

SUBJECT: Dissolution of the Bexar Metropolitan Water District

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — Ritter, Beck, Creighton, Hopson, Larson, Lucio, D. Miller, Price
1 nay — T. King
2 absent — Keffer, Martinez Fischer

SENATE VOTE: On final passage, March 21 — 29-1 (Zaffirini)

WITNESSES: *(On House companion bill, HB 648:)*
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, Bexar Metropolitan 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 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.

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.

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 is held.

DIGEST: CSSB 341 would require the Texas Commission on Environmental Quality (TCEQ) to evaluate the Bexar Metropolitan Water District (BexarMet) and to establish and oversee a rehabilitation plan. It would require a district-wide election or an alternative district-by-district election to dissolve BexarMet and would require changes to BexarMet if the voters chose not to dissolve the district. The bill would provide guidelines for the transfer of assets and liabilities to the San Antonio Water System (SAWS) if voters chose to dissolve the district, including protections for certain BexarMet employees and an advisory committee to provide representation to ratepayers living outside of the San Antonio city limits.

TCEQ evaluation of BexarMet. CSSB 341 would require TCEQ to evaluate BexarMet and to establish and oversee a rehabilitation plan.

Within 30 days of the effective date, TCEQ would have to begin an onsite evaluation of BexarMet. The evaluation would have to include:

- a complete inventory and evaluation of each distinct water system in BexarMet;

- a list of any BexarMet assets whose transfer to another appropriate public water utility would improve service to the former BexarMet customers who would be served by that utility or would improve BexarMet's overall efficiency;
- a list of existing contracts to which BexarMet was a party;
- a list of BexarMet property, rights, staff, and internal policies;
- a comprehensive rehabilitation plan for BexarMet;
- an assessment of BexarMet's ability to provide reliable, cost-effective, quality service to customers;
- a study of BexarMet's current infrastructure improvements; and
- a financial audit of BexarMet.

The bill would authorize TCEQ to employ or contract with any person necessary to carry out the evaluation, audit, or any other duties. All related expenses would have to be reimbursed by BexarMet. BexarMet also would be required to compensate any person employed or contracted with by TCEQ to carry out the necessary duties.

TCEQ would be required to evaluate the condition of BexarMet and determine whether it had been sufficiently rehabilitated to provide reliable, cost-effective, quality service to its customers.

If TCEQ found that BexarMet had not been rehabilitated, it could order BexarMet to implement any part of the rehabilitation plan. If BexarMet failed to comply, TCEQ could assess a penalty.

District-wide dissolution election. On the next uniform election date, the BexarMet board would be required to hold an election in the district on the question of dissolving BexarMet and disposing of its assets and obligations. The BexarMet board would be required to call the election within 90 days of the election date. The bill would prescribe 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 was approved by the voters, transfer of BexarMet assets and liabilities would take effect on the date the results were certified.

Alternate district-by-district election procedure. CSSB 341 would provide an alternative means of conducting an election on the question of dissolving BexarMet if the original election methods could not be used due to a final, unappealable administrative or judicial decision regarding the federal Voting Rights Act.

On the next uniform election date after such a decision, the election would have to be held in numbered voting districts established by BexarMet's board. The board would be required to draw each voting district to reflect population changes from the latest decennial census and to conform with state and federal law. The board would be required to certify the election results for each voting district, and BexarMet would be dissolved if the proposition were approved in a majority of the districts.

Changes to BexarMet if voters did not dissolve the district. If the voters did not approve the proposition, the bill would statutorily increase the BexarMet board of directors from five to seven members of single-member districts and would change the length of terms to which board members would be elected from six years each to staggered two-year terms in the uniform election in November 2011. 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, and any board vacancies would have to be filled by appointment until the next election date.

CSSB 341 would prescribe certain board of director eligibility and ethics requirements. Directors also would be required to complete a training program and file annual financial statements.

CSSB 341 would provide procedures for how a director could be recalled and for what types of misconduct.

Transfer of district assets and liabilities if voters dissolved BexarMet. If the voters dissolved BexarMet, the term of each director would expire on the date that election results were certified, and SAWS would assume control of the operations and management of BexarMet.

Within 90 days of the election results, TCEQ, in consultation with the BexarMet Oversight Committee, would have to transfer or assign to SAWS the:

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

This would not affect the position of any contracting party.

Within five years of the election results, SAWS would be required to integrate the services and infrastructure of BexarMet into SAWS based on the location and condition of the infrastructure, debt obligations, prudent utility practices and fiscal policies, 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 TCEQ transferred the assets, obligations, and duties to SAWS, SAWS would be required to provide affordable and reliable water services to all of the former ratepayers of BexarMet. Once the integration was complete, SAWS would be required to provide water service to former BexarMet ratepayers in the same way that it provided service to its other ratepayers.

If SAWS failed to integrate the services and infrastructure of BexarMet, TCEQ could impose an administrative penalty.

BexarMet employee protections. CSSB 341 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 salary of less than \$50,000. SAWS could not terminate an employee, except for cause, for five years if he or she met the above requirements and if the sum of the employee's age and years of service equaled 80. If an employee who fit these qualifications was terminated by SAWS, he or she would have the same opportunity for appeal as a SAWS employee 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.

Advisory committee for areas outside of the San Antonio city limits.
Within 60 days of BexarMet's dissolution, SAWS would be required to work with each county commissioner's court where the former BexarMet had been located to establish a committee to advise SAWS regarding the integration of the services and infrastructure of the former BexarMet, including service integration issues and the delivery of water services by SAWS in areas outside the San Antonio city limits.

The board of directors of SAWS would be required to consult with the advisory committee at least quarterly, and on request by the advisory committee chair, provide members of the committee an opportunity to address the SAWS board of trustees.

Except as otherwise provided, 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. 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 more time to fix problems with the utility, the Legislature has been exceedingly patient while historical problems remain unaddressed. BexarMet customers have been forced to live with water quality and supply problems for years. Clearly, the problems that must be tackled are too great, and change at BexarMet is long past due. Although BexarMet had been making progress, it seems to take two steps back for every step forward.

Despite concerns that the transition from the BexarMet electoral structure to the SAWS electoral structure could dilute minority voting representation, SAWS is owned by San Antonio, which has an electoral demographic very similar to BexarMet's. Also, the bill would provide an alternative district-by-district election if the original election was found to be in violation of the federal Voting Rights Act.

Despite concern that some BexarMet customers would not be able to vote in a San Antonio city council election 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. The bill would establish an advisory committee comprising former BexarMet customers living outside of the city limits. The advisory committee would advise SAWS on the integration of the former BexarMet services and infrastructure into SAWS. This would specify a method for ratepayers living outside of the city limits to directly advise and address the SAWS board of trustees.

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 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 consists of seven districts, several of which are minority districts. In a district-wide election, those minority votes could become diluted.

Another voting issue involves 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 made by the city regarding SAWS, placing 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.

While the bill provides some ratepayer protection by requiring that SAWS not divest itself of any of BexarMet's assets for five years, it would not provide any long-term protection against SAWS keeping the best assets of BexarMet and selling off those in the outlying and rural areas in less desirable circumstances.

This bill has strong local opposition. Resolutions in opposition to various aspects of CSSB 341 have been passed by the Atascosa County Commissioners Court, the city of Von Ormy, the Stone Oak Property Owners Association, the Canyon Regional Water Authority, the South Texas Regional Water Alliance, with representatives of the cities of Natalia, Castroville, and Charlotte and various neighboring rural water supplies. CSSB 341 is the wrong solution to a real problem. Any legislative solution should be carefully tailored to address the management problem at BexarMet, not to transfer the district to SAWS.

NOTES:

The companion bill, HB 648 by Menendez, was placed on the House General State Calendar on May 12, but no further action was taken.

The House committee substitute would make several changes to the Senate-passed version of the bill, including requiring TCEQ, instead of a conservator, to evaluate BexarMet and to establish and oversee a rehabilitation plan; providing an alternative district-by-district election if

the original election was found to violate the federal Voting Rights Act; requiring the BexarMet board to call the elections rather than TCEQ, and providing contract protections.