with direct oversight authority over the district regarding: the financial, managerial, technical, and operational status of the district under the conservatorship; the actions the conservator has taken to ensure that the district complies with the plan developed under Subdivision (3) (relating to a comprehensive rehabilitation plan) of this subsection; and the progress the conservator has made towards completion of the plan developed under Subdivision (3) of this subsection.

(c) Requires the comprehensive rehabilitation plan to identify strategies for restoring the district's financial integrity and for developing a system of sound financial management; describe a standard of ethics, professionalism, and openness expected of each member of the board and employees of the district and a mechanism for enforcing compliance with district policies, including procurement policies; address ways to enhance the district's operational

efficiency; as an integral part of rehabilitating the district, devise a program for: educating the board of directors and key management personnel on improving management practices, on complying with board policy and applicable laws and regulations, and on implementing needed reforms for the district; and developing greater technical expertise on the part of district employees; identify district assets that, if sold, would likely improve the district's ability to serve its remaining customers; ensure that any assets identified in Subdivision (5) (relating to identifying district assets) of this subsection that are sold are sold at fair market value; ensure that any entity that acquires a district asset is responsible for all transaction costs related to the acquisition, including the cost of defending the state against legal challenges to the disposition of the asset; and inventory and evaluate the discrete water systems that the district comprises and determine: the district's basis in or the intrinsic value of the infrastructure associated with each water system; the district's bonded debt and commercial paper reasonably associated with or allocable to the infrastructure of each water system; the adequacy of the source of the water supply, such as wells, located in each water system's service area to supply the current and projected demands generated in that service area; the adequacy of the water storage facilities located in each water system's service area to supply the current and projected demands generated in that service area; and the adequacy of the distribution system located in each water system's service area to supply the current and projected demands generated in that service area.

(d) Provides that the term of the conservator continues until the conservator reports that the district has been sufficiently rehabilitated to provide reliable, cost-effective, quality service to its customers, and TCEQ, after performing a confirmation review, concurs with the conservator's report that the district has been sufficiently rehabilitated to ensure that it can serve its customers in a professional manner and that conservatorship is no longer necessary.

(e) Provides that when conservatorship is terminated under Subsection (d) of this section, the assets and management of the district return to the control of the board of directors.

(f) Requires that funding for the conservatorship be provided by the district and approved by TCEQ.

(g) Prohibits the conservator from taking any action that will impair the district's ability to collect revenues, fees, or charges for operating district systems, or necessary for the payment of any bonds, commercial paper notes, or any other financial obligation, or would cause an event of default under any provision of any indenture, contract, order, or other financial instrument creating any such obligation.

(h) Provides that the appointment of the conservator is not conditioned on or a result of an insolvency or bankruptcy proceeding or an inability of the district to pay its debts.

(i) Prohibits the conservator, except as provided by Subsection (j) of this section, from being a receiver, trustee, custodian, or liquidator of the district's system or other property.

(j) Authorizes the conservator, if a majority of the voters approve the dissolution of the district in an election held under Section 35 of this Act, to use any authority provided by this Act as necessary to accomplish the dissolution.

**Sec. 34B. ADDITIONAL ENFORCEMENT AUTHORITY.** (a) Authorizes TCEQ, notwithstanding any other law, if TCEQ determines that, after a reasonable period, the district has not made satisfactory progress in rehabilitating its management and related operations, to use the auditing and enforcement authority provided to TCEQ by Chapters 36 (Groundwater Conservation Districts) and 49 (Provisions Applicable to All Districts),

Water Code, to address deficiencies on the part of the district or to recommend dissolution as provided by Section 35 of this Act.

(b) Requires TCEQ, if TCEQ determines that, after a reasonable period, the conservator has not made satisfactory progress in implementing the comprehensive rehabilitation plan and TCEQ has not determined that the district must be dissolved, to appoint a new conservator.

(c) Requires TCEQ to adopt rules providing for filling a vacancy in the position of conservator.

**SECTION 4. CREATION OF SUBSEQUENT CONSERVATORSHIP.** Effective June 1, 2011, amends Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, by adding Section 34C, as follows:

**Sec. 34C. SUBSEQUENT CONSERVATOR.** (a) Requires TCEQ to appoint a subsequent conservator for the district if TCEQ determines that after the termination of an earlier conservatorship under Section 34A of this Act, the district has obstructed TCEQ's authority to supervise the district; violated a final order of TCEQ; caused a potential health hazard by failing to provide appropriate water or wastewater treatment to district customers; caused a potential health hazard, extended outages, or repeated service interruptions by failing to adequately maintain district facilities; displayed a pattern of hostility towards TCEQ or repeatedly failed to respond to TCEQ or to district customers; engaged in a pattern of noncompliance with laws or regulations; or unethical conduct and unprofessional management practices; abandoned the operation of its facilities; had a majority of its board of directors resign; demonstrated weak management; engaged in financial improprieties; or provided unreliable service that impairs the quality of life of its customers or diminishes the prospects for economic growth within the district.

(b) Requires an individual appointed conservator under this section to have demonstrated a high level of expertise in water utility management and to have all the powers and duties assigned to a conservator under Section 34A of this Act.

(c) Provides that, for a conservatorship created under this section, TCEQ has the additional enforcement authority assigned to it under Section 34B of this Act.

**SECTION 5. OVERSIGHT COMMITTEE: COMPOSITION; REPORT.** Amends Section 33A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, by amending Subsection (c) and adding Subsection (g), as follows:

(c) Provides that the oversight committee is comprised of five members appointed as follows: a senator who represents a senate district that includes territory within the district, appointed by the lieutenant governor; a representative who represents a house district that includes territory within the district, appointed by the speaker of the Texas house of representatives; one member of the Senate Committee on Natural Resources appointed by the lieutenant governor; one member of the House Committee on Natural Resources appointed by the speaker of the Texas House of Representatives; and one member appointed by the governor to represent the public. Deletes existing text providing that the oversight committee is comprised of 5 members appointed to represent the following members: the senator sponsor of this Act, or, in the event this senator cannot serve, a senator appointed by the lieutenant governor; the house author of this Act, or, in the event this representative cannot serve, a representative appointed by the speaker of the Texas House of Representatives; one member with special expertise in the operation of public water utilities appointed by the governor; one member appointed by the governor to represent the public; and a member of the Bexar County commissioners court who represents a precinct in which customers of the district reside.

(g) Requires the oversight committee, on or before December 31, 2010, to provide a report under Subsection (e) of this section to the 82nd Legislature. Provides that the committee is abolished and this section expires on January 1, 2011.

SECTION 6. DISSOLUTION BY ELECTION AFTER FAILED REHABILITATION. Amends Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, by adding Section 35 and Sections 35A through 35E, as follows:

Sec. 35. RECOMMENDATION OF DISSOLUTION; ELECTION. (a) Authorizes TCEQ, if TCEQ makes an affirmative determination under Subsection (a), Section 34B of this Act, to recommend that the district be dissolved, in which case the conservator is required to order an election on the proposed dissolution.

(b) Authorizes the district to be dissolved only on approval of a majority of the voters voting in an election held for that purpose.

(c) Requires that the election be held not later than the 60th day after the date the election is ordered.

(d) Requires that the order calling the election state the nature of the election, including the proposition that is to appear on the ballot; the date of the election; the hours during which the polls will be open; and the location of the polling places.

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

Sec. 35A. NOTICE OF ELECTION. Requires the conservator to give notice of the election by publishing a substantial copy of the election order in a newspaper with general circulation in the district once a week for two consecutive weeks. Requires that the first publication appear at least 35 days before the date set for election.

Sec. 35B. BALLOT. Sets forth the required language of the ballot.

Sec. 35C. ADMINISTRATION OF ASSETS. Requires the conservator, if a majority of the votes in the election ordered under Section 35 of this Act favor dissolution, to administer the property, assets, and debts until all funds have been disposed of and all district debts have been paid or settled.

Sec. 35D. SALE OR TRANSFER OF ASSETS AND LIABILITIES. (a) Prohibits the district, notwithstanding any other provision of this Act, from being dissolved unless the conservator provides for the sale or transfer of the district's assets and liabilities to another person or entity or until all of the district's outstanding indebtedness or contractual obligations have otherwise been repaid or discharged.

(b) Prohibits the dissolution of the district and the sale or transfer of the district's assets or liabilities from contravening a trust indenture or bond resolution relating to the outstanding bonds of the district. Provides that the dissolution and sale or transfer does not diminish or impair the rights of a holder of an outstanding bond, warrant, commercial paper note, or other obligation of the district.

(c) Requires that the sale or transfer of the district's assets and liabilities satisfy the debt, bond obligations, commercial paper notes, or any other financial obligation of the district in a manner that protects the interests of the residents of the district, including the residents' collective property rights in the district's assets. Prohibits the district from transferring or disposing of the district's assets except for due compensation unless the transfer is made to another governmental agency that serves the district and the transferred assets are to be used for the benefit of the residents of the district.

Sec. 35E. REPORT; DISSOLUTION ORDER. (a) Requires the conservator, after the district has paid all its debts and has disposed of all its assets and funds as prescribed by this Act, to file a written report with TCEQ summarizing the conservator's actions in dissolving the district.

(b) Requires TCEQ, not later than the 10th day after the date TCEQ receives the report and determines that the requirements of this Act as they relate to dissolution have been fulfilled, to enter an order confirming the dissolution of the district and ordering the termination of conservatorship established under Section 34, 34B, or 34C of this Act, as applicable.

SECTION 7. NOTICE. (a) Provides that the legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution, and Chapter 313 (Notice For Local and Special Laws), Government Code.

(b) Provides that the governor, one of the required recipients, has submitted the notice and Act to TCEQ.

(c) Provides that TCEQ has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) Provides that all requirements of the constitution and 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 8. Effective date: upon passage or September 1, 2009.