

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 30, 2009
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB2440 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Sen. Carlos Uresti

Rep. Frank Corte

Sen. Kip Averitt

Rep. Trey Martinez Fischer

Sen. Glenn Hegar

Rep. David Leibowitz

Sen. Leticia Van de Putte

Rep. Jose Menendez

Sen. Jeff Wentworth

Rep. Allan Ritter

On the part of the Senate
Sen. Jeff Wentworth

On the part of the House
Rep. Allan Ritter

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 2440

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of a conservator for and authorizing
the dissolution of the Bexar Metropolitan Water District.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) In this section:

(1) "Board" means the district's board of directors.

(2) "District" means the Bexar Metropolitan Water
District.

(b) Following 18 months of review and audits by agencies of
this state and by the Bexar Metropolitan Water District Oversight
Committee, the legislature finds that:

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

(2) disagreements regarding the district's
jurisdiction and the jurisdiction of other entities inside the
district and distrust between management personnel and the board
have prevented the district from improving services for existing
customers and meeting the water supply needs of the growing
population within the district's service area;

(3) the district has a history of noncompliance with
regulations;

(4) the board has engaged in mismanagement of the
district, allowing for financial improprieties;

(5) the district has provided unreliable service to

1 the degree that the quality of life of the district's customers is
2 impaired and the prospects for economic growth within the district
3 are diminished; and

4 (6) to ensure the reliability, sustainability,
5 quality, and affordability of water supply services to the
6 district's customers, legislative action is necessary, including
7 the appointment of a conservator to serve as an advisor to the board
8 until the district has achieved sufficient rehabilitation to serve
9 its customers in a professional, ethical, and reliable manner.

10 SECTION 2. Sections 1 and 8, Chapter 306, Acts of the 49th
11 Legislature, Regular Session, 1945, are amended to read as follows:

12 Sec. 1. In obedience to the provisions of Article 16,
13 Section 59 of the Constitution of Texas, there is hereby created
14 Bexar Metropolitan Water District. [~~hereinafter in this Act~~
15 ~~sometimes called the "District."~~]

16 Sec. 8. (a) [~~→~~] The seven [~~five (5)~~] members of the Board of
17 Directors are [~~shall hereafter be~~] elected to staggered four-year
18 terms in an election held on the uniform election date in November.
19 Directors shall be elected from numbered single-member districts
20 established by the Board. The Board shall revise each
21 single-member district after each decennial census to reflect
22 population changes and to conform with state law, the federal
23 Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.), and any
24 applicable court order [~~for a term of six (6) years each, provided~~
25 ~~that an election for two (2) Directors for a term of six (6) years~~
26 ~~shall be held on the first Tuesday in April, 1954, the terms of~~
27 ~~three (3) members of the present Board shall be, and are, hereby,~~

1 ~~extended to the first Tuesday in April, 1957, and the present~~
2 ~~Directors shall determine such three (3) by lot. Three (3)~~
3 ~~Directors shall be elected on the first Tuesday in April, 1957, and~~
4 ~~two (2) Directors and three (3) Directors, alternately, shall be~~
5 ~~elected each three (3) years thereafter on the first Tuesday in~~
6 ~~April as the six-year terms expire]. At an election of Directors,~~
7 ~~the candidate from each single-member district who receives [The~~
8 ~~two (2) or three (3) persons, respectively, receiving] the greatest~~
9 number of votes shall be declared elected to represent that
10 single-member district. Each Director shall hold office until his
11 successor shall have been elected or appointed and shall have
12 qualified. [†]

13 (b) Such [~~such~~] elections shall be called, conducted and
14 canvassed in the manner provided by the Election Code. [~~Chapter 25,~~
15 ~~General Laws of the Thirty-ninth Legislature, Regular Session,~~
16 ~~1925, and any amendments thereto,~~]

17 (c) The [~~the~~] Board of Directors shall fill all vacancies on
18 the Board by appointment and such appointees shall hold office for
19 the unexpired term for which they were appointed. [†]

20 (d) Any four [~~any three~~] members of the Board shall
21 constitute a quorum for the adoption of passage of any resolution or
22 order or the transaction of any business of the District. [†]

23 (e) A Director must [~~Directors succeeding the first Board,~~
24 ~~whether now or hereafter elected, shall]~~ be a qualified voter of the
25 single-member district from which the Director is elected [~~resident~~
26 ~~electors of Bexar County, Texas, and owners of taxable property~~
27 ~~within the area comprising said District, and shall organize in~~

1 ~~like manner~~].

2 SECTION 3. Section 33A, Chapter 306, Acts of the 49th
3 Legislature, Regular Session, 1945, is amended by amending
4 Subsection (c) and adding Subsection (g) to read as follows:

5 (c) The oversight committee is comprised of five [5] members
6 appointed as follows [~~to represent the following members~~]:

7 (1) a [the] Senator who represents a Senate district
8 that includes territory within the District, [~~sponsor of this Act,~~
9 ~~or, in the event this Senator cannot serve, a Senator~~] appointed by
10 the Lieutenant Governor;

11 (2) a Representative who represents a [the] House
12 district that includes territory within the District, [~~author of~~
13 ~~this Act, or, in the event this Representative cannot serve, a~~
14 ~~Representative~~] appointed by the Speaker of the Texas House of
15 Representatives;

16 (3) one member of the Senate Committee on Natural
17 Resources [~~with special expertise in the operation of public water~~
18 ~~utilities~~] appointed by the Lieutenant Governor;

19 (4) one member of the House Committee on Natural
20 Resources appointed by the Speaker of the Texas House of
21 Representatives; and

22 (5) one member appointed by the Governor to represent
23 the public [~~and~~

24 [~~(5) a member of the Bexar County Commissioners Court~~
25 ~~who represents a precinct in which customers of the District~~
26 ~~reside~~].

27 (g) On or before December 31, 2010, the oversight committee

1 shall provide a report under Subsection (e) of this Section to the
2 82nd Legislature. The committee is abolished and this Section
3 expires on January 1, 2011.

4 SECTION 4. Chapter 306, Acts of the 49th Legislature,
5 Regular Session, 1945, is amended by adding Sections 1A, 8A, 8B, 8C,
6 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 to read as follows:

7 Sec. 1A. In this Act:

8 (1) "Board" means the District's Board of Directors.

9 (2) "Commission" means the Texas Commission on
10 Environmental Quality.

11 (3) "Director" means a Board member.

12 (4) "District" means the Bexar Metropolitan Water
13 District.

14 Sec. 8A. (a) To be eligible to be a candidate for or elected
15 as a Director, a person must have:

16 (1) resided continuously in the single-member
17 district that the person seeks to represent for 12 months
18 immediately preceding the date of the regular filing deadline for
19 the candidate's application for a place on the ballot;

20 (2) viewed the open government training video provided
21 by the attorney general and provided to the Board a signed affidavit
22 stating that the candidate viewed the video;

23 (3) obtained 200 signatures from individuals living in
24 the District; and

25 (4) paid a filing fee of \$250 or filed a petition in
26 lieu of the filing fee that satisfies the requirements prescribed
27 by Section 141.062, Election Code.

1 (b) In this subsection, "political contribution" and
2 "specific-purpose committee" have the meanings assigned by Section
3 251.001, Election Code. A Director or a candidate for the office of
4 Director may not knowingly accept political contributions from a
5 person that in the aggregate exceed \$500 in connection with each
6 election in which the person is involved. For purposes of this
7 subsection, a contribution to a specific-purpose committee for the
8 purpose of supporting a candidate for the office of Director,
9 opposing the candidate's opponent, or assisting the candidate as an
10 officeholder is considered to be a contribution to the candidate.

11 Sec. 8B. (a) A person who is elected or appointed to and
12 qualifies for office as a Director on or after the effective date of
13 this section may not vote, deliberate, or be counted as a member in
14 attendance at a meeting of the Board until the person completes a
15 training program on District management issues. The training
16 program must provide information to the person regarding:

17 (1) the enabling legislation that created the
18 District;

19 (2) the operation of the District;

20 (3) the role and functions of the Board;

21 (4) the rules of the Board;

22 (5) the current budget for the Board;

23 (6) the results of the most recent formal audit of the
24 Board;

25 (7) the requirements of the:

26 (A) open meetings law, Chapter 551, Government
27 Code;

1 (B) open records law, Chapter 552, Government
2 Code; and

3 (C) administrative procedure law, Chapter 2001,
4 Government Code;

5 (8) the requirements of the conflict of interest laws
6 and other laws relating to public officials; and

7 (9) any applicable ethics policies adopted by the
8 Board or the Texas Ethics Commission.

9 (b) The Texas Commission on Environmental Quality may
10 create an advanced training program designed for a person who has
11 previously completed a training program described by Subsection (a)
12 of this section. If the commission creates an advanced training
13 program under this subsection, a person who completes that advanced
14 training program is considered to have met the person's obligation
15 under Subsection (a) of this section.

16 (c) Each Director who is elected or appointed on or after
17 the effective date of this section shall complete a training
18 program described by Subsection (a) or (b) of this section at least
19 once in each term the Director serves.

20 (d) The Board shall adopt rules regarding the completion of
21 the training program described by Subsection (a) or (b) of this
22 section by a person who is elected or appointed to and qualifies for
23 office as a Director before the effective date of this section. A
24 Director described by this subsection who does not comply with
25 Board rules shall be considered incompetent as to the performance
26 of the duties of a Director in any action to remove the Director
27 from office.

1 (e) A Director may not:

2 (1) accept or solicit a gift, favor, or service that:

3 (A) might reasonably influence the Director in
4 the discharge of an official duty; or

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

8 (2) accept other employment or engage in a business or
9 professional activity that the Director might reasonably expect
10 would require or induce the Director to disclose confidential
11 information acquired by reason of the official position;

12 (3) accept other employment or compensation that could
13 reasonably be expected to impair the Director's independence of
14 judgment in the performance of the Director's official duties;

15 (4) make personal investments that could reasonably be
16 expected to create a substantial conflict between the Director's
17 private interest and the interest of the District;

18 (5) intentionally or knowingly solicit, accept, or
19 agree to accept any benefit for having exercised the Director's
20 official powers or performed the Director's official duties in
21 favor of another; or

22 (6) have a personal interest in an agreement executed
23 by the District.

24 (f) Not later than April 30 each year, a Director shall file
25 with the Bexar County clerk a verified financial statement
26 complying with Sections 572.022, 572.023, 572.024, and 572.0252,
27 Government Code. A copy of a financial statement filed under this

1 section shall be kept in the main office of the District.

2 Sec. 8C. (a) A Director may be recalled for:

3 (1) incompetency or official misconduct as described
4 by Section 21.022, Local Government Code;

5 (2) conviction of a felony;

6 (3) incapacity;

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

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

11 (6) failure to maintain residency in the District.

12 (b) If at least 10 percent of the voters in the District
13 submit a petition to the Board requesting the recall of a Director,
14 the Board, not later than the 10th day after the date the petition
15 is submitted, shall mail a written notice of the petition and the
16 date of its submission to each registered voter in the District.

17 (c) Not later than the 30th day after the date a petition
18 requesting the recall of a Director is submitted, the Board shall
19 order an election on the question of recalling the Director.

20 (d) A recall election under this section may be held on any
21 uniform election date.

22 (e) If a majority of the District voters voting at an
23 election held under this section favor the recall of the Director,
24 the Director is recalled and ceases to be a member of the Board.

25 (f) If a vacancy occurs on the Board after the recall of a
26 Director under this section, the remaining members of the Board
27 shall appoint a replacement. A Director appointed to fill a vacancy

1 under this subsection serves until the next regularly scheduled
2 Directors' election.

3 Sec. 34. Following 18 months of review and audits by
4 agencies of this state and by the Bexar Metropolitan Water District
5 Oversight Committee, the Legislature finds that:

6 (1) certain officials of the District have engaged in
7 unethical conduct and unprofessional management practices;

8 (2) disagreements regarding the District's
9 jurisdiction and the jurisdiction of other entities inside the
10 District and distrust between management personnel and the Board
11 have prevented the District from improving services for existing
12 customers and meeting the water supply needs of the growing
13 population within the District's service area;

14 (3) the District has a history of noncompliance with
15 regulations;

16 (4) the Board has engaged in mismanagement of the
17 District, allowing for financial improprieties;

18 (5) the District has provided unreliable service to
19 the degree that the quality of life of the District's customers is
20 impaired and the prospects for economic growth within the District
21 are diminished; and

22 (6) to ensure the reliability, sustainability,
23 quality, and affordability of water supply services to the
24 District's customers, legislative action is necessary, including
25 the appointment of a conservator to serve as an advisor to the Board
26 until the District has achieved sufficient rehabilitation to serve
27 its customers in a professional, ethical, and reliable manner.

1 Sec. 35. (a) The Commission shall appoint as conservator
2 for the District an individual who, at the time of the individual's
3 appointment:

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

6 (2) is not a Director; and

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

10 (b) The conservator's term expires on the earlier of:

11 (1) the date the conservatorship for which the
12 conservator is appointed dissolves under Section 40; or

13 (2) the date of the canvass of an election under
14 Section 41 in which a majority of the votes favor dissolution.

15 Sec. 36. (a) A conservator appointed under Section 35 is
16 entitled to receive a salary for performing those duties.

17 (b) The District shall pay the compensation of the
18 conservator.

19 Sec. 37. (a) A conservator appointed under Section 35 is
20 entitled to reimbursement of the reasonable and necessary expenses
21 incurred by the conservator in the course of performing duties
22 under Section 38.

23 (b) The District shall pay any reasonable and necessary
24 expenses incurred by the conservator.

25 Sec. 38. (a) The conservator shall advise the Board on
26 matters relating to the District's rehabilitation. The Board shall
27 work cooperatively with the conservator to improve the Board's

1 ability to manage and operate the District in a professional
2 manner.

3 (b) In addition to the duties under Subsection (a), the
4 conservator shall:

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

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

9 (B) the District's bonded debt and commercial
10 paper reasonably associated with or allocable to the infrastructure
11 in that water system; and

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

16 (2) identify any District assets whose sale for fair
17 market value would be likely to improve the District's ability to
18 serve its remaining customers; and

19 (3) develop a comprehensive rehabilitation plan for
20 the District that:

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

24 (B) describes a standard of ethics,
25 professionalism, and openness expected of each Director and
26 employee of the District;

27 (C) provides a mechanism to enforce compliance

1 with District policies, including procurement policies;

2 (D) identifies ways to enhance the District's
3 operational efficiency; and

4 (E) provides for educating the Board and
5 management personnel on improving management practices and
6 complying with District policy and state and federal laws and
7 regulations.

8 Sec. 39. The conservator shall report to the Commission
9 regularly on the progress the conservator has made in carrying out
10 the duties under Section 38.

11 Sec. 40. (a) When the conservator reports to the
12 Commission that the District has been sufficiently rehabilitated to
13 provide reliable, cost-effective, quality service to its
14 customers, the Commission shall evaluate the condition of the
15 District and determine whether:

16 (1) the District has been sufficiently rehabilitated
17 to enable the District to provide reliable, cost-effective, quality
18 service to its customers; and

19 (2) the conservatorship is no longer necessary.

20 (b) The Commission may issue an order dissolving the
21 conservatorship if the Commission determines the conservatorship
22 is no longer necessary.

23 Sec. 41. (a) On the next uniform election date following
24 the 60th day after the date of preclearance under Section 5 of the
25 federal Voting Rights Act of 1965 (42 U.S.C. Section 1973c) of all
26 provisions of the Act enacting this section that are subject to that
27 preclearance, the Commission shall hold an election in the District

1 on the question of dissolving the District and disposing of the
2 District's assets and obligations. If the Commission determines
3 that preclearance under Section 5 of the federal Voting Rights Act
4 of 1965 is not required, the Commission shall hold the election on
5 the next uniform election date that falls at least 60 days after the
6 date the Commission makes that determination.

7 (b) The order calling the election must state:

8 (1) the nature of the election, including the
9 proposition to appear on the ballot;

10 (2) the date of the election;

11 (3) the hours during which the polls will be open; and

12 (4) the location of the polling places.

13 (c) Section 41.001(a), Election Code, does not apply to an
14 election ordered under this section.

15 (d) The Commission shall give notice of an election under
16 this section by publishing once a week for two consecutive weeks a
17 substantial copy of the election order in a newspaper with general
18 circulation in the District. The first publication of the notice
19 must appear not later than the 35th day before the date of the
20 election.

21 (e) The ballot for an election under this section must be
22 printed to permit voting for or against the proposition: "The
23 dissolution of the Bexar Metropolitan Water District."

24 (f) If a majority of the votes in an election under this
25 section favor dissolution, the Commission shall find that the
26 District is dissolved.

27 Sec. 42. (a) If a majority of the votes in the election

1 held under Section 41 favor dissolution, the term of each person who
2 is serving as a Director of the District on the date of the canvass
3 of the election expires on that date. Not later than the 60th day
4 after the date of the canvass of the election, the Commission shall
5 appoint a receiver for the purposes described by this section.

6 (b) Under the Commission's oversight, the receiver shall
7 transfer or assign the rights and duties of the District associated
8 with the provision of water services, including existing contracts,
9 assets, and liabilities of the District, to one or more appropriate
10 entities in such a manner that service to the existing customers of
11 the District is not interrupted. If any funds remain after the
12 payment of all the debts of the District, the receiver shall issue a
13 rebate to the ratepayers in the District in an amount sufficient to
14 deplete the remaining funds.

15 (c) After the District has paid all its debts and has
16 disposed of all its money and other assets as prescribed by this
17 section, the receiver shall file a written report with the
18 Commission summarizing the receiver's actions in dissolving the
19 District.

20 (d) Not later than the 10th day after the date the
21 Commission receives the report and determines that the requirements
22 of this section have been fulfilled, the Commission shall enter an
23 order dissolving the District and releasing the receiver from any
24 further duty or obligation.

25 Sec. 43. If the majority of votes favor dissolution in an
26 election held under Section 41, this Act expires on the date the
27 Commission enters an order dissolving the District.

1 Sec. 44. If a majority of the votes in an election held
2 under Section 41 do not favor dissolution, the conservator
3 appointed under Section 35 continues to serve until the
4 conservatorship is dissolved under Section 40.

5 SECTION 5. (a) Section 8, Chapter 306, Acts of the 49th
6 Legislature, Regular Session, 1945, as amended by this Act, applies
7 only to a member of the board of directors of the Bexar Metropolitan
8 Water District who is elected to the board on or after the effective
9 date of this Act.

10 (b) Section 8A, Chapter 306, Acts of the 49th Legislature,
11 Regular Session, 1945, as added by this Act, applies only to a
12 member of the board of directors of the Bexar Metropolitan Water
13 District who is elected to the board on or after the effective date
14 of this Act. A director who is elected before the effective date of
15 this Act is governed by the law in effect when the director was
16 elected, and the former law is continued in effect for that purpose.
17 A director elected to a six-year term before the effective date of
18 this Act shall serve out the term to which the director was elected.

19 (c) For a numbered single-member district director's
20 position that expires in 2010 or 2011, the district shall call and
21 hold an election on a uniform election date in that year to elect
22 the director for that position for a term that expires on the
23 uniform election date in November 2013.

24 (d) As soon as practicable after the effective date of this
25 Act, the Texas Commission on Environmental Quality shall appoint a
26 conservator for the Bexar Metropolitan Water District as required
27 by Section 35, Chapter 306, Acts of the 49th Legislature, Regular

1 Session, 1945, as added by this Act.

2 SECTION 6. (a) The legal notice of the intention to
3 introduce this Act, setting forth the general substance of this
4 Act, has been published as provided by law, and the notice and a
5 copy of this Act have been furnished to all persons, agencies,
6 officials, or entities to which they are required to be furnished
7 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
8 Government Code.

9 (b) The governor, one of the required recipients, has
10 submitted the notice and Act to the Texas Commission on
11 Environmental Quality.

12 (c) The Texas Commission on Environmental Quality has filed
13 its recommendations relating to this Act with the governor, the
14 lieutenant governor, and the speaker of the house of
15 representatives within the required time.

16 (d) All requirements of the constitution and laws of this
17 state and the rules and procedures of the legislature with respect
18 to the notice, introduction, and passage of this Act are fulfilled
19 and accomplished.

20 SECTION 7. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2009.

Senate Bill 2440
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

SECTION 1. LEGISLATIVE FINDINGS. The legislature finds that:

(1) according to audits and evaluations of the Bexar Metropolitan Water 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 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;

(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

HOUSE VERSION

SECTION 1. (a) In this section:

(1) "Board" means the district's board of directors.

(2) "District" means the Bexar Metropolitan Water District.

(b) Following 18 months of review and audits by agencies of this state and by the Bexar Metropolitan Water District Oversight Committee, the legislature finds that:

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

(2) disagreements regarding the district's jurisdiction and the jurisdiction of other entities inside the district and distrust between management personnel and the board have prevented the district from improving services for existing customers and meeting the water supply needs of the growing population within the district's service area;

(3) the district has a history of noncompliance with regulations;

(4) the board has engaged in mismanagement of the district, allowing for financial improprieties;

(5) the district has provided unreliable service to the degree that the quality of life of the district's customers is impaired and the prospects for economic growth within the district are diminished; and

(6) to ensure the reliability, sustainability, quality, and affordability of water supply services to the district's customers, legislative action is necessary, including the appointment of a conservator to serve as an advisor to the board until the district has achieved sufficient rehabilitation

CONFERENCE

Same as House version.

Senate Bill 2440
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

sufficient rehabilitation to serve its customers in a professional, ethical, and reliable manner.

(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

See SECTION 1 above.

HOUSE VERSION

to serve its customers in a professional, ethical, and reliable manner.

See SECTION 1 above.

CONFERENCE

~~Sec. 34. Following 18 months of review and audits by agencies of this state and by the Bexar Metropolitan Water District Oversight Committee, the Legislature finds that:~~
~~(1) certain officials of the District have engaged in unethical conduct and unprofessional management practices;~~
~~(2) disagreements regarding the District's jurisdiction and the jurisdiction of other entities inside the District and distrust between management personnel and the Board have prevented the District from improving services for existing customers and meeting the water supply needs of the growing population within the District's service area;~~
~~(3) the District has a history of noncompliance with regulations;~~
~~(4) the Board has engaged in mismanagement of the District, allowing for financial improprieties;~~
~~(5) the District has provided unreliable service to the degree that the quality of life of the District's customers is impaired and the prospects for economic growth within the District are diminished; and~~

Senate Bill 2440
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION

CONFERENCE

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

Sec. 33B. ELECTION ON DISSOLUTION AND CONSERVATORSHIP. An election on the appointment of a conservator for the purpose of dissolving the District shall be held on the uniform election date in November 2009.

Sec. 33C. BALLOT. The ballot for the election shall 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. 33D. APPOINTMENT OF CONSERVATOR; ADMINISTRATION OF ASSETS. (a) If a majority of the votes in the election held under Section 33B of this Act favor dissolution, a conservator shall be appointed by the Texas Commission on Environmental Quality not later than the 60th day after the date of the election.

Sec. 41. (a) The Commission may hold an election in the District on the question of dissolving the District and disposing of the District's assets and obligations if:

(1) the conservator determines after an initial evaluation to be performed before the 60th day after the date of the effective date of the act creating this section that the District cannot be rehabilitated and the dissolution of the District would be in the best interest of the ratepayers; or
(2) the conservator reports to the Commission at any time that the Board is unable or unwilling to comply with a request or recommendation of the conservator or agency review team.

(b) The Commission may hold an election under this section on a uniform election date following the 60th day after 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

~~(6) to ensure the reliability, sustainability, quality, and affordability of water supply services to the District's customers, legislative action is necessary, including the appointment of a conservator to serve as an advisor to the Board until the District has achieved sufficient rehabilitation to serve its customers in a professional, ethical, and reliable manner.~~

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to that preclearance. If the Commission determines that preclearance under Section 5 of the federal Voting Rights Act of 1965 is not required, the Commission may hold the election on a uniform election date that falls at least 60 days after the date the Commission makes that determination.

- (c) The order calling the election must 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.

(d) The Commission shall 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

Sec. 41. (a) On the next uniform election date following the 60th day after 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, the Commission shall hold an election in the District on the question of dissolving the District and disposing of the District's assets and obligations. If the Commission determines that preclearance under Section 5 of the federal Voting Rights Act of 1965 is not required, the Commission shall hold the election on the next uniform election date that falls at least 60 days after the date the Commission makes that determination.

- (b) The order calling the election must 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.
- (c) Section 41.001(a), Election Code, does not apply to an election ordered under this section.
- (d) The Commission shall 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

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newspaper with general circulation in the District. The first publication of the notice must appear not later than the 35th day before the date of the election.

(e) The ballot for an election under this section must be printed to permit voting for or against the proposition: "The dissolution of the Bexar Metropolitan Water District."

(f) If a majority of the votes in an election under this section favor dissolution, the conservator shall report the result to the Commission and the Commission shall find that the District is dissolved.

Sec. 42. (a) If a majority of the votes in an election held under Section 41 favor dissolution, the term of each person who is serving as a Director of the District on the date of the canvass of the election expires on that date. Not later than the 60th day after the date of the canvass of the election, the conservator shall assume all powers necessary for the purposes described by this section.

(b) The conservator shall transfer or assign the rights and duties of the District associated with the provision of water services, including existing contracts, assets, and liabilities of the District, to one or more appropriate entities in such a manner that service to the existing customers of the District is not interrupted.

(c) After the District has paid all its debts and has disposed

newspaper with general circulation in the District. The first publication of the notice must appear not later than the 35th day before the date of the election.

(e) The ballot for an election under this section must be printed to permit voting for or against the proposition: "The dissolution of the Bexar Metropolitan Water District."

(f) If a majority of the votes in an election under this section favor dissolution, the Commission shall find that the District is dissolved.

Sec. 42. (a) If a majority of the votes in the election held under Section 41 favor dissolution, the term of each person who is serving as a Director of the District on the date of the canvass of the election expires on that date. Not later than the 60th day after the date of the canvass of the election, the Commission shall appoint a receiver for the purposes described by this section.

(b) Under the Commission's oversight, the receiver shall transfer or assign the rights and duties of the District associated with the provision of water services, including existing contracts, assets, and liabilities of the District, to one or more appropriate entities in such a manner that service to the existing customers of the District is not interrupted. If any funds remain after the payment of all the debts of the District, the receiver shall issue a rebate to the ratepayers in the District in an amount sufficient to deplete the remaining funds.

(c) After the District has paid all its debts and has disposed

(b) The Conservator shall administer the property, assets, and debts until all funds have been disposed of and all District debts have been paid or settled.

Sec. 33E. SALE OR TRANSFER OF ASSETS AND LIABILITIES. (a) Notwithstanding any other provision of this Act, the District may not be 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 in a manner consistent with Subsection (d) of

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this section.

(b) The dissolution of the District and the sale or transfer of the District's assets or liabilities may not contravene a trust indenture or bond resolution relating to the outstanding bonds of the District. 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) The sale or transfer of the District's assets and liabilities must 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. The District may not transfer or dispose 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.

(d) The sale or transfer of the District's assets and liabilities does not impair, affect the validity of, or modify the terms of any contract to which the District is a party, and the acquiring entity of a District asset, or any assignee-in-interest to the asset, assumes the terms, benefits, and obligations of a contract related to that asset, as if the entity or assignee were the District.

Sec. 33F. REPORT; DISSOLUTION ORDER. (a) After the District has paid all its debts and has disposed of all its assets and funds as prescribed by this Act, the Conservator shall file a written report with the Texas Commission on

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of all its money and other assets as prescribed by this section, the conservator shall file a written report with the Commission summarizing the conservator's actions in dissolving the District.

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of all its money and other assets as prescribed by this section, the receiver shall file a written report with the Commission summarizing the receiver's actions in dissolving the District.

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Environmental Quality summarizing the Conservator's actions in dissolving the District.

(b) Not later than the 10th day after the date the Texas Commission on Environmental Quality receives the report and determines that the requirements of this Act as they relate to dissolution have been fulfilled, the Commission shall enter an order confirming the dissolution of the District and ordering the termination of conservatorship established under Section 33E of this Act, as applicable.

No equivalent provision.

No equivalent provision.

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(d) Not later than the 10th day after the date the Commission receives the report and determines that the requirements of this section have been fulfilled, the Commission shall enter an order dissolving the District and releasing the conservator from any further duty or obligation.

Sec. 43. If a majority of votes favor dissolution in an election held under Section 41, this Act expires on the date the Commission enters an order dissolving the District.

Sec. 44. If a majority of the votes in an election held under Section 41 do not favor dissolution, the conservator appointed under Section 35 continues to serve until the conservatorship expires under Section 35.

SECTION 2. Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended to read as follows:

Sec. 8. (a) [·] The seven [~~five (5)~~] members of the Board of Directors are [~~shall hereafter be~~] elected to staggered two-

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(d) Not later than the 10th day after the date the Commission receives the report and determines that the requirements of this section have been fulfilled, the Commission shall enter an order dissolving the District and releasing the receiver from any further duty or obligation.

Sec. 43. If the majority of votes favor dissolution in an election held under Section 41, this Act expires on the date the Commission enters an order dissolving the District.

Sec. 44. If a majority of the votes in an election held under Section 41 do not favor dissolution, the conservator appointed under Section 35 continues to serve until the conservatorship is dissolved under Section 40.

SECTION 2. Sections 1 and 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, are amended to read as follows:

Sec. 1. In obedience to the provisions of Article 16, Section 59 of the Constitution of Texas, there is hereby created Bexar Metropolitan Water District, [, hereinafter in this Act sometimes called the "District."]

Sec. 8. (a) [·] The seven [five (5)] members of the Board of Directors are [~~shall hereafter be~~] elected to staggered four-

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year terms in an election held on the uniform election date in November. Directors shall be elected from numbered single-member districts established by the Board

~~[for a term of six (6) years each, provided that an election for two (2) Directors for a term of six (6) years shall be held on the first Tuesday in April, 1954; the terms of three (3) members of the present Board shall be, and are, hereby, extended to the first Tuesday in April, 1957; and the present Directors shall determine such three (3) by lot. Three (3) Directors shall be elected on the first Tuesday in April, 1957, and two (2) Directors and three (3) Directors, alternately, shall be elected each three (3) years thereafter on the first Tuesday in April as the six year terms expire].~~
At an election of Directors, the candidate from each single-member district who receives ~~[The two (2) or three (3) persons, respectively, receiving]~~ the greatest number of votes shall be declared elected to represent that single-member district. Each Director shall hold office until his successor shall have been elected or appointed and shall have qualified. A Director may not serve more than three terms.~~;~~

(b) Such ~~[such]~~ elections shall be called, conducted and canvassed in the manner provided by the Election Code. ~~[Chapter 25, General Laws of the Thirty-ninth Legislature, Regular Session, 1925, and any amendments thereto;]~~

year terms in an election held on the uniform election date in November. Directors shall be elected from numbered single-member districts established by the Board. The Board shall 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

~~[for a term of six (6) years each, provided that an election for two (2) Directors for a term of six (6) years shall be held on the first Tuesday in April, 1954; the terms of three (3) members of the present Board shall be, and are, hereby, extended to the first Tuesday in April, 1957; and the present Directors shall determine such three (3) by lot. Three (3) Directors shall be elected on the first Tuesday in April, 1957, and two (2) Directors and three (3) Directors, alternately, shall be elected each three (3) years thereafter on the first Tuesday in April as the six year terms expire].~~
At an election of Directors, the candidate from each single-member district who receives ~~[The two (2) or three (3) persons, respectively, receiving]~~ the greatest number of votes shall be declared elected to represent that single-member district. Each Director shall hold office until his successor shall have been elected or appointed and shall have qualified.~~;~~

(b) Such ~~[such]~~ elections shall be called, conducted and canvassed in the manner provided by the Election Code. ~~[Chapter 25, General Laws of the Thirty-ninth Legislature, Regular Session, 1925, and any amendments thereto;]~~

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(c) The [the] Board of Directors shall fill all vacancies on the Board by appointment and such appointees shall hold office for the unexpired term for which they were appointed.[;]

(d) Any four [any three] members of the Board shall constitute a quorum for the adoption of passage of any resolution or order or the transaction of any business of the District.[;]

(e) A Director must [Directors succeeding the first Board, whether now or hereafter elected, shall] be a qualified voter of the single-member district from which the Director is elected [resident electors of Bexar County, Texas, and owners of taxable property within the area comprising said District, and shall organize in like manner].

(c) The [the] Board of Directors shall fill all vacancies on the Board by appointment and such appointees shall hold office for the unexpired term for which they were appointed.[;]

(d) Any four [any three] members of the Board shall constitute a quorum for the adoption of passage of any resolution or order or the transaction of any business of the District.[;]

(e) A Director must [Directors succeeding the first Board, whether now or hereafter elected, shall] be a qualified voter of the single-member district from which the Director is elected [resident electors of Bexar County, Texas, and owners of taxable property within the area comprising said District, and shall organize in like manner].

No equivalent provision.

SECTION 3. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 1A, 8A, 8B, 8C, 9A, 9B, 12A, 12B, 23A, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 to read as follows:

Sec. 1A. In this Act:

(1) "Board" means the District's Board of Directors.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Director" means a Board member.

(4) "District" means the Bexar Metropolitan Water District.

Sec. 8A. (a) To be eligible to be a candidate for or elected as a Director, a person must have:

(1) resided continuously in the single-member district that

SECTION 4. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 1A, 8A, 8B, 8C, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 to read as follows:

Sec. 1A. In this Act:

(1) "Board" means the District's Board of Directors.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Director" means a Board member.

(4) "District" means the Bexar Metropolitan Water District.

Sec. 8A. (a) To be eligible to be a candidate for or elected as a Director, a person must have:

(1) resided continuously in the single-member district that

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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; and
(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.

(b) In this subsection, "political contribution" and "specific-purpose committee" have the meanings assigned by Section 251.001, Election Code. A Director or a candidate for the office of Director may not knowingly accept political contributions from a person that in the aggregate exceed \$500 in connection with each election in which the person is involved. 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) A person who is elected or appointed to and qualifies for office as a Director on or after the effective date of this section may not vote, deliberate, or be counted as a member in attendance at a meeting of the Board until the person completes a training program on District management issues. The training program must provide information to the person regarding:

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, Election Code.

(b) In this subsection, "political contribution" and "specific-purpose committee" have the meanings assigned by Section 251.001, Election Code. A Director or a candidate for the office of Director may not knowingly accept political contributions from a person that in the aggregate exceed \$500 in connection with each election in which the person is involved. 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) A person who is elected or appointed to and qualifies for office as a Director on or after the effective date of this section may not vote, deliberate, or be counted as a member in attendance at a meeting of the Board until the person completes a training program on District management issues. The training program must provide information to the person regarding:

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- (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, Government Code;
 - (B) open records law, Chapter 552, Government Code; and
 - (C) administrative procedure law, Chapter 2001, 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) The Commission may create an advanced training program designed for a person who has previously completed a training program described by Subsection (a) of this section. If the Commission 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) Each Director who is elected or appointed on or after the effective date of this section shall complete a training program described by Subsection (a) or (b) of this section at least once in each term the Director serves.
- (d) The Board shall 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

- (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, Government Code;
 - (B) open records law, Chapter 552, Government Code; and
 - (C) administrative procedure law, Chapter 2001, 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) The Texas Commission on Environmental Quality may create an advanced training program designed for a person who has previously completed a training program described by Subsection (a) of this section. If the commission 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) Each Director who is elected or appointed on or after the effective date of this section shall complete a training program described by Subsection (a) or (b) of this section at least once in each term the Director serves.
- (d) The Board shall 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

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and qualifies for office as a Director before the effective date of this section. A Director described by this subsection who does not comply with Board rules shall be considered incompetent as to the performance of the duties of a Director in any action to remove the Director from office.

(e) A Director may not:

(1) accept or solicit a 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) accept other employment or engage 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) accept 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) make 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 solicit, accept, or agree 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) have a personal interest in an agreement executed by the District.

and qualifies for office as a Director before the effective date of this section. A Director described by this subsection who does not comply with Board rules shall be considered incompetent as to the performance of the duties of a Director in any action to remove the Director from office.

(e) A Director may not:

(1) accept or solicit a 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) accept other employment or engage 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) accept 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) make 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 solicit, accept, or agree 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) have a personal interest in an agreement executed by the District.

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(f) Not later than April 30 each year, a Director shall file with the Bexar County clerk a verified financial statement complying with Sections 572.022, 572.023, 572.024, and 572.0252, Government Code. A copy of a financial statement filed under this section shall be kept in the main office of the District.

Sec. 8C. (a) A Director may be recalled for:

(1) incompetency or official misconduct as described by Section 21.022, 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) If at least 10 percent of the voters in the District submit a petition to the Board requesting the recall of a Director, the Board, not later than the 10th day after the date the petition is submitted, shall mail a written notice of the petition and the date of its submission to each registered voter in the District.

(c) Not later than the 30th day after the date a petition requesting the recall of a Director is submitted, the Board shall order an election on the question of recalling the Director.

(d) A recall election under this section may be held on any uniform election date.

(e) If a majority of the District voters voting at an election held under this section favor the recall of the Director, the

(f) Not later than April 30 each year, a Director shall file with the Bexar County clerk a verified financial statement complying with Sections 572.022, 572.023, 572.024, and 572.0252, Government Code. A copy of a financial statement filed under this section shall be kept in the main office of the District.

Sec. 8C. (a) A Director may be recalled for:

(1) incompetency or official misconduct as described by Section 21.022, 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) If at least 10 percent of the voters in the District submit a petition to the Board requesting the recall of a Director, the Board, not later than the 10th day after the date the petition is submitted, shall mail a written notice of the petition and the date of its submission to each registered voter in the District.

(c) Not later than the 30th day after the date a petition requesting the recall of a Director is submitted, the Board shall order an election on the question of recalling the Director.

(d) A recall election under this section may be held on any uniform election date.

(e) If a majority of the District voters voting at an election held under this section favor the recall of the Director, the

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Director is recalled and ceases to be a member of the Board.

(f) If a vacancy occurs on the Board after the recall of a Director under this section, the remaining members of the Board shall appoint a replacement. A Director appointed to fill a vacancy under this subsection serves until the next regularly scheduled Directors' election.

Sec. 9A. (a) The Board shall employ a general manager of the District or contract with a person to perform the duties of a general manager. The Board shall delegate to the general manager or contractor full authority to manage and operate the affairs of the District subject only to orders of the Board.

(b) The Board shall delegate to the general manager or contractor the authority to employ persons necessary for the proper handling of the business and operation of the District and to determine the compensation to be paid to employees, other than the general manager or contractor.

(c) The general manager or contractor annually shall complete a training program on state and federal laws related to the administration of the District. The training program must provide information regarding:

- (1) nepotism;
- (2) conflicts of interest;
- (3) criminal penalties related to the conduct of elected officials;
- (4) financial disclosure requirements;
- (5) equal employment;
- (6) disability accommodation;
- (7) labor relations; and

Director is recalled and ceases to be a member of the Board.

(f) If a vacancy occurs on the Board after the recall of a Director under this section, the remaining members of the Board shall appoint a replacement. A Director appointed to fill a vacancy under this subsection serves until the next regularly scheduled Directors' election.

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(8) the acquisition and sale of property.

Sec. 9B. (a) The Board shall employ a chief financial officer of the District or contract with a person to perform the duties of a chief financial officer. The Board shall delegate to the chief financial officer or contractor the authority necessary to administer all financial affairs of the District, including:

(1) maintaining the general accounting system for the District;

(2) certifying the availability of funds for all proposed expenditures;

(3) submitting to the Board a monthly statement of all receipts and disbursements in sufficient detail to show the financial condition of the District; and

(4) preparing at the end of each fiscal year a complete financial statement and report.

(b) The Board shall require the chief financial officer of the District to furnish good and sufficient bond, payable to the District, in an amount determined by the Board to be sufficient to safeguard the District. The bond shall be conditioned on the faithful performance of that person's duties and on accounting for all funds and property of the District. The bond shall be signed or endorsed by a surety company authorized to do business in the state.

Sec. 12A. (a) All Board reimbursements and expenditures must be approved by the Board in a regularly scheduled meeting.

(b) At each regularly scheduled meeting of the Board, the Board shall review all expenditures made by the general manager.

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- Sec. 12B. (a) The Board shall adopt an annual budget.
- (b) The budget must contain:
- (1) a message explaining the budget;
 - (2) an outline of the proposed financial policies of the District for the next fiscal year, including any major changes from the current fiscal year;
 - (3) a comparison of the actual and estimated revenue and expenditures for the current fiscal year and actual and estimated revenue for the two preceding fiscal years;
 - (4) a statement of the water rates and collections for the preceding five years; and
 - (5) a complete financial statement, including a statement of:
 - (A) the outstanding obligations of the District, with a schedule of payments and maturities;
 - (B) the amount of cash on hand to the credit of each fund of the District;
 - (C) the amount of money received by the District from all sources during the preceding fiscal year, with notations regarding each department, division, or office of the District;
 - (D) the amount of money available to the District from all sources during the following fiscal year;
 - (E) the amount of the balances expected at the end of the fiscal year for which the budget is being prepared;
 - (F) the estimated amount of revenue and balances available to cover the proposed budget; and
 - (G) the estimated revenue from fees that will be required.
- (c) The Board shall conduct two public hearings not later than the 30th day before the date of the public hearing at

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which the Board will adopt the budget. At least one of the public hearings must be held at a location other than the District office. Notice of the hearings must be included in a water or sewer service bill of each ratepayer mailed at least 30 days before the date of the first hearing.

Sec. 23A. (a) The Board may not increase residential water or sewer service rates by more than 10 percent unless the Board holds a public hearing on the matter of the rate increase. The hearing must be attended by the Board and, if the District employs a general manager or chief financial officer, by the general manager and the chief financial officer.

(b) The Board may increase residential rates by more than 10 percent only if approved by a unanimous vote of the Board after the hearing held under Subsection (a).

(c) A motion by a Director to increase residential water or sewer service rates by more than 10 percent must read as follows:

"I move that we increase residential (water or sewer, as appropriate) rates by _____ percent. An average water bill in the District is \$ _____ for _____ gallons. With this increase, the average residential water bill will be \$ _____ for _____ gallons. We need to increase the rates because of the following: (insert justification for rate increase)."

Sec. 34. (a) After September 1, 2014, the Board annually shall have an audit conducted of the District's books and records that covers all matters relating to the fiscal affairs of the District. The audit must be conducted by an independent auditor who does not:

(1) otherwise maintain any District accounts;

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- (2) act as a financial advisor to the District; or
- (3) have any financial interest in the District.
- (b) The Board may not select the same auditor for more than three consecutive annual audits.

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

Sec. 34. CONSERVATOR. If a majority of the votes in the election held under Section 33B of this Act do not favor dissolution, not later than the 60th day after the date of this election, the Texas Commission on Environmental Quality shall appoint a conservator for the purpose of rehabilitating the District. The individual appointed must have demonstrated a high level of expertise in water utility management.

Sec. 34A. POWERS AND DUTIES OF

Sec. 35. (a) The Commission shall appoint as conservator for the District an individual who, at the time of the individual's appointment:

- (1) may be, but is not required to be, a Commission employee;
- (2) has demonstrated a high level of expertise in water utility management;
- (3) is not a Director; and
- (4) has no financial interest in the District or any entity that has a contract with the District or that is likely to develop a contractual relationship with the District.

Sec. 36. A conservator appointed under Section 35 shall

Sec. 35. (a) The Commission shall appoint as conservator for the 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 Director; and
- (3) has no financial interest in the District or any entity that has a contract with the District or that is likely to develop a contractual relationship with the District.

(b) The conservator's term expires on the earlier of:
(1) the date the conservatorship for which the conservator is appointed dissolves under Section 40; or
(2) the date of the canvass of an election under Section 41 in which a majority of the votes favor dissolution.

Sec. 36. (a) A conservator appointed under Section 35 is entitled to receive a salary for performing those duties.

(b) The District shall pay the compensation of the conservator.

Sec. 38. (a) The conservator shall advise the Board on

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CONSERVATOR. (a) If a conservator is appointed under Section 34 or 34B of this Act, the Board shall work cooperatively with the Conservator in rehabilitating the Board in its ability to manage and operate the District in a professional manner.

(b) The Conservator shall:

(1) collectively coordinate the daily management of the District;

(2) work with the Board 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;

(3) develop and work to implement a comprehensive rehabilitation plan for the District; and

(4) report monthly to the Texas Commission on Environmental Quality and to any committee with direct oversight authority over the District regarding:

(A) the financial, managerial, technical, and operational status of the District under the conservatorship;

(B) the actions the Conservator has taken to ensure that the District complies with the plan developed under Subdivision (3) of this Subsection; and

(C) the progress the Conservator has made towards completion of the plan developed under Subdivision (3) of this Subsection.

(c) The comprehensive rehabilitation plan must:

(1) identify strategies for restoring the District's financial integrity and for developing a system of sound financial management;

(2) describe a standard of ethics, professionalism, and

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appoint an agency review team to assist the conservator in carrying out the duties described by Section 39. A person appointed under this section to the team must meet the same qualifications as those required for the conservator appointed under Section 35(a).

Sec. 39. (a) The conservator and the agency review team shall advise the Board on matters relating to the District's rehabilitation. The Board shall work cooperatively with the conservator and the agency review team to improve the Board's ability to manage and operate the District in a professional manner.

(b) In addition to the duties under Subsection (a), not later than June 1, 2010, the agency review team shall prepare a report evaluating the distinct water systems that make up the District and determine the following:

matters relating to the District's rehabilitation. The Board shall work cooperatively with the conservator to improve the Board's ability to manage and operate the District in a professional manner.

(b) In addition to the duties under Subsection (a), the conservator shall:

(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 that water system; and

(C) the adequacy of the water supply sources, water storage facilities, and 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 sale for fair market value would be likely to improve the District's ability to serve its remaining customers; and

(3) 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;

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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;

(3) address ways to enhance the District's operational efficiency;

(4) as an integral part of rehabilitating the District, devise a program for:

(A) 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

(B) developing greater technical expertise on the part of District employees;

(5) identify District assets that, if sold, would likely improve the District's ability to serve its remaining customers;

(6) ensure that any assets identified in Subdivision (5) of this Subsection that are sold are sold at fair market value;

(7) 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

(8) inventory and evaluate the discrete water systems that the District comprises and determine:

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

(B) the District's bonded debt and commercial paper reasonably associated with or allocable to the infrastructure

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(1) the District's basis in or the intrinsic value of the infrastructure associated with each water system;

(2) the District's bonded debt and commercial paper reasonably associated with or allocable to the infrastructure

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(D) identifies ways to enhance the District's operational efficiency; 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.

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of each water system:

(C) 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;

(D) 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

(E) 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) The term of the Conservator continues until the earlier of:

(1) the end of a period of 18 months; or

(2) the Conservator reports that the District has been

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in each water system:

(3) the adequacy of the source of the water supply located in each water system's service area to supply the current and projected demands generated in that service area;

(4) 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;

(5) 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; and

(6) the ability of the District to serve its customers in a particular service area or a specific part of the service area based on the infrastructure and capacity of the District in that area.

(c) The conservator shall submit the report to the governor, the lieutenant governor, the speaker of the house of representatives, the chair of each committee of the legislature having primary jurisdiction over water districts, and the Commission.

(d) The conservator and the agency review team shall develop bylaws for the District that separate the administrative and technical functions of the District. The Board shall consider and adopt rules and bylaws consistent with the bylaws developed by the conservator and the agency review team.

(b) The conservator's term expires on the earlier of:

(1) the fifth anniversary of the date the conservator is appointed;

(2) the date the Commission issues an order dissolving the

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Sec. 39. The conservator shall report to the Commission regularly on the progress the conservator has made in carrying out the duties under Section 38.

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sufficiently rehabilitated to provide reliable, cost-effective, quality service to its customers, and the Texas Commission on Environmental Quality, 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.

Sec. 34B. APPOINTMENT OF NEW CONSERVATOR.

(a) If the Texas Commission on Environmental Quality determines that, after a reasonable period, the Conservator has not made satisfactory progress in developing and working to implement the comprehensive rehabilitation plan, the Commission shall appoint a new Conservator.

(b) The Texas Commission on Environmental Quality shall adopt rules providing for filling a vacancy in the position of Conservator.

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conservatorship under Section 40; or
(3) the date the Commission enters an order dissolving the District under Section 42.

(c) If the Commission, after a reasonable period, determines that the conservator has not made satisfactory progress in performing the conservator's duties, the Commission shall appoint a new conservator to serve for the remainder of the conservator's term.

Sec. 40. (a) When the conservator reports to the Commission that the District has been sufficiently rehabilitated to provide reliable, cost-effective, quality service to its customers, the Commission shall evaluate the condition of the District and determine whether:

(1) the District has been sufficiently rehabilitated to enable the District to provide reliable, cost-effective, quality service to its customers; and

(2) the conservatorship is no longer necessary.

(b) The Commission may issue an order dissolving the conservatorship if the Commission determines the conservatorship is no longer necessary.

(e) The agency review team shall examine the service

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Sec. 40. (a) When the conservator reports to the Commission that the District has been sufficiently rehabilitated to provide reliable, cost-effective, quality service to its customers, the Commission shall evaluate the condition of the District and determine whether:

(1) the District has been sufficiently rehabilitated to enable the District to provide reliable, cost-effective, quality service to its customers; and

(2) the conservatorship is no longer necessary.

(b) The Commission may issue an order dissolving the conservatorship if the Commission determines the conservatorship is no longer necessary.

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delivery in the several service areas of the District to determine whether the District is financially and practically able to provide continuous quality service in each area at reasonable rates. For any area the agency review team determines the District's ability to serve is inadequate or impractical, the agency review team shall recommend that the District divest the utility assets in that area.

(f) If the agency review team makes a recommendation under Subsection (e), the conservator shall appoint an agent to carry out the sale of the utility assets in that area. The agent shall bring an action in a district court in Bexar County for a determination of the fair market value of the assets to be sold. The fair market value shall be determined by a judge who was elected to that court from competent evidence of the value introduced by the parties. Competent evidence of value may include:

- (1) expert opinion testimony;
- (2) comparable sales;
- (3) anticipated marketing time and holding costs;
- (4) cost of sale; and
- (5) the necessity and amount of any discount to be applied to the future sales price or the cash flow generated by the property to arrive at a fair market value as of the date of the sale.

(g) After the fair market value is determined under Subsection (f), the agent shall sell the assets to an appropriate entity in the best interest of the ratepayers. The agent shall conduct the sale in a manner consistent with the best interest of the ratepayers. Proceeds from the sale of the assets shall be applied to outstanding debt of the

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- (f) The Conservator may not take any action that:
(1) will impair the District's ability to collect revenues, fees, or charges:
(A) for operating District systems; or
(B) necessary for the payment of any bonds, commercial paper notes, or any other financial obligation; or
(2) would cause an event of default under any provision of any indenture, contract, order, or other financial instrument creating any such obligation.
(g) 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.
(h) The Conservator may not be a receiver, trustee, custodian, or liquidator of the District's system or other property.

(e) Funding for the conservatorship shall be provided by the District and approved by the Commission.

District, and if any proceeds remain after the retirement of all the District's debt, the remaining proceeds shall be distributed to the ratepayers as a rebate.
(h) This section expires September 1, 2014.

Sec. 37. (a) A conservator appointed under Section 35 and any person appointed by the conservator is entitled to receive a salary for performing those duties.

(b) The District shall pay the compensation of the conservator and any person appointed by the conservator.

Sec. 38. (a) A conservator appointed under Section 35 and any person appointed by the conservator is entitled to reimbursement of the reasonable and necessary expenses incurred by the conservator or appointee in the course of

Sec. 37. (a) A conservator appointed under Section 35 is entitled to reimbursement of the reasonable and necessary expenses incurred by the conservator in the course of performing duties under Section 38.

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performing duties under Section 39.

(b) The District shall pay any reasonable and necessary expenses incurred by the conservator or appointee.

(b) The District shall pay any reasonable and necessary expenses incurred by the conservator.

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

Sec. 34C. SUBSEQUENT CONSERVATOR. (a) The Texas Commission on Environmental Quality shall appoint a subsequent Conservator for the District if the Commission determines that after the termination of an earlier conservatorship under Section 34A of this Act, the District has:

(1) obstructed the Commission's authority to supervise the District;

(2) violated a final order of the Commission;

(3) caused a potential health hazard by failing to provide appropriate water or wastewater treatment to District customers;

(4) caused a potential health hazard, extended outages, or repeated service interruptions by failing to adequately maintain District facilities;

(5) displayed a pattern of hostility towards the Commission or repeatedly failed to respond to the Commission or to District customers;

(6) engaged in a pattern of:

(A) noncompliance with laws or regulations; or

No equivalent provision.

Same as House version.

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(B) unethical conduct and unprofessional management practices;

(7) abandoned the operation of its facilities;

(8) had a majority of its Board of Directors resign;

(9) engaged in financial improprieties; or

(10) provided unreliable service that impairs the quality of life of its customers or diminishes the prospects for economic growth within the District.

(b) An individual appointed Conservator under this Section must have demonstrated a high level of expertise in water utility management and shall have all the powers and duties assigned to a Conservator under Section 34A of this Act.

SECTION 5. OVERSIGHT COMMITTEE:
COMPOSITION; REPORT.

Section 33A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by amending Subsection (c) and adding Subsection (g) to read as follows:

(c) The oversight committee is comprised of five [5] members appointed as follows [~~to represent the following members~~]:

(1) a [the] Senator who represents a Senate district that includes territory within the District. [~~sponsor of this Act, or, in the event this Senator cannot serve, a Senator~~] appointed by the Lieutenant Governor;

(2) a Representative who represents a [the] House district that includes territory within the District. [~~author of this~~]

No equivalent provision.

SECTION 3. Substantially the same as Senate version.

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~~Act, or, in the event this Representative cannot serve, a Representative]~~ appointed by the Speaker of the Texas House of Representatives;

(3) one member of the Senate Committee on Natural Resources [~~with special expertise in the operation of public water utilities~~] appointed by the Lieutenant Governor;

(4) one member of the House Committee on Natural Resources appointed by the Speaker of the Texas House of Representatives; and

(5) one member appointed by the Governor to represent the public[~~;~~and

~~[(5) a member of the Bexar County Commissioners Court who represents a precinct in which customers of the District reside].~~

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

SECTION 6. NOTICE. (a) 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, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on

Same as Senate version.

Same as Senate version.

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Environmental Quality.

(c) The Texas Commission on Environmental Quality 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) 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.

No equivalent provision.

SECTION 4. (a) Subject to approval by the Legislative Audit Committee for inclusion in the annual audit plan, the state auditor shall conduct an annual audit of the Bexar Metropolitan Water District for the five years following the effective date of this Act. The scope of the audit shall be determined by the state auditor based on a risk assessment.
(b) The district shall reimburse the state auditor for the cost of the audit.

Same as Senate version.

No equivalent provision.

SECTION 5. (a) Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as amended by this Act, applies only to a member of the board of directors of the Bexar Metropolitan Water District who is elected to the board on or after the effective date of this Act.
(b) Section 8A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as added by this Act, applies only to a member of the board of directors of the Bexar

SECTION 5. (a) Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as amended by this Act, applies only to a member of the board of directors of the Bexar Metropolitan Water District who is elected to the board on or after the effective date of this Act.
(b) Section 8A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as added by this Act, applies only to a member of the board of directors of the Bexar

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Metropolitan Water District who is elected to the board on or after the effective date of this Act. A director who is elected before the effective date of this Act is governed by the law in effect when the director was elected, and the former law is continued in effect for that purpose. A director elected to a six-year term before the effective date of this Act shall serve out the term to which the director was elected.

(c) For a numbered single-member district director's position that expires in 2010 or 2011, the district shall call and hold an election on a uniform election date in that year to elect the director for that position for a term that expires on the uniform election date in November 2013.

SECTION 7. EFFECTIVE DATE. Except as otherwise provided by this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009, except as otherwise provided by this Act.

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

Metropolitan Water District who is elected to the board on or after the effective date of this Act. A director who is elected before the effective date of this Act is governed by the law in effect when the director was elected, and the former law is continued in effect for that purpose. A director elected to a six-year term before the effective date of this Act shall serve out the term to which the director was elected.

(c) For a numbered single-member district director's position that expires in 2010 or 2011, the district shall call and hold an election on a uniform election date in that year to elect the director for that position for a term that expires on the uniform election date in November 2013.

(d) As soon as practicable after the effective date of this Act, the Texas Commission on Environmental Quality shall appoint a conservator for the Bexar Metropolitan Water District as required by Section 35, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as added by this Act.

Same as House version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 31, 2009

**TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives**

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: SB2440 by Uresti (Relating to the appointment of a conservator for and authorizing the dissolution of the Bexar Metropolitan Water District.), Conference Committee Report

No fiscal implication to the State is anticipated.

Local Government Impact

Because the bill would not have statewide impact on units of local government of the same type or class, no comment from this office is required by the rules of the House/Senate as to its probable fiscal implication on units of local government.

Source Agencies:

LBB Staff: JOB, DB, SZ, JB, SD