

BILL ANALYSIS

H.B. 1673
By: Cook, Robby
Natural Resources
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Special utility districts (ASUDs@) are created by converting an existing, non-profit water supply or sewer service corporation into a political subdivision under Chapter 65, Texas Water Code. Over the years, water supply companies (AWSCs@) 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 Aprotests@ 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 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 (which include both water and sewer service). 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.

The 78th Texas Legislature enacted HB 1014 which effected certain changes to Chapter 65, Water Code, in an attempt to prevent such unnecessary hearings. Notwithstanding the changes in law enacted by HB1014, in a recent application by Porter Water Supply Corporation to convert to a SUD without any power to engage in retail sewer service, the 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 districts sewer service activities.

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

HB 1673 amends Chapter 65, Texas 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.

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

EFFECTIVE DATE

September 1, 2005.

H.B. 1673 79(R)

