

## **BILL ANALYSIS**

Senate Research Center  
81R5456 PMO-D

S.B. 1254  
By: Seliger  
Natural Resources  
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As Filed

### **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.

As proposed, 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. The bill requires approval from the Texas Commission on Environmental Quality (TCEQ) for FWSD condemnation of land in excess of this limit, and requires the local county commissioner's court where the FWSD is located to approve such an exercise before TCEQ approves the application. 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.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 (Section 53.108, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 53.001, Water Code, by adding Subdivision (4), to define "commission."

SECTION 2. Amends Section 53.101, Water Code, as follows:

Sec. 53.101. PURPOSE OF DISTRICT. Authorizes fresh water supply districts (district) to be created to conserve, transport, and distribute fresh water within or to the district from any sources for domestic and commercial purposes.

SECTION 3. Amends Subchapter D, Chapter 53, Water Code, by adding Section 53.108, as follows:

Sec. 53.108. LIMITATION ON USE OF EMINENT DOMAIN POWER; REQUIRED APPROVALS. (a) 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: 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 incorporate into one program after approval by the commissioners court,

the Texas Commission on Environmental Quality (TCEQ) issues an order approving the district's application to exercise that power.

(b) Requires a district that seeks TCEQ approval for the district's planned exercise of eminent domain power to submit to TCEQ a written application for approval of the exercise of that power and to provide notice of the application in the manner prescribed by TCEQ.

(c) Authorizes TCEQ, 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 TCEQ finds that the requested exercise of the power of eminent domain is necessary and serves a purpose for which the district was created and granting the request will serve the public interest.

(d) Requires TCEQ 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.

(e) Provides that this section applies to a fresh water supply district and a district that converts from a fresh water supply district to another type of district.

SECTION 4. Makes application of Section 53.108, Water Code, as added by this Act prospective to January 1, 2010.

SECTION 5. Effective date: September 1, 2009.