

## **BILL ANALYSIS**

Senate Research Center  
79R6892 HLT-F

H.B. 1673  
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5/12/2005  
Engrossed

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

Special utility districts (SUDs) are created by converting an existing, non-profit water supply or sewer service corporation into a political subdivision under Chapter 65, 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 SUD does not seek the authority to provide sewer service. This is due to TCEQ determining 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, Water Code, which includes both water and sewer service. Accordingly, WSCs must go through unnecessary contested case hearings in order to convert to SUDs.

The primary 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 Texas Building and Procurement Commission, which is another cost savings.

Enacted by the 78th Legislature, Regular Session, 2003, H.B. 1014 effected certain changes to Chapter 65, Water Code, in an attempt to prevent such unnecessary hearings. Notwithstanding the changes in law enacted by H.B. 1014, in a recent application by Porter Water Supply Corporation to convert to a SUD without any power to engage in retail sewer service, TCEQ ordered a contested hearing in response to a protest by the Porter Municipal Utility District alleging concerns that the SUD, if authorized, could compete with the existing municipal utility district's sewer service activities.

H.B. 1673 amends Chapter 65, Water Code, by clarifying only those powers specified the water supply corporation in its resolution and application for conversion to a special utility district may be considered in any contested hearing called by the state agency, and only those powers specified in that same resolution and application may be included in the agency's order creating the district.

H.B. 1673 applies only to resolutions filed with TCEQ after the effective date of the legislation.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 65.020(a), Water Code, to require the Texas Commission on Environmental Quality (TCEQ) to conduct a hearing and accept evidence on the sufficiency of the resolution and whether or not the request for conversion for each purpose specified in the

resolution, as required by Section 65.015, is feasible and practicable and is necessary and would be a benefit to all or any part of the land proposed to be included in the special utility district (district). Authorizes TCEQ to only consider a purpose for which the district is being created that is specified in the resolution.

SECTION 2. Amends Sections 65.021(a), (b), and (d), Water Code, as follows:

(a) and (b) Make conforming changes.

(d) Requires TCEQ to make this finding in its order and to deny the creation of the district upon finding that the resolution does not conform to the requirements of Section 65.015 of this code, the request for conversion is not feasible or, practicable, or a purpose for which the district is created is not necessary, or a benefit to the land in the district.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2005.