

## SPECIAL UTILITY DISTRICTS VS. WATER SUPPLY CORPORATIONS

SPECIAL UTILITY DISTRICTS	WATER SUPPLY CORPORATIONS
<b>Statutory Authority</b>	
Texas Water Code (TWC), Chapters 13, 49 & 65	Texas Water Code (TWC), Chapters 49 & 67 Texas Business Organizations Code (TBOC) Chapter 22
<b>General</b>	
<p>Governmental entity</p> <ul style="list-style-type: none"> <li>• TWC § 65.011</li> <li>• Tex. Const. Art. XVI, § 59(b)</li> </ul>	<p><b>MWSC is a nonprofit corporation</b></p> <ul style="list-style-type: none"> <li>• <b>Articles of Incorporation</b></li> <li>• <b>Bylaws, Art. VIII</b></li> </ul> <p>Nonprofit corporation</p> <ul style="list-style-type: none"> <li>• TWC § 49.001(a)(5)</li> <li>• TWC § 67.004</li> </ul>
<p>Customer of the District</p> <ul style="list-style-type: none"> <li>• TWC § 49.2122</li> </ul>	<p><b>MWSC shall have members as defined by the TWC</b></p> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. X, § 1</b></li> </ul> <p>Member of the Corporation</p> <ul style="list-style-type: none"> <li>• TBOC § 22.151(a)</li> </ul>
<p>Refundable deposit</p> <ul style="list-style-type: none"> <li>• TWC § 49.212(b)</li> </ul>	<p><b>MWSC's membership fee is \$100 and refundable</b></p> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. X, §§ 2, 3</b></li> </ul> <p>Membership fee</p> <ul style="list-style-type: none"> <li>• TBOC § 22.151(c)</li> </ul>
<p>Can service outside of District's boundaries without CCN</p> <ul style="list-style-type: none"> <li>• TWC § 49.215</li> </ul>	<p>Limited to service within CCN area</p> <ul style="list-style-type: none"> <li>• TWC §§ 13.139, 13.242</li> </ul>
<p>Rules properly adopted shall be recognized by courts as if they were penal ordinances of a city</p> <ul style="list-style-type: none"> <li>• TWC § 65.206</li> <li>• TWC § 49.228 (damage to property)</li> </ul> <p>Board may set reasonable civil penalties for the breach of any rule of the District that shall not exceed the jurisdiction of a justice court</p> <ul style="list-style-type: none"> <li>• TWC § 49.004(a)</li> </ul>	<p>Limited authority to issue penalties</p> <ul style="list-style-type: none"> <li>• TWC § 49.228 (damage to property)</li> </ul>
<p>Can provide water, wastewater, firefighting, and solid-waste service, but cannot levy taxes</p> <ul style="list-style-type: none"> <li>• TWC § 65.012 (purposes)</li> <li>• TWC § 65.201 (powers)</li> <li>• TWC § 65.203 (solid waste)</li> </ul>	<p>Can provide water supply, sewer service, or both for a municipality, a private corporation, an individual, or a military camp or base; can provide flood control and a drainage system for a political</p>

<ul style="list-style-type: none"> <li>• TWC § 65.235 (tax prohibition)</li> </ul>	subdivision, private corporation, or another person <ul style="list-style-type: none"> <li>• TWC § 67.002</li> </ul>
Same <ul style="list-style-type: none"> <li>• TWC § 49.222</li> </ul>	“A district or water supply corporation” has the ability to use condemnation inside or outside the district or the boundaries of the CCN “for water, sanitary sewer, storm drainage, or flood drainage or control purposes or for any other of its projects or purposes, and may elect to condemn either the fee simple title or a lesser property interest” <ul style="list-style-type: none"> <li>• TWC § 49.222</li> </ul>
<b>Directors &amp; Elections</b>	
Directors must be 18; resident citizen of the state; and either own land subject to taxation in the District, be a user of facilities, or a qualified voter of the District <ul style="list-style-type: none"> <li>• TWC § 65.102</li> </ul>	<b>MWSC directors must be 18 and a member of the Corporation</b> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. IV, § 1</b></li> </ul> Directors must be 18 and a member of the Corporation (own property) <ul style="list-style-type: none"> <li>• TWC § 67.0051(a)</li> <li>• TWC § 67.016(d)</li> </ul>
Elections can be on any date determined by the District’s Board <ul style="list-style-type: none"> <li>• TWC § 65.103(d)</li> </ul>	<b>MWSC directors elected at each annual meeting</b> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. IV, § 2</b></li> <li>• <b>Bylaws, Art. VI, §§ 2–10 (election procedures)</b></li> </ul> Annual elections per written procedures <ul style="list-style-type: none"> <li>• TWC § 67.007(b)</li> </ul>
Must comply with requirements in the Texas Election Code (TEC) <ul style="list-style-type: none"> <li>• TWC §§ 49.101; 49.102(a) &amp; (c)</li> </ul>	<b>MWSC has annual member meetings</b> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. IV, § 1</b></li> <li>• <b>Bylaws, Art. VI, §§ 1–2 (board shall adopt rules for annual membership meetings)</b></li> </ul> <b>Must adopt written procedures for conducting an annual or special meeting of the members</b> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. VI, §§ 1–2 (board shall adopt rules for annual membership meetings)</b></li> <li>• TWC § 67.007(b)</li> </ul>
Who Can Vote: All residents of the District who are registered voters <ul style="list-style-type: none"> <li>• TEC § 11.001</li> </ul>	<b>Each MWSC member is entitled to one vote regardless of the number of memberships owned</b> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. X, § 2</b></li> </ul>

	<p>Who Can Vote: Members of the Corporation (own property)</p> <ul style="list-style-type: none"> <li>• TWC § 67.016(d)</li> <li>• TWC § 67.006(a) (one vote per member)</li> </ul>
<p>Term of office may not exceed three years; terms can be staggered</p> <ul style="list-style-type: none"> <li>• TWC § 65.103(b)</li> </ul>	<p><b>MWSC directors serve staggered terms</b></p> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. IV, § 2</b></li> </ul> <p>Serve staggered terms of two or three years</p> <ul style="list-style-type: none"> <li>• TWC §§ 67.005(c)–(e)</li> </ul>
<p>5 to 11 directors</p> <ul style="list-style-type: none"> <li>• TWC § 65.101</li> </ul>	<p><b>MWSC has 9 directors</b></p> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. IV, § 2</b></li> </ul> <p>Can have up to 21 directors</p> <ul style="list-style-type: none"> <li>• TWC § 67.005(a)</li> </ul>
<p>A majority of the District’s board constitutes a quorum for any meeting, but a concurrence of a majority of the entire board is required for transacting any District business</p> <ul style="list-style-type: none"> <li>• TWC § 49.053</li> </ul>	<p><b>A majority of those present may act on behalf of the Corporation’s full Board</b></p> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. IV, § 2</b></li> <li>• TBOC § 22.214</li> </ul>
<p>Directors may receive fees of office</p> <ul style="list-style-type: none"> <li>• TWC § 49.060</li> </ul>	<p><b>MWSC directors serve without pay but may be compensated for actual expenses</b></p> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. IV, § 2</b></li> </ul> <p>Officers may receive a salary not to exceed \$5,000/year</p> <ul style="list-style-type: none"> <li>• TWC § 67.006(c)</li> </ul>
<p>Filings &amp; Requirements (TWC § 49.055):</p> <ul style="list-style-type: none"> <li>- Oaths</li> <li>- Statements of Officer</li> <li>- Director Bond</li> <li>- Conflicts Disclosure Statements</li> <li>- District must annually provide financial information and Tax Rate to Comptroller (Texas Government Code §§ 403.0241, 403.0242)</li> <li>- Annual Debt Obligations/Audit Submission to Comptroller (Texas Local Gov’t Code § 140.008)</li> <li>- Interested Parties Filing (Texas Government Code, Chapter 2252)</li> </ul>	<p><b>WSC incorporates a Conflict of Interest Policy</b></p> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. IV, § 5</b></li> </ul> <p><b>MWSC’s Board must prepare annual financial activity report</b></p> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. XIX</b></li> </ul> <p>Corporation may require bond of an officer, but officers are not required to file bonds</p> <ul style="list-style-type: none"> <li>• TWC § 67.006(b)</li> </ul>
<p>Directors may be removed only under certain conditions</p> <ul style="list-style-type: none"> <li>• TWC § 49.052</li> </ul>	<p><b>Officers &amp; Directors may be removed for or without cause or as provided by the bylaws or articles of incorporation</b></p> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. IV, § 3</b></li> <li>• TBOC § 22.211</li> </ul>

<p>Directors generally cannot serve on the boards of two governmental entities at the same time</p> <ul style="list-style-type: none"> <li>• Tex. Const. Art. XVI, § 40 (dual offices of emolument)</li> </ul>	<p>Directors can generally serve on the board of a governmental entity concurrently, unless prohibited by the Corporation’s bylaws</p> <ul style="list-style-type: none"> <li>• Tex. Local Gov’t Code (TLGC) § 171.009</li> <li>• TWC §§ 36.001(15) &amp; 36.051(b) (cannot concurrently serve on board of GWCD)</li> </ul>
<p>Eligible to participate in Texas Counties and Districts Retirement System</p> <ul style="list-style-type: none"> <li>• TWC § 49.069(b).</li> </ul>	<p>Not available to water supply corporations</p>
<b>Finances</b>	
<p>No taxing authority</p> <ul style="list-style-type: none"> <li>• TWC § 65.235</li> </ul>	<p>No taxing authority</p>
<p>May participate in government investment pools</p> <ul style="list-style-type: none"> <li>• TGC § 2256.016</li> </ul>	<p>Not available to water supply corporations</p>
<p>May participate in the Texas Municipal League</p> <ul style="list-style-type: none"> <li>• TLGC § 172.005</li> </ul>	
<p>Can issue tax-exempt revenue bonds on the open market or for purchase by the TWDB</p> <ul style="list-style-type: none"> <li>• TWC § 65.501</li> </ul>	<p>May contract with certain entities to issue bonds secured by a contract entered into under TLGC § 552.014, but interest rates will be higher</p> <ul style="list-style-type: none"> <li>• TWC § 67.014</li> </ul>
<p>Exempt from ad valorem taxes on its personal property, utility lines, and plant facilities</p> <ul style="list-style-type: none"> <li>• Texas Tax Code (TTC) § 11.11(a)</li> </ul>	<p>Exempt from ad valorem taxes on property, incomplete improvements, and certain land</p> <ul style="list-style-type: none"> <li>• TTC § 11.30</li> </ul>
<p>Exempt from sales tax on supplies and services</p> <ul style="list-style-type: none"> <li>• TTC § 151.309(5); 151.355</li> </ul>	<p>Exempt from taxes for construction of regional water systems certified by the TCEQ (qualified purchases only) and water and wastewater systems constructed or operated as a public-private use partnership</p> <ul style="list-style-type: none"> <li>• TTC § 151.355</li> </ul>
<b>Contracting</b>	
<p>May enter into interlocal agreements</p> <ul style="list-style-type: none"> <li>• TGC § 791.011</li> </ul>	<p>Corporation may enter into a contract with any political subdivision, federal agency, or other entity for the acquisition, construction, or maintenance of a project or improvement for an authorized purpose</p> <ul style="list-style-type: none"> <li>• TWC § 67.010(a)</li> </ul>
<p>Must follow statutory bid advertisement and contract provisions for districts</p> <ul style="list-style-type: none"> <li>• TWC § 49.273</li> </ul>	<p>Not a water supply corporation requirement</p>
<p>Ability to participate in cooperative purchasing programs provided by the Texas Building &amp; Procurement Commission</p> <ul style="list-style-type: none"> <li>• TLGC § 271.102</li> </ul>	

<p>Sovereign immunity/official immunity and Texas Tort Claims Act</p> <ul style="list-style-type: none"> <li>• TGC § 2260.006</li> <li>• TCPRC Ch. 101; § 101.001(3)(B) (TTCA)</li> </ul>	<p>Not available to water supply corporations</p>
<p><b>Administrative</b></p>	
<p>Must conduct an annual audit and file the audit with the TCEQ</p> <ul style="list-style-type: none"> <li>• TWC §§ 49.194 &amp; 49.199(a)(6)</li> </ul>	<p><b>MWSC’s Board must prepare annual financial activity report</b></p> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. XIX</b></li> </ul> <p>Corporations must maintain true and accurate financial records and prepare an annual report of the financial activity conforming to the standards of the American Institute of CPAs</p> <ul style="list-style-type: none"> <li>• TBOC §§ 22.352–.355</li> </ul>
<p>Must adhere to Public Funds Investment Act (PFIA) and investment officer must take required training</p> <ul style="list-style-type: none"> <li>• TWC § 49.1571</li> </ul>	<p>Financial officer is not required to attend public investment training; Water Code authorizes investment in only bonds or other indebtedness backed by the US, savings accounts, or share accounts; can invest in other securities set forth in Texas Government Code (TGC) Chapter 2256 <u>if</u> the Corporation has a written investment policy authorized by the PFIA</p> <ul style="list-style-type: none"> <li>• TWC § 67.104(b)(4)</li> <li>• TGC § 2256.005</li> </ul>
<p>Subject to continuing right of supervision by the TCEQ, which includes notices and filings</p> <ul style="list-style-type: none"> <li>• TWC § 5.013</li> </ul>	
<p>Subject to the Open Meetings and Open Records Act</p> <ul style="list-style-type: none"> <li>• TWC §§ 49.064–.65</li> </ul>	<p><b>MWSC’s records are available for inspection</b></p> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. XIX</b></li> </ul> <p><b>MWSC dissolution provision provides for transfer to entity providing water or wastewater service, or both, that is exempt from ad valorem taxation</b></p> <ul style="list-style-type: none"> <li>• <b>Bylaws, Art. XV</b></li> </ul> <p>If Corporation does not pay ad valorem taxes, required to comply with the Public Information Act and Open Meetings Act; Corporation must have a provision in its bylaws stating that upon dissolution, the Corporation’s assets will be transferred to an entity the provides water and wastewater, and that the entity is exempt from ad valorem taxes</p> <ul style="list-style-type: none"> <li>• TTC § 11.30</li> </ul>

<p>Must file a district registration form with the TCEQ</p> <ul style="list-style-type: none"> <li>• TWC § 49.054(f)</li> </ul>	
<p>Must adopt a records management program and file a copy with the TSLAC and appoint a records management officer</p> <ul style="list-style-type: none"> <li>• TWC § 49.065</li> <li>• TLCG § 205.003</li> </ul>	
<p>Must adopt a code of ethics</p> <ul style="list-style-type: none"> <li>• TWC § 49.199(a)(1)</li> </ul>	
<p>Must have a travel expenditure policy</p> <ul style="list-style-type: none"> <li>• TWC § 49.199(a)(2)</li> </ul>	
<p>Must have policies and procedures in place for the selection, monitoring, and reviewing of professional services</p> <ul style="list-style-type: none"> <li>• TWC § 49.199(a)(4)</li> </ul>	
<p>Rates are reviewable by the Public Utility Commission (PUC)</p> <ul style="list-style-type: none"> <li>• TWC § 13.043</li> </ul>	<p>Rates are reviewable by the PUC</p> <ul style="list-style-type: none"> <li>• TWC § 13.043</li> </ul>