

By: Callegari

H.B. No. 2876

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to certificates of public convenience and necessity for  
3 water service and sewer service.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Sections 13.241 (a) and (d), Water Code, are  
6 amended to read as follows:

7 (a) In determining whether to grant or amend a certificate  
8 of public convenience and necessity, the commission shall ensure  
9 that the applicant possesses the financial, managerial, and  
10 technical capability to provide continuous and adequate service.

11 (d) Before the commission grants or amends a [~~new~~  
12 certificate of convenience and necessity [~~for an area which would~~  
13 ~~require construction of a physically separate water or sewer~~  
14 ~~system~~], the applicant must demonstrate that regionalization or  
15 consolidation with another retail public utility is not  
16 economically feasible.

17 SECTION 2. Sections 13.244(b) and (c), Water Code, are  
18 amended, and Section 13.244, Water Code, is amended by adding  
19 Subsection (d), to read as follows:

20 (b) Each [~~On request by the commission, each~~] public utility  
21 and water supply or sewer service corporation shall file with the  
22 commission a map or maps showing all its facilities and  
23 illustrating separately facilities for production, transmission,  
24 and distribution of its services, and each certificated retail

1 public utility shall file with the commission a map or maps showing  
2 any facilities, customers, or area currently being served outside  
3 its certificated areas.

4 (c) Each applicant for a certificate shall file with the  
5 commission evidence required by the commission to show that the  
6 applicant has received the required consent, franchise, or permit  
7 of the proper municipality or other public authority. Each  
8 applicant for a certificate to serve an area all or part of which is  
9 located in the corporate limits or extraterritorial jurisdiction of  
10 a municipality shall file with the commission a certified copy of an  
11 ordinance or resolution of the municipality consenting to the  
12 certificate or amendment to the certificate.

13 (d) Applications for certificates of convenience and  
14 necessity or for an amendment to a certificate shall minimally  
15 contain:

16 (1) a boundary description of the proposed service  
17 area by a metes and bounds survey certified by a Texas registered  
18 professional land surveyor or, if there is a recorded plat of the  
19 area, by lot and block number;

20 (2) a description of the requests for service made by  
21 landowners, tenants or residents in the proposed service area and  
22 copies of all written service requests;

23 (3) a capital improvements plan, including budgets and  
24 estimated timelines for construction of all facilities necessary to  
25 provide full service to the entire proposed service area;

26 (4) a description of the sources of funding for all  
27 facilities necessary to provide full service to the entire proposed

1 service area other than funding from landowners or the dedication  
2 of facilities from landowners;

3 (5) a certificate of the central appraisal district  
4 indicating the owners of the real property within the proposed  
5 service area as reflected on the tax rolls of the central appraisal  
6 district as of the date of the application or any amended  
7 application; and

8 (6) written consent to be included in the certificated  
9 area executed by each and every owner of real property within the  
10 proposed service area as indicated by the certificate of the  
11 central appraisal district.

12 SECTION 3. Sections 13.246(a) and (c), Water Code, are  
13 amended, and Section 13.246, Water Code, is amended by adding  
14 Subsections (h), (i) and (j), to read as follows:

15 (a) If an application for a certificate of public  
16 convenience and necessity is filed, the commission shall cause  
17 notice of the application to be given to affected parties and, if  
18 requested, shall fix a time and place for a hearing and give notice  
19 of the hearing. Notice of an application must be mailed to every  
20 owner of land within the proposed service area as reflected on the  
21 tax rolls of the central appraisal district. Any person affected by  
22 the application may intervene at the hearing.

23 (c) Certificates of convenience and necessity shall be  
24 granted on a nondiscriminatory basis after consideration by the  
25 commission of:

26 (1) the adequacy of service currently provided to the  
27 requested area;[7]

1           (2) the need for additional service in the requested  
2 area, including whether any landowners, tenants, or residents have  
3 requested service;~~[7]~~

4           (3) the effect of the granting of a certificate on the  
5 recipient of the certificate, on the landowners in the area, and on  
6 any retail public utility of the same kind already serving the  
7 proximate area;~~i~~~~[7]~~

8           (4) the ability of the applicant to provide adequate  
9 service, including fire suppression service;

10           (5) the feasibility of obtaining service from an  
11 adjacent retail public utility;~~i~~~~[7]~~

12           (6) the financial ability of the applicant to pay for  
13 the facilities, including fire suppression facilities, necessary  
14 to provide continuous and adequate service and the financial  
15 stability of the applicant, including, if applicable, the adequacy  
16 of the applicant's debt-equity ratio;~~i~~~~[7]~~

17           (7) environmental integrity;~~[7 and]~~

18           (8) the probable improvement of service or lowering of  
19 cost to consumers in that area resulting from the granting of the  
20 certificate; and

21           (9) the effect on the land to be included in the  
22 certificated area.

23           (h) No real property may be included in the territory of a  
24 certificate of convenience and necessity without the written  
25 consent of the owner of the real property.

26           (i) No real property within the corporate limits or  
27 extraterritorial jurisdiction of a municipality may be included in

1 the territory of a certificate of convenience and necessity without  
2 the written consent of the municipality. The municipality may  
3 require, as a condition of such consent, that all water and sewer  
4 facilities be designed and constructed to its municipal standards.

5 (j) An applicant may not demonstrate its financial ability  
6 to pay for the facilities necessary to provide continuous and  
7 adequate service by relying on a plan to require landowners to pay  
8 the capital cost for, or construct at the landowners' expense and  
9 dedicate, the facilities necessary to provide continuous and  
10 adequate service to their property.

11 SECTION 4. Section 13.247 is amended to read as follows:

12 Sec. 13.247. AREA [~~INCLUDED~~] WITHIN MUNICIPALITY [~~CITY,~~  
13 ~~TOWN, OR VILLAGE~~]. (a) If an area [~~has been or~~] is [~~included~~]  
14 within the corporate limits or extraterritorial jurisdiction  
15 [~~boundaries~~] of a municipality [~~city as the result of annexation,~~  
16 ~~incorporation, or otherwise~~], all retail public utilities  
17 certified or entitled to certification under this chapter to  
18 provide service or operate facilities in that area [~~before the~~  
19 ~~inclusion~~] may continue and extend service in its area of public  
20 convenience and necessity within the [~~annexed or incorporated~~] area  
21 pursuant to the rights granted by its certificate and this chapter,  
22 unless and until the municipality exercises its power of eminent  
23 domain to acquire the property of the retail public utility  
24 pursuant to subsection (d). Except as provided by Section 13.255 of  
25 this code, a municipally owned or operated utility may not provide  
26 retail water and sewer utility service within the area certificated  
27 to another retail public utility without first having obtained from

1 the commission a certificate of public convenience and necessity  
2 that includes the areas to be served.

3 (b) Notwithstanding any other provision of law, a retail  
4 public utility may continue and extend service within its area of  
5 public convenience and necessity and utilize the roads, streets,  
6 highways, alleys, and public property to furnish retail utility  
7 service, subject to the authority of the governing body of a  
8 municipality to require any retail public utility, at its own  
9 expense, to relocate its facilities to permit the widening or  
10 straightening of streets, by giving to the retail public utility 30  
11 days' notice and specifying the new location for the facilities  
12 along the right-of-way of the street or streets.

13 (c) This section may not be construed as limiting the power  
14 of municipalities [~~cities~~] to incorporate or extend their  
15 boundaries by annexation, or as prohibiting any municipality [~~city~~]  
16 from levying taxes and other special charges for the use of the  
17 streets as are authorized by Section 182.025, Tax Code.

18 (d) Upon petition of the majority of residents in a retail  
19 public utility, a municipality may exercise its power of eminent  
20 domain to acquire by condemnation the property of a retail public  
21 utility located within its corporate limits or extraterritorial  
22 jurisdiction. The municipality shall pay just and adequate  
23 compensation in accordance with the Texas Constitution and the  
24 federal constitution for such property. This right of eminent  
25 domain shall be exercised in the manner provided in Chapter 21,  
26 Property Code.

27 SECTION 5. Sections 13.2502(b), (c), (d) and (e), Water

1 Code, are amended to read as follows:

2 (b) Notice pursuant to this section shall be mailed to every  
3 owner of land within the area of the certificate as reflected on the  
4 tax rolls of the central appraisal district. [~~Publication of~~  
5 ~~notice in a newspaper of general circulation in each county in which~~  
6 ~~the corporation or special utility district is certificated for~~  
7 ~~utility service of the requirement to comply with the subdivision~~  
8 ~~service extension policy constitutes notice under this section.~~  
9 ~~The notice must be published once a week for two consecutive weeks~~  
10 ~~on a biennial basis and must contain information describing the~~  
11 ~~subdivision service extension policy of the corporation or special~~  
12 ~~utility district. The corporation or special utility district must~~  
13 ~~be able to provide proof of publication through an affidavit of the~~  
14 ~~publisher of the newspaper that specifies each county in which the~~  
15 ~~newspaper is generally circulated.]~~

16 (c) [~~As an alternative to publication of notice as provided~~  
17 ~~by Subsection (b), a corporation or special utility district may~~  
18 ~~demonstrate by any reasonable means that a developer has been~~  
19 ~~notified for purposes of this section, including: (1) an agreement~~  
20 ~~executed by the developer; (2) correspondence with the developer~~  
21 ~~that sets forth the subdivision service extension policy; or (3)~~  
22 ~~any other documentation that reasonably establishes that the~~  
23 ~~developer should be aware of the subdivision service extension~~  
24 ~~policy.~~

25 ~~(d)]~~ This section does not limit or extend the jurisdiction  
26 of the commission under Section 13.043(g).

27 (d) [~~(e)~~] For purposes of this section:

1           (1) "Developer" means a person who subdivides land or  
2 requests more than two water or sewer service connections on a  
3 single contiguous tract of land.

4           (2) "Service applicant" means a person, other than a  
5 developer, who applies for retail water or sewer utility service.

6           SECTION 6. Section 13.251, Water Code, is amended to read as  
7 follows:

8           Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE.

9           (a) Except as provided by Section 13.255 of this code, a utility or  
10 a water supply or sewer service corporation may not sell, assign, or  
11 lease a certificate of public convenience and necessity or any  
12 right obtained under a certificate unless the commission has  
13 determined that the purchaser, assignee, or lessee is capable of  
14 rendering adequate and continuous service to every consumer within  
15 the certified area, after considering the factors under Section  
16 13.246(c) of this code. The sale, assignment, or lease shall be on  
17 the conditions prescribed by the commission.

18           (b) Public notice of any sale, acquisition, lease, rental,  
19 merger, or consolidation shall include mailed notice to all current  
20 customers and all owners of real property within the service area as  
21 reflected on the tax rolls of the central appraisal district.

22           (c) A hearing regarding any sale, acquisition, lease,  
23 rental, merger, or consolidation must be held if requested by an  
24 owner of real property within the service area or any retail public  
25 utility already serving the proximate area.

26           SECTION 7. Section 13.254, Water Code, is amended to read as  
27 follows:



1           Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE. (a)

2   The commission at any time after notice and hearing may revoke or  
3   amend any certificate of public convenience and necessity with the  
4   written consent of the certificate holder or if it finds that:

5           (1) the certificate holder has never provided, is no  
6   longer providing, or has failed to provide continuous and adequate  
7   service in the area, or part of the area, covered by the  
8   certificate, at no cost to the landowner or customer other than the  
9   standard rates for service charge by the certificate holder to all  
10 of its customers;

11           (2) in an affected county as defined in Section  
12 16.341, the cost of providing service by the certificate holder is  
13 so prohibitively expensive as to constitute denial of service,  
14 provided that, for commercial developments or for residential  
15 developments started after September 1, 1997, in an affected county  
16 as defined in Section 16.341, the fact that the cost of obtaining  
17 service from the currently certificated retail public utility makes  
18 the development economically unfeasible does not render such cost  
19 prohibitively expensive in the absence of other relevant factors;

20           (3) the certificate holder has agreed in writing to  
21 allow another retail public utility to provide service within its  
22 service area, except for an interim period, without amending its  
23 certificate; or

24           (4) the certificate holder has failed to file a cease  
25 and desist action pursuant to Section 13.252 within 180 days of the  
26 date that it became aware that another retail public utility was  
27 providing service within its service area, unless the certificate

1 holder demonstrates good cause for its failure to file such action  
2 within the 180 days.

3 (b) Upon written request of an owner of real property within  
4 the certificated area, the commission shall amend the certificate  
5 to remove the owner's property if the owner did not consent to or  
6 request in writing inclusion in the certificated area. Such owner  
7 of real property shall provide compensation for any actual costs  
8 incurred in designing and constructing water and sewer facilities  
9 to serve the owner's property.

10 (c) [~~(b)~~] Upon written request from the certificate holder,  
11 the executive director may cancel the certificate of a utility or  
12 water supply corporation authorized by rule to operate without a  
13 certificate of public convenience and necessity under Section  
14 13.242(c).

15 (d) [~~(c)~~] If the certificate of any retail public utility is  
16 revoked or amended, the commission may require one or more retail  
17 public utilities with their consent to provide service in the area  
18 in question. The order of the commission shall not be effective to  
19 transfer property.

20 (e) [~~(d)~~] A retail public utility may not in any way render  
21 retail water or sewer service directly or indirectly to the public  
22 in an area that has been decertified under subsection (a) [~~this~~  
23 ~~section~~] without providing compensation for any actual costs  
24 incurred in designing and constructing water and sewer facilities  
25 to serve the decertified area [~~any property that the commission~~  
26 ~~determines is rendered useless or valueless to the decertified~~  
27 ~~retail public utility as a result of the decertification)].~~

1           ~~[(e)]~~ The determination of the monetary amount of such  
2 compensation, if any, shall be determined at the time another  
3 retail public utility seeks to provide service in the previously  
4 decertified area and before service is actually provided.

5           (f) The monetary amount shall be determined by a qualified  
6 individual or firm serving as independent appraiser agreed upon by  
7 the decertified retail public utility and the retail public utility  
8 seeking to serve the area or the landowner requesting  
9 decertification pursuant to subsection (b). The determination of  
10 compensation by the independent appraiser shall be binding on the  
11 commission. ~~[The costs of the independent appraiser shall be borne~~  
12 ~~by the retail public utility seeking to serve the area.]~~

13           (g) For the purpose of implementing this section, the value  
14 of ~~[real]~~ property shall be determined according to the standards  
15 set forth in Chapter 21, Property Code, governing actions in  
16 eminent domain ~~[and the value of personal property shall be~~  
17 ~~determined according to the factors in this subsection. The~~  
18 ~~factors ensuring that the compensation to a retail public utility~~  
19 ~~for the taking, damaging, or loss of personal property, including~~  
20 ~~the retail public utility's business, is just and adequate shall at~~  
21 ~~a minimum include: the impact on the existing indebtedness of the~~  
22 ~~retail public utility and its ability to repay that debt; the value~~  
23 ~~of the service facilities of the retail public utility located~~  
24 ~~within the area in question; the amount of any expenditures for~~  
25 ~~planning, design, or construction of service facilities that are~~  
26 ~~allocable to service to the area in question; the amount of the~~  
27 ~~retail public utility's contractual obligations allocable to the~~

1 ~~area in question; any demonstrated impairment of service or~~  
2 ~~increase of cost to consumers of the retail public utility~~  
3 ~~remaining after the decertification; the impact on future revenues~~  
4 ~~and expenses of the retail public utility; necessary and reasonable~~  
5 ~~legal expenses and professional fees; factors relevant to~~  
6 ~~maintaining the current financial integrity of the retail public~~  
7 ~~utility; and other relevant factors].~~

8 (h) The commission shall conduct hearings, on an expedited  
9 bases, to resolve any issues concerning the determination of the  
10 monetary amount of compensation. The commission shall determine  
11 whether payment of compensation shall be in a lump sum or paid out  
12 over a specified period of time. If there were no current customers  
13 in the area decertified and no immediate loss of revenues or if  
14 there are other valid reasons determined by the commission,  
15 installment payments as new customers are added in the decertified  
16 area shall ~~may~~ be an acceptable method of payment.

17 SECTION 8. Section 13.2541, Water Code, is amended to read  
18 as follows:

19 Sec. 13.2541. REVOCATION OF CERTIFICATE WHEN SERVICE  
20 PROVIDED TO A MUNICIPALITY. (a) Upon petition of the majority of  
21 the residents in a public utility, ~~[This section applies only to a~~  
22 ~~municipality with a population of more than 1.3 million. (b) On~~  
23 ~~request of]~~ a municipality served by a public utility may request  
24 that the commission revoke, and the commission shall ~~[at any time~~  
25 ~~after notice and hearing may]~~ revoke the public utility's  
26 certificate of public convenience and necessity ~~[if it finds that~~  
27 ~~the public utility: (1) has never provided, is no longer providing,~~

1 ~~or has failed to provide continuous and adequate service in the~~  
2 ~~municipality requesting the revocation; or (2) has been grossly or~~  
3 ~~continuously mismanaged or has grossly or continuously not complied~~  
4 ~~with this chapter, commission rules, or commission orders].~~

5 (b) [~~(c)~~] If the certificate of a public utility is revoked  
6 under Subsection (a) [~~(b)~~], the municipality that requested the  
7 revocation shall [~~operate the decertified public utility for an~~  
8 ~~interim period prescribed by commission rule and shall request~~  
9 ~~commission approval to~~] acquire the decertified public utility's  
10 facilities and the commission shall [~~to~~] transfer the decertified  
11 public utility's certificate of convenience and necessity to the  
12 municipality. [~~The municipality must apply in accordance with~~  
13 ~~Subchapter H.~~]

14 (c) [~~(d)~~] The compensation paid to the decertified public  
15 utility for its facilities shall be just and adequate in accordance  
16 with the Texas Constitution and the federal constitution and shall  
17 be determined by a qualified individual or firm serving as  
18 independent appraiser agreed upon by the decertified public utility  
19 and the municipality. The determination of compensation by the  
20 independent appraiser shall be binding on the commission. [~~The~~  
21 ~~municipality shall pay the costs of the independent appraiser.~~]  
22 For the purpose of implementing this section, the value of [~~real~~]  
23 property shall be determined according to the standards prescribed  
24 by Chapter 21, Property Code, governing actions in eminent domain.

25 (d) [~~(e)~~] The commission shall determine whether the  
26 municipality shall pay the compensation in a lump sum or over a  
27 specified period.

1 SECTION 9. Section 13.255(g), Water Code, is amended to  
2 read as follows:

3 (g) For the purpose of implementing this section, the value  
4 of [~~real~~] property shall be determined according to the standards  
5 set forth in Chapter 21, Property Code, governing actions in  
6 eminent domain[~~, the value of personal property shall be determined~~  
7 ~~according to the factors in this subsection. The factors ensuring~~  
8 ~~that the compensation to a retail public utility for the taking,~~  
9 ~~damaging, and/or loss of personal property, including the retail~~  
10 ~~public utility's business, is just and adequate, shall, at a~~  
11 ~~minimum, include: impact on the existing indebtedness of the~~  
12 ~~retail public utility and its ability to repay that debt, the value~~  
13 ~~of the service facilities of the retail public utility located~~  
14 ~~within the area in question, the amount of any expenditures for~~  
15 ~~planning, design, or construction of service facilities outside the~~  
16 ~~incorporated or annexed area that are allocable to service to the~~  
17 ~~area in question, the amount of the retail public utility's~~  
18 ~~contractual obligations allocable to the area in question, any~~  
19 ~~demonstrated impairment of service or increase of cost to consumers~~  
20 ~~of the retail public utility remaining after the single~~  
21 ~~certification, the impact on future revenues and expenses of the~~  
22 ~~retail public utility, necessary and reasonable legal expenses and~~  
23 ~~professional fees, factors relevant to maintaining the current~~  
24 ~~financial integrity of the retail public utility, and other~~  
25 ~~relevant factors)].~~

26 SECTION 10. Subchapter G, Chapter 13, Water Code, is  
27 amended by adding Section 13.258 to read as follows:

1       Sec. 13.258. RECORDING REQUIREMENTS WITH REAL PROPERTY  
2 RECORDS. (a) All certificate holders must record a certified copy  
3 of their certificate of convenience and necessity and any amendment  
4 thereto in the real property records of each county in which the  
5 service area or a portion of the service area lies and shall submit  
6 to the executive director evidence of such recording. The recorded  
7 certificate must include a boundary description by metes and bounds  
8 survey certified by a Texas registered professional land surveyor  
9 or, if there is a recorded plat of the area, by lot and block number.

10       (b) The recordation required by this section must be  
11 completed by September 1, 2005, for all certificates then in  
12 existence and within 30 days of receipt of an order from the  
13 commission granting an application for a new service area or an  
14 amendment to an existing service area.

15       SECTION 11. EFFECTIVE DATE.       This Act takes effect  
16 immediately if it receives a vote of two-thirds of all the members  
17 elected to each house, as provided by Section 39, Article III, Texas  
18 Constitution. If this Act does not receive the vote necessary for  
19 immediate effect, this Act takes effect September 1, 2005.