

## **BILL ANALYSIS**

C.S.H.B. 2876  
By: Callegari  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Subchapter G, Chapter 13, Water Code, provides the statutory framework for the issuance of certificates of convenience and necessity (CCN) for water and sewer service by the Texas Commission on Environmental Quality (TCEQ). In general, a utility may not render retail water or sewer utility service to the public without first having obtained a CCN. In general, a CCN entitles a utility to be the sole, monopoly water or sewer utility provider in a certain area.

Under current law, landowners have very little rights in the process of the Commission granting a CCN over their property. Landowners are not required to consent to a CCN over their property. The CCN applicant does not need to show that any landowners actually requested utility service from the utility. Landowners are not given adequate or direct notice; the only statutorily required notice is one newspaper publication. A CCN is an encumbrance on land in as much as it dictates how, when and by whom utilities will be provided to that land.

In some cases, the inability of landowners to participate in the CCN process has led to abuses. CCNs have been granted over tracts of undeveloped land without the ability to provide service to the entire area. Once landowners are included in a CCN, without notice or consent or request for service, they cannot remove their land from the CCN without going through a time-consuming and costly administrative process at the TCEQ.

Some CCN holders have demanded payment of exorbitant sums to release property from a CCN. These payments often bear no relation to investments in utility infrastructure or capacity to serve the land, because no such investment has been made.

In addition, of particular importance in urban and suburban areas is a CCN holder's ability to provide adequate fire suppression service. Issues of service quality predominate in areas where a non-municipal utility operates inside the corporate limits of a municipality. In these situations, many residents would prefer to receive higher quality utility service from the municipality.

C.S.H.B. 2876 amends Chapter 13, Water Code to reform the process by which CCNs are created and maintained. The bill grants TCEQ meaningful discretion with regard to its evaluation of CCN applications while giving affected landowners greater latitude in deciding whether or not their land will be included in a certificated area. C.S.H.B. 2876 also empowers certain landowners to petition TCEQ to have their land decertified from a CCN in instances where the water or sewer service that they have been provided is either nonexistent or shoddy.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 9 and SECTION 10 of the bill.

### **ANALYSIS**

SECTION 1. Amends §13.002(1), Water Code to expand the definition of affected person to include any landowner within an area for which a CCN is filed.

SECTION 2. Amends §13.241(a), Water Code to specify criteria that TCEQ shall consider when reviewing an amendment to a CCN.

SECTION 3. Amends §13.242, Water Code to prohibit a wholesale water or sewer service provider from requiring a purchaser to obtain a CCN if the purchaser is not otherwise required to obtain such a certificate.

SECTION 4. Amends §13.244, Water Code to require an application for a new or amended CCN to include a description of the proposed service area, a description of requests for service in the service area, a capital improvements plan, a description of the sources of facilities funding, a description of current and projected land uses, the applicant's current financial statement, a list of landowners who own at least 50 acres wholly or partially within the service area, and any other item as required by TCEQ.

SECTION 5. Adds §13.245, Water Code to prohibit TCEQ from granting a CCN to a utility within a city or the city's extraterritorial jurisdiction with a population of 650,000 or more without the city's consent. Authorizes TCEQ to grant a CCN to a utility located within a city with a population of 650,000 or more without the city's consent if the city has not consented within 180 days and if TCEQ finds that the city cannot provide service. Authorizes cities to appeal commission decision to grant a certificate within their boundaries to the appropriate state district court.

Adds §13.2451, Water Code to clarify that a retail public utility may continue to provide service in an area where a municipality has extended its extraterritorial jurisdiction (ETJ) and prohibits TCEQ from extending a municipality's CCN beyond its extraterritorial jurisdiction without the written consent of affected landowners. Provides that the portion of a city's CCN that extends beyond the ETJ without landowner consent is void.

SECTION 6. Amends §13.246, Water Code to require TCEQ to require that notice for each new or amended CCN application be mailed to each landowner of 50 acres or more that is located wholly or partially within the area proposed to be certified. Expands criteria that TCEQ shall consider when evaluating an application for a CCN or an amendment to include requests for service in the affected area, consideration of current and projected density and land use of the area, the applicant's financial ability to pay for requisite facilities, and the effect on the land to be included in the service area. Authorizes a landowner of at least 25 acres that is located wholly or partially within the proposed CCN to elect to exclude all or part of their property from the proposed CCN area by providing written notice of their preference to TCEQ no later than 30 days after their receipt of a notice for the creation of or amendment to a CCN. Prohibits a landowner located within a city with a population of 650,000 from electing to exclude their land from a CCN that is held by the city.

SECTION 7. Amends section title of §13.247, Water Code without substantive change.

SECTION 8. Amends §13.247, Water Code to authorize a city with a population of 650,000 or more to exercise the power of eminent domain and acquire substandard water or sewer systems that are located entirely within the city's boundaries. Requires cities to pay just and adequate compensation for condemned systems.

SECTION 9. Amends §13.254, Water Code to provide the TCEQ with the authority to revoke a CCN upon finding that a provider is incapable of providing service. Authorizes a landowner of at least 100 acres that are not in a platted subdivision actually receiving water or sewer service to petition TCEQ for the expedited decertification of their land. Requires landowners seeking expedited decertification to include in their petition evidence of a written request of service submitted to the CCN holder in a timely manner, that the CCN holder after 90 days to review and respond has refused or is incapable of providing service, and that an alternate utility is capable of providing service. Prohibits a landowner from petitioning TCEQ for the expedited decertification of their land if their property is located within a city with a population of 650,000 or more or in a platted subdivision already receiving service. Requires TCEQ to grant a petition for expedited decertification unless the commission makes the express finding that a landowner failed to satisfy the requirements necessary for a decertification application and supports its finding with separate findings and conclusions. Requires a decision by TCEQ within 90 days. Exempts petitions for expedited decertification from requirements of Chapter 2001, Government Code. Requires TCEQ to ensure that the monetary amount of compensation pursuant to a decertification order be determined within 90 days. Revises factors for consideration by TCEQ

in determining the compensation to the decertified utility. Requires TCEQ to adopt rules governing the evaluation of factors for determining compensation to utilities from which territory has been decertified. Provides for selection of independent appraiser by TCEQ in certain circumstances.

SECTION 10. Amends §13.255, Water Code to revise factors for consideration by TCEQ in determining the compensation to the decertified utility. Requires TCEQ to adopt rules governing the evaluation of factors to be considered in determining the amount of compensation to utilities from which territory has been decertified.

SECTION 11. Adds §13.2551, Water Code to authorize TCEQ to order, upon revocation of a certificate or single certification for an area, and on request by an affected retail public utility, the utility seeking to provide service to a decertified area to serve the area and to order the transfer of a CCN for a partially decertified area to the utility seeking to provide service. Authorizes TCEQ to order service to the entire service area of a decertified utility upon the finding that the utility will be unable to provide service at an affordable cost. Authorizes TCEQ to require a utility servicing a decertified area to require that utility to provide service to remaining customers at a cost comparable to its existing customers and to establish the terms under which the service must be provided.

SECTION 12. Amends §13.257, Water Code to amend the definition of utility service provider to include all retail public utilities. Requires a utility service provider to record in the real property records of each county in which it has a CCN a sufficient description of the certificate's boundaries. Requires each county to accept and file in its real property records a utility's CCN map.

SECTION 13. REPEALERS. Repeals §13.254(h), Water Code and §13.2541, Water Code.

SECTION 14. Transition language requiring a CCN holder to comply with the requirements of §13.257, Water Code no later than 1 January 2007.

SECTION 15. Transition language specifying applicability of changes made by the Act.

SECTION 16. 1 September 2005 effective date.

#### **EFFECTIVE DATE**

1 September 2005.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

SECTION 1. New section of the bill expanding the definition of affected person.

SECTION 2. Similar to SECTION 1 of original bill.

SECTION 3. New section prohibiting a wholesale water or sewer service provider from requiring a purchaser to obtain a CCN if the purchaser is not otherwise required to obtain such a certificate.

SECTION 4. Similar to SECTION 2 of original bill, expands and adds criteria for a CCN application.

SECTION 5. New section to prohibit TCEQ from granting a CCN to a utility within a municipality with a population of 650,000 or more without the municipality's consent. Also prohibits TCEQ from extending a municipality's CCN beyond its extraterritorial jurisdiction without the written consent of affected landowners.

SECTION 6. Similar to SECTION 3 of the original bill. Limits provision of notice to landowners with 50 acres or more. Expands certain criteria for TCEQ's evaluation of CCN applications. Authorizes only landowners of 25 acres or more to opt-out of a proposed CCN.

Prohibits landowners in a municipality with a population of 650,000 or more from opting-out of a proposed CCN held by such city.

SECTION 8. Similar to SECTION 4 of original bill, limits condemnation and acquisition powers to cities with a population of 650,000 or more.

SECTION 9. Specifies process for the expedited decertification of tracts of land of at least 100 acres in size.

SECTION 10. New section to require TCEQ to adopt rules governing the evaluation of factors to be considered in determining the amount of compensation to utilities from which territory has been decertified.

SECTION 11. New section of the bill authorizing TCEQ to order the provision of service to a decertified area.

SECTION 12. Similar to SECTION 10 of the original bill expanding criteria for the boundary description of a service area for recordation in county deed records.

SECTION 13. New section of the bill repealing §13.254(h), Water Code and §13.2541, Water Code.