

OVERLAPPING GOVERNMENT STRUCTURES:
THE TIMING, THE TRIBULATIONS, AND THE TRIUMPHS

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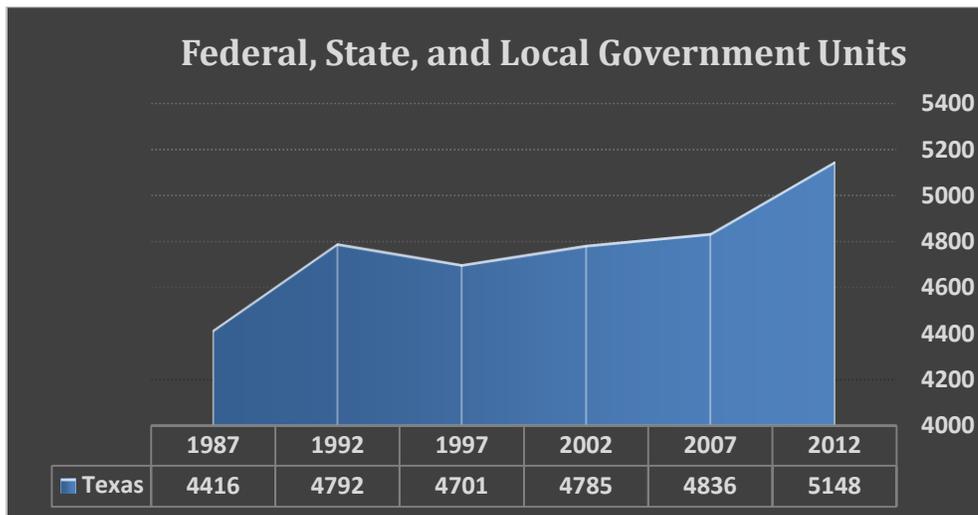
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INTRODUCTION

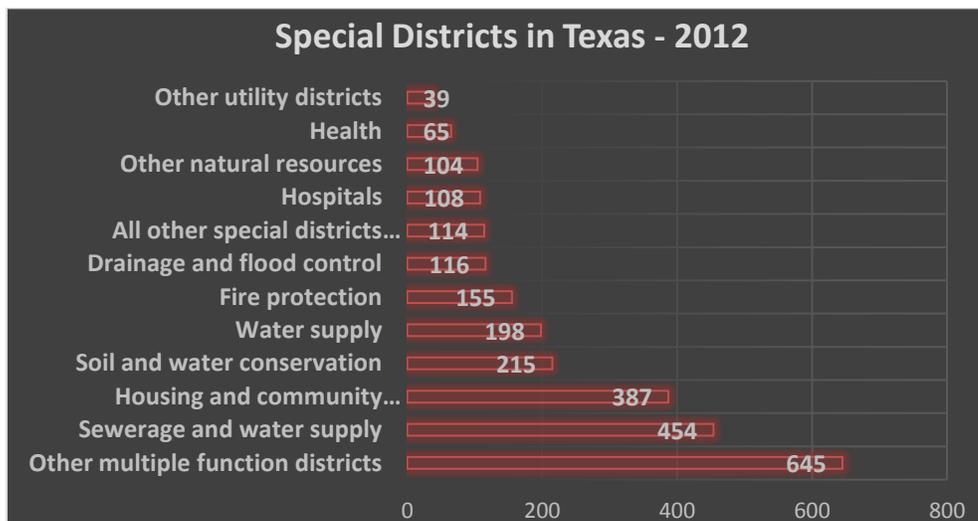
Hostile takeovers, embroiled legal battles and millions in wasted taxpayer dollars all done in the name of public service? The Texan ideals of property rights, limited government and plain old “doing what’s right,” are not evident in the description above, yet multiple layers of government have either gone through or are in the midst these activities today. Government’s purpose is to serve the public good, but it may not always do so very efficiently. Numerous examples exist where various government organizations, programs and capacities overlap each other both geographically and in service ability.

As the chart below illustrates, there are many forms of government on many levels within Texas. (U.S. Census Bureau)



In Texas, the most commonly known government forms are the state, counties and municipalities. Each of these levels of government carry out an array of activities to provide basic services. With a more narrow focus, Texas law also allows for dozens of special purpose districts. “Special purpose districts were originally created due to urban sprawl and the desire of

suburban residents to create entities that could provide their own infrastructure and levy taxes for limited purposes,” including various utility districts, hospital districts and crime control and prevention districts. (Texas Senate Research Center 2) Special districts are often formed where no other level of government has either the authority or the political will to serve that particular need at that particular time under the leadership of that particular governing body and citizenry. The chart below illustrates the number of special districts by function for Texas as reported in the 2012 US Census of Governments. (U.S. Census Bureau)



Even within Texas, there are more than a handful of special districts providing public water service. When considering a new special district for water service, the TCEQ relies on policy, which reads “Our policy is that regionalization is feasible unless one of these three exceptions applies:

- (1) No other systems are reasonably close to your planned system.
 - (2) You have requested service from neighboring systems, and your request has been denied.
 - (3) You can successfully demonstrate that an exception based on costs, affordable rates, and
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financial, managerial, and technical capabilities of the existing system should be granted.” (Texas Commission on Environmental Quality 3) This research points to the need for not only more research, but more diligent application of our own regionalization policies.

The lowest level of organizing water service in Texas is the designation as a public water system, which is defined as “any drinking water system that has the potential to serve at least 15 connections or that does serve at least 25 people for at least 60 days out of one year.” (Texas Commission on Environmental Quality 2) To help narrow the scope of this study, examples from only the more significant Municipal Utility Districts and Special Utility Districts are examined.

The focus of this research is not to discount the importance and economic development opportunities produced through the use of special districts. Rather the goal is to examine the historical use of these arrangements, the diminishing value over time, the challenges often faced when it is time to consider providing the same services through another means and ultimately to suggest all public officials consider first the end goal of best serving the public. The illustrations and examples provided are not indicative of any other utility, but do highlight a few common threads of both the good and the bad in special districts. Lastly, while this research does not intend to take a political bent towards conservatism, it is assumed throughout this report that duplication of effort or overspending in public endeavors should be minimized.

General Environment of Overlapping Governments

The idea of overlapping governments is deeply embedded in the American way of life and our historical governance. In many ways, our systems demand some level of overlap to facilitate oversight. Federalism, for example, requires some distribution of powers from affairs of the nation and those of the state. Checks and balances are put into place giving way to shared areas of control. In this context, overlap sounds prudent.

For the sake of this paper, overlap will be defined as any public service provided by one organization that another organization has the financial, managerial and technical expertise as

well as the legal ability to provide the same service. If one organization is equally effective and more efficient, then the more efficient of the two should consider taking over the operations of the less efficient governmental unit.

Duplication often occurs for overhead or support functions such as senior management, finance, human resources and information technology. Other areas of duplication include additional meetings possibly at differing locations, board training and education expenses, stipends or other reimbursements. “Texas, like many other jurisdictions governing special districts, lacks clear standards to discern where a special district ends and a general purpose local government begins.” (Galvan 3062)

Given the scarcity of water and the importance of future planning, separate organizations will often secure substantially more water resources through take-or-pay agreements or reservation rates than they will require. The combining or pooling effect of combining systems may reduce the total volumes over-estimated since the risk is diluted by a greater number of connections.

TIMING

Background and Authority for Water Utility Districts

Water districts were first authorized in Texas under an amendment to the Constitution in 1917. (Texas Commission on Environmental Quality) The initial purpose was to allow for rural water supply to be improved and especially so in unincorporated areas with few other water service options. This paper uses real world examples from various forms of water districts. Two of the most common types illustrate some of the advantages and disadvantages of this form of governance.

Municipal Utility Districts (“MUDs”) are the most common form of non-municipal water utility. Chapter 54 of the Texas Water Code spells out the requirements for the creation of MUDs

under the authority of Section 59, Article XVI of the Texas Constitution. MUDs have grown in function over time and perform many more general government activities including drainage, street lighting, road control and maintenance, recreation, hydro-electric generation, security and navigation control. In exercising these powers, MUDs have the powers of eminent domain and ad valorem taxation to further their causes. (Texas Legislature)

Special Utility Districts (“SUDs”) are another common form found throughout the state. This form is addressed by Chapter 65 of the Texas Water Code. SUDs are created to serve in the supply, treatment, transmission and sale of water and wastewater. They may sell this resource to other entities including districts and municipalities. Outside the expected, water-related scope of SUDs, they can also provide for street lighting, fire protection, recreation and security within the district. Unlike MUDs, SUDs cannot levy a tax to finance its activities. Required revenues must be made up in user rates and fees. (Texas Legislature)

Transferring Risk to Meet Unmet Needs

One of the biggest reasons these special districts are continuing to be approved is for the simplicity in creating funding for major improvements and a ripe “market for legislation”. Ekelund and Tollison define the term ‘market for legislation’ as “the interaction between interest groups acting as demanders of legislation beneficial to the group and legislators acting as suppliers of legislation.” (Ekelund and Tollison 455) Developers almost always lead the charge to put infrastructure in place that will greatly enhance the value of their property. Municipalities and neighboring districts may not want to absorb the additional capital burden of providing even the marginal supply or capacities to serve speculative areas. Dr. Ron Welch, a consultant who helped initiate and review many southeast Texas districts offers some gritty insight into how the process shifts risk. (Dunklin, Government by Developer)

Dr. Welch admits, “he came to accept the practice as a means to a good end,” allowing for development of good quality homes and related infrastructure where a market of willing

buyers exists for these communities, but cities and other authorities choose not to extend services. Regardless of the funding mechanism - whether through ad valorem taxes, system buy-in fees or higher home prices - homeowners will ultimately pay. Moreover, it is sometimes argued that user fees are more equitable, attributing costs to only those in the new area as opposed to spreading the initial capital revenue recovery over the entire system. Dr. Welch notes that this concentration of cost recovery also concentrates risk, with early purchasers making quite a gamble. "If you're the first person living in one of these," he said bluntly, "you're taking a hell of a risk." (Dunklin, Government by Developer)

It is this very risk that other levels of government are content to farm out and even share premium rewards if successful. If timed right, developers and surrounding entities win. If not properly planned or unfavorable economic conditions fall upon a district in its infancy, it is the developer and the early homeowners who lose.

TRIBULATIONS

There have been more than a handful of problem areas with these districts. Public involvement and understanding of each type of organization is often limited. Development standards may be less stringent than those of the city or other jurisdiction that will eventually take over the systems. In a positive swing, legislation recently passed that requires districts to bring fire flow standards up to the city standards if the city standard is higher than the currently rated fire flow pressure for the district. (Johnston)

Many reasons lead to the continuing operations of districts that have exceeded or completed their utility. Good intentions and committed citizens involved in boards commissions or councils may simply disagree. Other times it seems quite obvious that control and ego play a large role in legal battles over how to best bring water service to citizens.

Failure to Fund

The late 1980's savings and loan crisis put a spotlight on certain financial instruments in the mortgage industry and general lending practices. The failing institutions caused many ripples in the market and values plummeted. With significantly decreased property values, it was difficult for speculative growth ventures and ad valorem revenue dependent organizations to survive. This era took with it a number of special districts that could no longer pay obligations. With few other options at the time, many sought bankruptcy. The major economic crises deflated many special purpose district expectations; still others seem to have simply missed the market during the planning phases. (Williamson)

In one extreme example, the Bond Buyer reported in 1999 on Grimes County Municipal Utility District #1 ("Grimes County MUD 1"). Grimes County MUD 1 was created northwest of Houston and had high hopes of becoming a flourishing residential subdivision. Despite having a total outstanding debt obligation of \$1.86 Million that dates back to 1974 the entire district had only three utility connections as of the time of the article. It was unknown if Grimes County MUD 1 ever made a single payment on its revenue bonds. (Williamson) Although this is an extreme example, it does give a good example of the risks associated with development projections. Had a neighboring city or other utility district taken on this investment, its other customers would be footing the bill for significant unused water system costs.

Not Invited

In 1999, the City of Frisco's City Manager, George Purefoy was surprised to learn that Denton County Fresh Water Supply District #1A had created another district in Frisco City limits. To protect its interests, the City of Frisco sued. Instead of taking a losing battle before the legal system, the district rescinded its annexation. That does not mean the discussions regarding the release were friendly. (Dunklin, Districts Multiply in 'Amoeba Effect')

Mr. Purefoy recalled an argument at City Hall with Mr. Leonard, an attorney who assisted in creating the encroaching district. During their exchange, Mr. Leonard demanded Mr. Purefoy halt any attempt to protest the annexation with an implied threat of getting Mr. Purefoy fired. Mr. Leonard touted previous experience having a Carrollton Assistant City Manager terminated. Frisco's scenario was not one of a simple mistake, but rather one of disregard. Around the same time, the cities of Denton and Argyle settled similar cases where districts annexed their territory without consent. Later the City of Little Elm filed under the same line of reasoning. Mr. Purefoy is quoted in this article as saying "Every city in the state should be concerned about it. I think it's the biggest threat to orderly development in the state of Texas." (Dunklin, Districts Multiply in 'Amoeba Effect')

Overstaying Their Welcome

In 2010, the City of Corinth wanted a quick end to the Corinth MUD. Debts had been paid off in September and a new fiscal year began on October 1, 2010 with taxes still to be collected. The City filed suit and called for a restraining order to halt the payment of any further expenses until better understood by the City. Since the date the thirty year revenue bonds were issued, both parties had access to the payment schedule and could have seen the end coming years before they decided to take action. (Heinkel-Wolfe) It is a common story where overlapping jurisdictions fail to cooperate and end up settling even simple matters through costly litigation. This example illustrates a lack of coordination between local governing bodies.

TRIUMPHS

Despite the tribulations cited above, hundreds of MUDs and SUDs have provided an invaluable service to both their respective economies and also the state as a whole. It is easily argued that, but for these special districts, many communities thriving today would still remain

undeveloped. Multiple examples in this section point to the strengths in creation and even victories in death of these governmental forms.

In addition to consolidation wherein a City takes over for a utility district, there are many regional efforts that have built economies of scale into utility offerings beyond city limits. It should be again stated that the objective is not to get all the services under the roof of city councils control or purview but rather provide the highest quality public service at the best value for citizens.

Providing Service

Park Cities Municipal Utility District

The Dallas County Park Cities Water Control and Improvement District No. 2 was created in 1938 at the request of the City of University Park and the Town of Highland Park to share a common water supply. Together with Dallas, Dallas County Park Cities Water Control and Improvement District No. 2 secured large volumes of water in the construction of Lake Grapevine. In 1973, the Improvement District was converted to the Dallas County Park Cities Water Municipal Utilities District (“Park Cities Water”).

Through this alliance between University Park and Highland Park, the special purpose district is more efficient than each city operating its own utility. As individual utilities, the bulk water purchase would have been harder than with both cities combining expected volumes. This partnership may not be classified as a major regionalization effort, but the public represented by each governing body benefits.

Economic Development

New College Station MUD

The City of College Station has given its blessing for the creation of a new MUD in College Station’s extra-territorial jurisdiction in Brazos County. This 550 acre planned

development will be replacing a longtime icon for the region - Texas World Speedway. The racetrack is in need of much repair and updating; the total area is currently valued at \$5.4 million. After fully developed, the new project is estimated to be valued at \$514 million. (Brown)

While not yet finalized by the TCEQ, College Station and this prospective MUD have been cooperating to ensure the site is built to College Station standards. Also, the developer has requested College Station to provide water and wastewater service to the community as required under TCEQ guidance. If approved, the MUD tax rate is estimated to be \$1 per every \$100 of assessed property value. (Brown)

Amicable Dissolution

Fort Bend MUD 21

The recent dissolution of Fort Bend Municipal Utility District 21 (“MUD 21”) by the City of Sugarland (“Sugarland”) illustrates a recent win for ratepayers. MUD 21 was created in 1975 and served approximately 1,000 acres of business park properties within Sugarland. MUD 21 subsequently adopted a utility agreement with Sugarland in 1977 which would transfer the infrastructure.

In an important strategic move, Sugarland considered and adopted a policy on March 15, 2011 outlining criterion to consider the dissolution of districts. In anticipation of a significant reduction in outstanding debt obligations following MUD 21’s March 2014 debt service payments, Sugarland determined the ongoing debt associated with dissolving the district was equal to the expected agreement payment. Given this, the citizens of Sugarland would not bear any additional burden to take over MUD 21 fully. With the dissolution, Sugarland will take ownership of existing cash balances, liabilities and maintenance demands of MUD 21. The staff report included with the agenda item recommending dissolution aptly states, “Property owners in the district will realize savings immediately since the board of directors opted to not levy a MUD tax for tax year 2013, and will benefit from elimination of a layer of government.” (City of

Sugarland Staff) Assuming all else equal, the calculations below estimate annual savings to MUD 21 property owners from the dissolution.

***Fort Bend County MUD #21
Estimated Reduction in Taxes***

2011/12 Taxable Assessed Value	I&S Rate	M&O Rate	Total Tax Rate	Approximate Levy
\$ 558,392,811	0.06	0.18	0.24	\$ 1,340,143

Estimated Tax Savings per \$100,000 in Value
\$ 240

(Fort Bend ISD 40)

Even after excluding the Interest and Sinking (“I&S”) rate for debt coverage, District property owners will still see a reduction in over one million dollars from the elimination of the M&O rate. (City of Sugarland Staff) While this example is listed under the heading of “Triumph,” it would be interesting to know how much might have been saved if these overlapping structures had acted sooner.

CONCLUSIONS

Municipal Utility and Special Utility Districts have literally brought water to the masses in unimproved areas and allowed for development that would not have been achievable or as expedient without this option. These type of entities are very useful and have significantly contributed to much of the State of Texas’ success. As with most things, they too have a lifecycle. The Texas Water Code spells out stipulations for the creation and dissolution of this form of government. As a precondition of providing water service, the TCEQ issues Certificates

of Convenience and Necessity (“CCN”). It should be a focal point of all holders that as a certificated area is no longer more convenient or necessary to be served by this body, other options should be embraced. As it is said,

“There is a time for everything, and a season for every activity under the heavens:
a time to be born and a time to die,
a time to plant and a time to uproot,”

(Holy Bible, New International Version Ecclesiastes 3:1-2)

Michael Phillips saw, with clarity in 1975, the challenges we face today when he wrote, “When viewed in isolation, the special district mechanism can be a viable and efficient means of providing services to the metropolitan area. When integrated with other units of local government, however, special districts often create as many problems as they solve. The major criticism is that the proliferation of special districts leads to fragmentation and overlapping of authority and function and contributes to a general weakening of the local government structure.” (Phillips 139)

Special purpose districts have many advantages. They are created with focus areas to serve, can be custom-fit, responsive to the local level, and do not rely on outside funding. There are also disadvantages to special purpose districts. Competition with other forms of government that provide the same services can create hardships. Information sharing may be limited since special districts can operate almost autonomously.

As mentioned in the introductory section, the state of Texas has many funding mechanisms and governmental options to accomplish the goals of both local officials and property owners. There are approximately 3,300 special purpose districts in Texas. Most citizens know very little about these jurisdictions, their structure, functions or governance. This, as one author puts it, makes, “them the invisible governments of Texas.” (Texas Senate Research Center 43)

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