

BILL ANALYSIS

C.S.H.B. 1014
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Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Special utility districts ("SUDs") are created by converting an existing, nonprofit water supply or sewer service corporation into a political subdivision under Chapter 65, Texas Water Code. Over the years, water supply companies ("WSCs") have applied to the Texas Commission on Environmental Quality (TCEQ) for authorization to convert to SUDs. Generally, these applications have not required contested case hearings under the Texas Administrative Procedure Act because "protests" have not identified any harmful change to customers or neighboring utilities. TCEQ recently has determined that a WSC providing only retail water service seeking to convert to a SUD, which would provide the same retail water service, can be forced to go through a contested case hearing if a neighboring utility protests because of concerns over the SUD competing with sewer service, even though the WSC testifies that it has no plans to provide sewer service and does not seek the authority to provide sewer service as a SUD. This is because the TCEQ has determined that it has no legal authority to authorize a WSC to convert to a SUD with less than the full powers authorized under Section 65.012, Texas Water Code. Accordingly, WSCs are being forced to go through unnecessary contested case hearings in order to convert to SUDs.

The only appreciable difference between a SUD form and a WSC form of water or sewer service is that the SUD form enjoys greater efficiencies through an exemption from sales taxes under state law and tax exempt bond financing under federal law, which are cost efficiencies that ultimately benefit the customers. Other differences between a SUD and a WSC exist such as the requirement that a SUD must comply with the Texas Election Code, and a SUD, as a political subdivision, can participate in cooperative purchasing programs provided by the General Services Commission, which is another cost savings. However, these differences are not valid reasons for the TCEQ to refuse a WSC request for approval to convert to a SUD.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1014 amends Chapter 65, Texas Water Code, by clarifying that a SUD should be created to perform all of the purposes authorized under Section 65.012, Texas Water Code, and by providing that a WSC seeking to convert to a SUD must specify one or more of the authorized purposes the proposed SUD is to perform.

It should be noted that this change in the law will not preclude a SUD created with only water service authority from providing sewer service if circumstances warrant in the future. Any service not included in the original order creating a SUD can be added at a later date by petitioning the TCEQ to amend the order. This amendment procedure will require notice to, and an opportunity for a contested case hearing on behalf of, any neighboring utility affected by the new authority requested in the amendment.

EFFECTIVE DATE

On passage, or if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 1014 modifies the original bill in SECTION 3 by removing the words “pending on or” and “the effective date of this Act,” and adding “September 1, 2001.” The effect of C.S.H.B. 1014 is to provide for certain pending applications at the agency.