

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1254
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Natural Resources
4/1/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, fresh water supply districts (FWSD) are generally used to provide water and wastewater services within their boundaries. To do so, FWSDs often need to build a pipeline a few miles outside of its boundaries to the nearest lake or well field. To obtain the necessary easements, FWSDs have been granted the power of eminent domain.

While most FWSDs use the power of eminent domain properly, far reaching eminent domain powers are unnecessary due to the fact that projects typically only require right-of-way for a few miles. Furthermore, the current statutorily defined purpose of FWSDs allows for the "transport" of water. This would permit a FWSD to both import and export water. Again, FWSDs would rarely, if ever, need to export water and were never intended to be used for this purpose. This bill applies to any district created from the conversion of a FWSD to prevent current FWSDs from converting to Municipal Utility Districts or Water Control and Improvement Districts to avoid these restrictions.

C.S.S.B. 1254 prohibits FWSDs from exercising the use of eminent domain for property that is more than five miles outside of the FWSD's boundaries unless certain actions are taken. The bill requires approval from the Texas Commission on Environmental Quality (TCEQ) for FWSD condemnation of land. The bill authorizes TCEQ to issue a permit only after proper notice, public comment, and any necessary hearings have been conducted and after confirming that the project is necessary and in the public interest. The bill prohibits the use of eminent domain for certain purposes for property located 75 miles or more outside the district's boundaries.

[**Note:** While the statutory reference in this bill is to Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to agency TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 1 (Section 49.222, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 49.222, Water Code, by amending Subsection (a) and adding Subsections (d)-(h), as follows:

- (a) Creates an exception provided by and subject to this section.
- (d) Prohibits a district from exercising the power of eminent domain to acquire land, an easement, or other property that is located more than five miles outside the district's boundaries unless:
 - (1) the district provides notice of the hearing required under Subdivision (2) to the owners of the land that the district seeks to condemn not later than two weeks before the date of the hearing;
 - (2) the commissioners court in the county in which the eminent domain power is to be exercised, after notice and hearing, officially approves the exercise; and

(3) after approval by the commissioners court, the Texas Natural Resource Conservation Commission (TNRCC) issues an order approving the district's application to exercise that power.

(e) Provides that a district that seeks TNRCC approval for the district's planned exercise of eminent domain power:

(1) is required to submit to TNRCC a written application for approval of the exercise of that power that includes a copy of the commissioners court's resolution approving the district's proposed condemnation of property; and

(2) is required to provide notice of the application in the manner prescribed by TNRCC.

(f) Authorizes TNRCC, after publication of notice, an opportunity for public comment, and an opportunity for public hearing on an application under this section, to issue an order approving the application if TNRCC finds that:

(1) all procedural requirements have been satisfied;

(2) the requested exercise of the power of eminent domain is necessary and serves a purpose for which the district was created and will encourage regionalization of water supply and distribution; and

(3) granting the request will serve the public interest and benefit the residents of the district.

(g) Requires TNRCC by rule to establish procedures for public notice and hearing of applications under this section. Requires that the procedures include provision of notice to elected state and local officials who represent residents of the district and of the property proposed for condemnation.

(h) Prohibits a district from exercising the power of eminent domain to acquire land, an easement, or other property that is located more than 75 miles outside the district's boundaries.

SECTION 2. Makes application of Section 49.0222 [*sic*], Water Code, as amended by this Act, prospective to January 1, 2010.

SECTION 3. Effective date: September 1, 2009.