

SUBJECT: Conservatorship and dissolution of the BexarMet Water District

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Ritter, T. King, Beck, Keffer, Larson, Lucio, Martinez Fischer,
D. Miller, Price

0 nays

2 absent — Creighton, Hopson

WITNESSES: For — John Clamp, City of San Antonio; Norman Dugas, Real Estate Council of San Antonio and Greater San Antonio Builders Association; Stephanie Johns, Councilman John Clamp – City of San Antonio District 10; Richard Perez, The Greater San Antonio Chamber of Commerce; Ann Marie King-Wethern; J. Thomas Kirby; Albert Ochoa; James Poage; (*Registered, but did not testify*: Carlos Contreras, City of San Antonio; Thomas Guevara, Bexar County Commissioners Court; David Mintz, San Antonio Apartment Association; Scott Norman, Texas Association of Builders; Ken Whalen, Texas Daily Newspaper Association and Texas Press Association)

Against — Olga Barajas, Deena Borden, Rosalinda Camacho, Minerva Diaz, Madeleine Garcia, Humberto Ramos, Nathan Riggs, John Shackelford, Robert Villareal II, and Rosalinda Villanueva, BexarMet Water District; Guadalupe Lopez, BexarMet Water District Board of Directors; Lesley Wenger, BexarMet District 6 constituents; Dean Davenport, Water Exploration Company; Gina Castaneda; James Clement; Debra Eaton; (*Registered, but did not testify*: Irael Guerra, Melissa Killen, Jesse Morin, and Rogelio Placencia, Bexar Metropolitan Water District; Roe Gawlik; Rolando Rios; Alfred Rocha)

On — Keith Martin and Robert Puente, San Antonio Water System; (*Registered, but did not testify*: Don Durden; BexarMet Legislative Oversight Committee; Rhonda Harris)

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 non-contiguous districts primarily in Bexar County, although some accounts also exist in neighboring Comal, Medina, and Atascosa counties. BexarMet is governed by seven board members elected by owners of taxable property in the district.

As of December 2010, BexarMet had 343 employees, with 253 earning less than \$40,000 per year.

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.

In the oversight committee's report to the 82nd Legislature, it recommends that the Legislature provide BexarMet's customers the opportunity to vote to dissolve the district and place it in conservatorship before the actual election is held.

DIGEST:

CSHB 648 would establish a conservator for the Bexar Metropolitan Water District (BexarMet). It would provide for an election to dissolve BexarMet and for changes to BexarMet if the voters did not choose to dissolve the district. It would provide guidelines for the transfer of assets and liabilities to the San Antonio Water System (SAWS) if the voters did choose to dissolve the district, including protections for certain BexarMet employees.

Establishment of conservatorship. The Texas Commission on Environmental Quality (TCEQ) would be required to appoint for BexarMet a conservator who had demonstrated a high level of expertise in water utility management, was not a BexarMet director, and had no financial interest in BexarMet.

The BexarMet board of directors would be required to work with the conservator to identify the policies, assets, liabilities, and resources of BexarMet.

The conservator would be required to:

- evaluate and complete an inventory of each distinct water system in BexarMet;

- identify any BexarMet assets whose transfer would improve BexarMet's overall efficiency or whose transfer to San Antonio Water System (SAWS) would improve service to the former customers of BexarMet who would be served by SAWS;
- compile a list and copies of existing contracts to which BexarMet was a party;
- compile a list of BexarMet property, rights, staff, and internal policies; and
- develop a comprehensive rehabilitation plan for BexarMet.

If the conservator reported to the TCEQ that BexarMet had sufficiently rehabilitated, TCEQ would be required to determine whether BexarMet could provide reliable, cost-effective, quality service to its customers and that conservatorship no longer was necessary. If TCEQ determined the conservatorship was no longer necessary, it would be required to dissolve the conservatorship within 60 days of the report.

TCEQ could order BexarMet to implement any part of its rehabilitation plan. If they failed to do so, TCEQ could assess a penalty.

The conservator would be required to provide quarterly progress reports to TCEQ and the Bexar Metropolitan Water District Oversight Committee. At the conservator's request, the State Auditor's Office could audit BexarMet at BexarMet's expense.

District dissolution election and effective dates. On the next uniform election date following the date of preclearance under the federal Voting Rights Act, the TCEQ would be required to hold an election in the district on the question of dissolving BexarMet and disposing of the BexarMet's assets and obligations. If the TCEQ determined that preclearance of the Voting Rights Act was not required, TCEQ would hold the election on the next uniform election date after the date that determination was made. CSHB 648 would provide certain election notice requirements.

The ballot for an election would have to be printed to permit voting for or against the proposition: "The dissolution of the Bexar Metropolitan Water District and the transfer of all the District's assets, obligations, and duties to the water utility of the municipality with the largest population in the area served by the District."

If the proposition were approved by the voters, transfer of BexarMet assets and liabilities would take effect on the date the results were officially declared.

Changes to BexarMet if voters did not dissolve the district. If the voters did not approve the proposition, certain changes would be made to BexarMet, including the terms and election dates of board members. Four members would constitute a quorum, and the board of directors would be required to revise each district after each census to reflect population changes and to conform with state and federal law. Any board vacancies would be filled by appointment until the next election date.

CSHB 648 would provide certain board of director eligibility and ethics requirements. Directors also would be required to complete a training program, and file an annual financial statement.

CSHB 648 also would provide how a director could be recalled and for what misconduct.

Transfer of district assets and liabilities to the San Antonio Water System (SAWS) if voters dissolve BexarMet. If the voters dissolve BexarMet, the term of each BexarMet director would expire on the date of the election to dissolve the district.

Within 60 days of the election results being certified and under the oversight of the TCEQ and the BexarMet Oversight Committee, the conservator would transfer or assign to SAWS:

- rights and duties of BexarMet associated with the provision of water services, including existing contracts, assets, and obligations;
- files, records, and accounts of BexarMet, including those that pertain to the control, finances, management, and operation of BexarMet; and
- permits, approvals, and certificates necessary to provide water services.

Within 60 days of receiving the conservator's report summarizing the actions in dissolving BexarMet and determining the requirements have been fulfilled, TCEQ would be required to enter an order dissolving BexarMet and releasing the conservator from any further duty or obligation.

Within five years of the date the election results were certified in favor of dissolution, SAWS would be required to integrate the services and infrastructure of BexarMet into SAWS in a reasonable and orderly manner based on the location and condition of the infrastructure, debt obligations, costs and revenue, and potential impacts on the customers of BexarMet and SAWS. SAWS would be required to provide an annual report on the progress of integration to TCEQ.

Until the five year deadline for integration, SAWS could operate the former BexarMet as a special project under SAWS' existing senior lien revenue bond ordinances.

Once the conservator transferred the assets, obligations, and duties to SAWS, and at least until the five-year deadline for integrations, SAWS would be required to provide affordable and reliable water services to all of the former ratepayers of BexarMet.

BexarMet employee protections. CSHB 648 would prohibit SAWS from terminating any former BexarMet employee, except for cause, for two years if the employee was vested in BexarMet's retirement program and earned an annual base salary of less than \$50,000 on the effective date of this act. If an employee who fit these qualifications were terminated by SAWS, that person would have the same opportunity for appeal as a person employed by SAWS who was not an employee of the former BexarMet.

SAWS would not be required to employ an employee of BexarMet if that person was formerly terminated from, or resigned in lieu of termination from SAWS.

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 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 has had to be delivered by trucks to some customers.

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. BexarMet customers have been forced to live with water quality and supply problems for years. It has become clear that the significant problems that must be tackled are too much, and it is past time to make a change at BexarMet. Even though BexarMet had been making progress and has been moving forward, it seems that for every step they take forward they take two steps back.

While there are concerns that the transition from the BexarMet electoral structure to the SAWS electoral structure could dilute minority voting representation, SAWS is owned by city of San Antonio, which has an electoral demographic very similar to BexarMet's. In addition, while there is concern that some BexarMet customers would not be able to vote for San Antonio City Council since they live outside the city limits, most BexarMet customers do live in the city limits, and about 70 percent of BexarMet customers are already SAWS sewer customers.

**OPPONENTS
SAY:**

CSHB 648 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 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 for only a few years, which is not enough time 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 truncating what so far has been a successful reform process.

Transferring BexarMet to SAWS could pose some significant voting rights issues. The transition from the BexarMet electoral structure to the SAWS electoral structure could dilute minority voting representation because BexarMet is made up of seven districts, several of which are minority districts. In a districtwide election, those minority votes could get diluted.

Another voting issue would involve BexarMet customers who live outside the city of San Antonio, which owns SAWS. Those customers outside the city limits would not have an opportunity to have their voice heard in decisions that the city would make regarding SAWS. This would place those customers in an unfair position compared to customers inside the San Antonio city limits. This arrangement could lead to lack of representation and neglect of those customers. It would be appropriate, at least, for the SAWS board to include three publically elected board positions to represent non-residents of the city of San Antonio.

NOTES:

The Senate companion bill, SB 341 by Uresti, passed the Senate by 29-1 (Zaffirini) on March 21 and was reported favorably, as substituted, by the House Natural Resources Committee on May 3.