

## **BILL ANALYSIS**

Senate Research Center  
82R13447 SLB-F

C.S.S.B. 341  
By: Uresti, Wentworth  
Natural Resources  
3/10/2011  
Committee Report (Substituted)

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

The Bexar Metropolitan Water District (district) was created by the 49th legislature in 1945, to serve unexpected growth in Bexar County. From an initial account base of 4,765 primarily residential accounts, it has grown to more than 92,000 residential and commercial accounts today. Repeated and numerous customer complaints about inadequate service, unsafe water conditions, and excessive rates resulted in legislative intervention in 2007, through H.B. 1865, which created the Joint Committee on Oversight of the Bexar Metropolitan Water District (committee) to monitor operations, management, and governance of the district. The legislature also mandated operational and financial audits of the district by the state. The audits found a number of serious problems with the district, including financial improprieties, weak management, and a pattern of unethical conduct and unprofessional management practices by certain officials of the district. Attempts to put legislative remedies in place in 2009 were unsuccessful and oversight by the committee continued during the interim with findings that the district's board of directors is incapable of functioning as a policymaking body. The committee recommended that two bills be filed to address the district's situation.

C.S.S.B. 341 establishes a conservatorship for the district and would authorize district customers who are registered voters to vote to dissolve the district and transfer its assets to the water utility owned by the municipality with a population of more than one million in the area served by the district in an election to be held in November 2011, or as soon as a Federal Voting Rights Act preclearance would allow.

C.S.S.B. 341 amends current law relating to the appointment of a conservator for and authorizing the dissolution of the district and provides a penalty.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

#### **ARTICLE 1. CONSERVATORSHIP ESTABLISHED**

SECTION 1.01. Amends Section 1, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, to delete existing text referring to the Bexar Metropolitan Water District as the "district."

SECTION 1.02. Amends Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, by adding Sections 1A, 34, 35, 36, 37, 38, and 39, as follows:

Sec. 1A. Defines, in this Act, "board," "commission," "committee," "director," "district," and "system."

Sec. 34. (a) Requires the Texas Commission on Environmental Quality (TCEQ) to appoint as conservator for the Bexar Metropolitan Water District (district) an individual who, at the time of the individual's appointment:

(1) has demonstrated a high level of expertise in water utility management;

(2) is not a member of the district board of directors; and

(3) has no financial interest in the district or in any entity that has a contract with the district or that is likely to develop a contractual relationship with the district.

(b) Provides that the conservator's term expires on the date TCEQ determines that the duties of the conservator under this Act have been discharged.

Sec. 35. (a) Requires the conservator to use district staff to carry out the duties assigned to the conservator. Authorizes the conservator to hire up to three additional persons who will report to and assist the conservator if assistance from district staff is not provided, or the conservator needs special expertise from one or more of the persons.

(b) Entitles a conservator appointed under Section 34 and any additional persons hired by the conservator under this section to receive a salary determined by the executive director of TCEQ (executive director) for performing those duties.

(c) Requires the district to pay the compensation of the conservator and any additional persons hired by the conservator under this section.

(d) Requires the executive director to set the compensation of the conservator after considering the conservator's level of expertise in water utility management, and certifications and education.

Sec. 36. (a) Entitles a conservator appointed under Section 34 and the persons hired under Section 35 to reimbursement of the reasonable and necessary expenses incurred by the conservator or the persons hired under Section 35 in the course of performing duties under this Act.

(b) Requires the district to pay the expenses incurred by the conservator and the persons hired under Section 35. Requires the executive director to determine if an expense is reasonable and necessary after considering whether the expense is:

(1) necessary to complete the duties of the conservator as assigned by law;

(2) at or below the cost of a similar expense incurred by other utilities;

(3) documented by an invoice, bill, or work order that includes details relating to the time spent on services, or cost of supplies; and

(4) in accordance with procedures used to minimize expenses, including comparing vendor rates or competitive bidding.

Sec. 37. (a) Requires the district's board of directors (board) to work cooperatively with the conservator to identify the policies, assets, liabilities, and resources of the district.

(b) Requires the conservator to:

(1) complete an inventory of and evaluate each distinct water system in the district to determine:

(A) the district's basis in or the intrinsic value of the infrastructure associated with that water system;

(B) the district's bonded debt and commercial paper reasonably associated with or allocable to the infrastructure in the water system; and

(C) the adequacy of the water supply sources, water storage facilities, distribution systems located in that water system's service area to supply current and projected demands in that service area;

(2) identify any district assets whose transfer to another appropriate public water utility would be likely to improve:

(A) service to the former customers of the district who would be served by that utility; or

(B) the district's overall efficiency;

(3) compile a list and copies of existing contracts to which the district is a party, including for each contract:

(A) effective and termination dates;

(B) general scope of the property and services involved;

(C) obligations of the district, including financial obligations;

(D) how the district benefits from the contract; and

(E) whether the district has waived governmental immunity;

(4) compile a list of the following in regard to the district:

(A) property;

(B) rights, including certificates of convenience and necessity, pumping rights, and any other rights;

(C) staff; and

(D) internal policies, including employment rules, benefits, and an evaluation of the usefulness and efficiency of each policy;

(5) develop a comprehensive rehabilitation plan for the district that:

(A) identifies strategies for restoring the district's financial integrity and developing a system of sound financial management;

(B) describes a standard of ethics, professionalism, and openness expected of each director and employee of the district;

(C) provides a mechanism to enforce compliance with district policies, including procurement policies;

(D) identifies ways to enhance the districts operational efficiency and improve the district's provision of redundancy in water services; and

(E) provides for educating the board and management personnel on improving management practices and complying with district policy and state and federal laws and regulations; and

(6) assess the district's ability to provide reliable, cost-effective, quality service to customers, including an assessment of operations compared to the best management practices of modern utilities.

Sec. 38. Requires the conservator to report to TCEQ and the legislative oversight committee quarterly on the progress the conservator has made in carrying out the duties under Section 37.

Sec. 39. Authorizes the Office of the State Auditor (SAO), at the conservator's request, to audit the district under Chapter 321 (State Auditor), Government Code. Requires the district to reimburse SAO for the cost of the audit.

SECTION 1.03. Requires TCEQ, not later than the 60th day after the effective date of this Act, to appoint a conservator for the district as required by Section 34, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as added by this Act.

## ARTICLE 2. ELECTION; EFFECTIVE DATE OF ARTICLES 3 AND 4

SECTION 2.01. (a) Defines "commission" and "district" in this article.

(b) Requires TCEQ, on the next uniform election date following the date of preclearance under Section 5 of the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973c) of all provisions of the Act enacting this section that are subject to that preclearance, to hold an election in the district on the question of dissolving the district and disposing of the district's assets and obligations. Requires TCEQ, if TCEQ determines that preclearance under Section 5 of the federal Voting Rights Act of 1965 is not required, to hold the election of the next uniform election date after the date TCEQ makes that determination.

(c) Authorizes TCEQ to contract with another entity to conduct the election. Requires the district to pay any cost of conducting the election.

(d) Requires that the order calling the election state:

- (1) the nature of the election, including the proposition to appear on the ballot;
- (2) the date of the election;
- (3) the hours during which the polls will be open; and
- (4) the location of the polling places.

(e) Requires TCEQ to give notice of an election under this section by publishing once a week for two consecutive weeks a substantial copy of the election order in a newspaper with general circulation in the district. Requires that the first publication of the notice appear not later than the 35th day before the date of the election.

(f) Sets forth the required language for the ballot and requires it to be printed to permit voting for or against the proposition.

(g) Requires TCEQ to certify that a majority of the voters in the district have voted in favor of dissolution, or not in favor of dissolution.

SECTION 2.02. (a) Requires TCEQ, not later than the 20th day after the date on which the election results are officially declared, to certify that result to the secretary of state (SOS).

(b) Provides that if the proposition is approved by a majority of the voters voting in the election Article 3 of this Act does not take effect, and Article 4 of this Act takes effect on the date the results are officially declared.

(c) Provides that if the majority of the voters voting in the election do not approve the proposition Article 3 of this Act takes effect on the date the results are officially declared, and Article 4 of this Act does not take effect.

ARTICLE 3. CHANGES TO THE BEXAR METROPOLITAN WATER DISTRICT IF  
VOTERS DO NOT DISSOLVE THE DISTRICT UNDER ARTICLE 2

SECTION 3.01. Amends Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as follows:

Sec. 8. (a) Provides that the seven members of the board are elected to staggered two-year terms in an election held on the uniform election date in November. Provides that directors are elected from numbered single-member districts established by the board. Requires the board to revise each single-member district after each decennial census to reflect population changes and to conform with state law, the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.), and any applicable court order. Provides that at an election of directors, the candidate from each single-member district who receives the greatest number of votes is elected to represent that single-member district. Requires each director to hold office until his successor is elected or appointed and has qualified. Deletes existing text requiring five members of the board to hereafter be elected for a term of six years each, provided that an election for two directors for a term of six years is required to be held on the first Tuesday in April, 1954; requiring that the terms of three members of the present board, and are, hereby, extended to the first Tuesday in April, 1957; and requiring the present directors to determine such three by lot. Deletes existing text requiring three directors to be elected on the first Tuesday in April, 1957, and two directors and requiring three directors, alternately, to be elected each three years thereafter on the first Tuesday in April as the six-year terms expire. Deletes existing text requiring the two or three persons, respectively, receiving the greatest number of votes be declared elected. Makes nonsubstantive changes.

(a-1) Provides that a person is not eligible to serve as a director for more than three terms or for more than a total of seven years of service.

(b) Requires that such elections be called, conducted, and canvassed in the manner provided by the Election Code, rather than Chapter 25 (S.B. 169), General Laws of the Thirty-Ninth Legislature, Regular Session, 1925, and any amendments thereto.

(c) Requires the board to fill all vacancies on the board by appointment and requires such appointees to hold office until a successor elected at the next scheduled election date has qualified, rather than to hold office for the unexpired term for which they were appointed.

(d) Provides that any four members of the board, rather than any three members of the board, are a quorum for the adoption or passage of any resolution or order or the transaction of any business of the district. Makes nonsubstantive changes.

(e) Requires a director to be a qualified voter of the single-member district from which the director is elected. Deletes existing text requiring directors succeeding the first board, whether now or hereafter elected, to be qualified resident electors of Bexar County, Texas, and owners of taxable property within the area comprising said district, and to organize in like manner.

(f) Prohibits a payment to a director for fees of office under Section 49.060 (Fees of Office; Reimbursement), Water Code, from being made for a meeting that occurs in a different fiscal year from the one in which the payment is made. Makes nonsubstantive changes.

SECTION 3.02. 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 seven members appointed as follows:

- (1) two senators who represent senate districts that include territory within the district appointed by the lieutenant governor;
- (2) two representatives who represent House districts that include territory within the district, appointed by the speaker of the Texas House of Representatives;
- (3) one member with special expertise in the operation of public water utilities appointed by the governor;
- (4) one member appointed by the governor to represent the public; and
- (5) one member of the Bexar County Commissioners Court who represents a precinct in which customers of the district reside.

Deletes existing text providing that the oversight committee is comprised of five 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, 2012, to provide a report under Subsection (e) of this section to the legislature. Provides that the committee is abolished and this section expires January 1, 2013.

SECTION 3.03. Amends Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, by adding Sections 8A, 8B, 8C, 10A, and 10B, as follows:

Sec. 8A. (a) Requires a person, to be eligible to be a candidate for or to be elected or appointed as a director, to have:

- (1) resided continuously in the single-member district that the person seeks to represent for 12 months immediately preceding the date of the regular filing deadline for the candidate's application for a place on the ballot;
- (2) viewed the open government training video provided by the attorney general and provided to the board a signed affidavit stating that the candidate viewed the video;
- (3) obtained 200 signatures from individuals living in the district; and
- (4) paid a filing fee of \$250 or filed a petition in lieu of the filing fee that satisfies the requirements prescribed by Section 141.062 (Validity of Petition), Election Code.

(b) Defines "political contribution" and "specific-purpose committee" in this subsection. Prohibits a director or a candidate for the office of director from knowingly accepting political contributions from a person that in the aggregate exceed \$500 in connection with each election in which the person is involved. Provides that for purposes of this subsection, a contribution to a specific-purpose committee for the purpose of supporting a candidate for the office of director,

opposing the candidate's opponent, or assisting the candidate as an officeholder is considered to be a contribution to the candidate.

Sec. 8B. (a) Prohibits a person who is elected or appointed to and qualifies for office as a director on or after the effective date of this section from voting, deliberating, or being counted as a member in attendance at a meeting of the board until the person completes a training program on district management issues. Requires that the training program provide information to the person regarding:

- (1) the enabling legislation that created the district;
- (2) the operation of the district;
- (3) the role and functions of the board;
- (4) the rules of the board;
- (5) the current budget for the board;
- (6) the results of the most recent formal audit of the board;
- (7) the requirements of the:
  - (A) open meetings law, Chapter 551 (Open Meetings), Government Code;
  - (B) open records law, Chapter 552 (Public Information), Government Code; and
  - (C) administrative procedure law, Chapter 2001 (Administrative Procedure), Government Code;
- (8) the requirements of the conflict of interest laws and other laws relating to public officials; and
- (9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(b) Authorizes TCEQ to create an advanced training program designed for a person who has previously completed a training program described by Subsection (a) of this section. Provides that if TCEQ creates an advanced training program under this subsection, a person who completes that advanced training program is considered to have met the person's obligation under Subsection (a) of this section.

(c) Requires each director who is elected or appointed on or after the effective date of this section to complete a training program described by Subsection (a) or (b) of this section at least once in each term the director serves.

(d) Requires the board to adopt rules regarding the completion of the training program described by Subsection (a) or (b) of this section by a person who is elected or appointed to and qualifies for office as a director before the effective date of this section. Provides that a director described by this subsection who does not comply with board rules is considered incompetent as to the performance of the duties of a director in any action to remove the director from office.

(e) Prohibits a director from:

- (1) accepting or soliciting a gift, favor, or service, the value of which exceeds \$50 per gift, favor, or service, that:

(A) might reasonably influence the director in the discharge of an official duty; or

(B) the director knows or should know is being offered with the intent to influence the director's official conduct;

(2) accepting other employment or engaging in a business or professional activity that the director might reasonably expect would require or induce the director to disclose confidential information acquired by reason of the official position;

(3) accepting other employment or compensation that could reasonably be expected to impair the director's independence of judgment in the performance of the director's official duties;

(4) making personal investments that could reasonably be expected to create a substantial conflict between the director's private interest and the interest of the district;

(5) intentionally or knowingly soliciting, accepting, or agreeing to accept any benefit for having exercised the director's official powers or performed the director's official duties in favor of another; or

(6) having a personal interest in an agreement executed by the district.

(f) Requires a director, not later than April 30 each year, to file with the Bexar County clerk a verified financial statement complying with Sections 572.022 (Reporting Categories; Required Descriptions), 572.023 (Contents of Financial Statement in General), 572.024 (Information About Services for Lobbyists or Lobbyist Employers), and 572.0252 (Information About Referrals), Government Code. Requires the district to keep a copy of a financial statement filed under this section in the main office of the district.

Sec. 8C. (a) Authorizes a director to be recalled for:

(1) incompetency or official misconduct as defined by Section 21.022 (Definitions), Local Government Code;

(2) conviction of a felony;

(3) incapacity;

(4) failure to file a financial statement as required by Section 8B(f) of this Act;

(5) failure to complete a training program described by Section 8B(a) or (b) of this Act; or

(6) failure to maintain residency in the district.

(b) Requires the board, if at least 10 percent of the registered voters in a single-member voting district of the district submit a petition to the board requesting the recall of the director who serves that single-member voting district, not later than the 10th day after the date the petition is submitted, to mail a written notice of the petition and the date of its submission to each registered voter in the single-member voting district.

(c) Requires the board, not later than the 30th day after the date a petition requesting the recall of a director is submitted, to order an election on the question of recalling the director.

(d) Authorizes a recall election under this section to be held on any uniform election date.

(e) Provides that if a majority of the voters of a single-member voting district voting at an election held under this section favor the recall of the director who serves that single-member voting district, the director is recalled and ceases to be a director.

Sec. 10A. Requires that all board reimbursements and expenditures be approved by the board in a regularly scheduled meeting.

Sec. 10B. Prohibits the board from selecting the same auditor to conduct an audit required by Section 49.191 (Duty to Audit), Water Code, for more than three consecutive annual audits.

SECTION 3.04. Amends Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, by adding Sections 40 and 41, as follows:

Sec. 40. (a) Requires TCEQ, if the conservator reports to TCEQ that the district has been sufficiently rehabilitated to provide reliable, cost-effective, quality service to its customers, to evaluate the condition of the district and determine whether the district has been sufficiently rehabilitated to enable the district to provide reliable, cost-effective, quality service to its customers, and the conservatorship is no longer necessary.

(b) Requires TCEQ, not later than the 60th day after the date TCEQ receives a report under this section, to issue an order dissolving the conservatorship if TCEQ determines the conservatorship is no longer necessary.

Sec. 41. (a) Provides that the conservator appointed under Section 34 continues to serve until the conservatorship is dissolved under Section 40.

(b) Authorizes TCEQ to order the district to implement any part of the rehabilitation plan developed under Section 37.

(c) Authorizes TCEQ, if the district fails to comply with a TCEQ order, to assess a penalty against the district in the manner provided by Section 13.4151 (Administrative Penalty), Water Code.

SECTION 3.05. (a) Provides that Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as added by this Act, applies only to a member of the board who is elected to the board on or after the effective date of this Act.

(b) Makes application of Section 8A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as amended by this Act, to a member of the board who is elected to the board on or after the effective date of this Act, prospective.

(c) Requires the district, for two of the numbered single-member district director's positions that expire in 2012, to call and hold an election on a uniform election date in that year to elect the directors for those positions for terms that expire on the uniform election date in November 2013. Requires the district, for the other two of the director's positions that expire in 2012, to call and hold an election on a 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. Requires the district to determine by lot which single-member districts shall elect directors to serve one-year terms and which single-member districts shall elect directors to serve two-year terms.

ARTICLE 4. TRANSFER OF DISTRICT ASSETS AND LIABILITIES IF VOTERS  
DISSOLVE THE BEXAR METROPOLITAN WATER DISTRICT UNDER ARTICLE 2

SECTION 4.01. Amends Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, by adding Sections 50, 51, 52, 53, 54, 55, 56, and 57, as follows:

Sec. 50. (a) Provides that the term of each person who is serving as a director of the district on the date of the canvass of the election authorized by Article 2 of the Act enacting this section expires on that date.

(b) Requires the conservator, under TCEQ and the committee's oversight, to transfer or assign to a water utility owned by a municipality with a population of more than one million in an area served by the district (system), beginning not later than the 60th day after the date the election results are certified the:

(1) rights and duties of the district associated with the provision of water services, including existing contracts, assets, and obligations of the district;

(2) files, records, and accounts of the district, including those that pertain to the control, finances, management, and operation of the district; and

(3) permits, approvals, and certificates necessary to provide water services.

(c) Requires a state agency, to the extent that the transfer of an item listed in Subsection (b) requires the approval of the state agency, to grant approval without additional notice or hearing.

(d) Requires the conservator, after the conservator has transferred the property, assets, and liabilities as prescribed by this section, to file a written report with TCEQ and the committee summarizing the conservator's actions in dissolving the district.

(e) Requires TCEQ, not later than the 60th day after the date TCEQ receives the report and determines that the requirements of this section have been fulfilled, to enter an order dissolving the district and releasing the conservator from any further duty or obligation.

Sec. 51. Provides that this section expires on the fifth anniversary of the date TCEQ enters an order dissolving the district.

Sec. 52. (a) Requires the system, not later than five years after the date the election results were certified in favor of dissolution under Article 2 of the Act enacting this section, to integrate the services and infrastructure of the district into the system in a reasonable and orderly manner based on the consideration of relevant information, including:

(1) the location and condition of the infrastructure;

(2) debt obligations;

(3) costs and revenue; and

(4) potential impacts on the customers of the district and the system.

(b) Requires the system to provide an annual report on the progress of integration to TCEQ. Authorizes TCEQ for good cause to grant an extension to complete integration. Authorizes TCEQ, if the system fails to comply with the

requirements of this section, to assess a penalty against the system in the manner provided by Section 13.4151 (Administrative Penalty), Water Code.

(c) Authorizes the system, until the date specified in Subsection (a), to operate the former district as a special project under the system's existing senior lien revenue bond ordinances.

(d) Requires the system, once the conservator has transferred the assets, obligations, and duties to the system, and at least until the date specified in Subsection (a), to provide affordable and reliable water services to all of the former ratepayers of the district.

Sec. 53. (a) Prohibits the system, for a 24-month period following the transfer of the employment of any employee of the former district, from terminating that employee, except for cause, if the employee is vested in the retirement program of the district on the effective date of this Act, and earns an annual base salary of less than \$50,000 on the effective date of the Act enacting this section.

(b) Provides that an employee who qualifies under Subsection (a) and who is terminated by the system has the same opportunity for appeal as a person employed by the system who is not an employee of the former district.

(c) Provides that the system is not required to employ an employee of the district if that person was formerly terminated from, or resigned in lieu of termination from the system.

Sec. 54. Prohibits the attorney general, from the effective date of the Act enacting this section until the date election results dissolving the district are certified to SOS, from approving any public security, as defined by Chapter 1201 (Public Security Procedures Act), Government Code, of the district unless TCEQ consents in writing before approval, or the district provides written evidence that issuing the public security represents a refunding of outstanding debt for the purpose of realizing debt service savings in each year that outstanding obligations are refunded and that results in a cumulative net present value savings of three percent compared to refunded debt service.

Sec. 55. (a) Requires that a contract or other agreement entered into during the period from the effective date of the Act enacting this section until the date election results dissolving the district are certified to SOS, to which the district is a party include a provision that the contract or other agreement is subject to:

(1) review by the system; and

(2) termination by the system at the system's sole discretion, including the termination of all rights, duties, obligations, and liabilities of the district or the system under the contract or other agreement, if the contract or other agreement is assumed by the system.

(b) Provides that a person is not entitled to compensation for loss or other damages resulting from the termination of the contract or other agreement under Subsection (a)(2).

Sec. 56. Prohibits the district, from the effective date of the Act enacting this section until the date election results dissolving the district are certified to SOS, from disposing of, selling, transferring, assigning, impairing, or restricting any of the district's rights or assets outside the normal and customary course of business.

Sec. 57. Requires a state agency at which an administrative or enforcement action is pending to grant the district special consideration and reasonable extensions to identify and resolve the action in a manner satisfactory to the agency.

ARTICLE 5. NOTICE; EFFECTIVE DATE OF ACT

SECTION 5.01. Provides that all requirements of the constitution and the 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 5.02. Effective date, except as otherwise provided by Article 2: upon passage or September 1, 2011.