

By: Armbrister

S.B. No. 765

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of water and sewer utility services.

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

SECTION 1. Subchapter A, Chapter 13, Water Code, is amended by adding Section 13.004 to read as follows:

Sec. 13.004. LEGISLATIVE FINDINGS AND POLICY REGARDING REGIONALIZATION OF SERVICES. (a) The legislature finds that regionalization of retail water or sewer utility services delivery promotes continuous, adequate, affordable, and reliable water and sewer utility services.

(b) Regionalization of retail water or sewer utility services may take the form of:

(1) a single retail public utility serving a service area that is composed of different communities or different subdivisions or portions of more than one county;

(2) a single retail public utility serving several isolated systems with each system providing services to one or more communities or subdivisions;

(3) several retail public utilities with the individual systems of the utilities operated through a centrally coordinated operating system;

(4) one or more retail public utilities served by a central wholesale provider; or

(5) permanent emergency interconnections between two

1 or more retail public utilities.

2 SECTION 2. Sections 13.244(a) and (b), Water Code, are  
3 amended to read as follows:

4 (a) To obtain a certificate of public convenience and  
5 necessity or an amendment to a certificate, a retail [A] public  
6 utility must [or water supply or sewer service corporation shall]  
7 submit to the commission an application for the [to obtain a]  
8 certificate [of public convenience and necessity] or [an] amendment  
9 [of a certificate].

10 (b) On request by the commission, each retail public utility  
11 [and water supply or sewer service corporation] shall file with the  
12 commission a map or maps showing all its facilities and  
13 illustrating separately facilities for production, transmission,  
14 and distribution of its services, and each certificated retail  
15 public utility shall file with the commission a map or maps showing  
16 any facilities, customers, or area currently being served outside  
17 its certificated areas. The service area boundary defined by the  
18 map may be described by a metes and bounds survey, by lot and block  
19 number, or by verifiable landmarks such as roads, creeks, or  
20 railroads.

21 SECTION 3. Subchapter G, Chapter 13, Water Code, is amended  
22 by adding Section 13.245 to read as follows:

23 Sec. 13.245. EXTENSIONS OF CERTIFICATED AREA FOR  
24 MUNICIPALITIES WITH A POPULATION GREATER THAN 750,000. (a) The  
25 commission shall amend a municipality's certificate of public  
26 convenience and necessity on the application of the municipality to  
27 extend the certificated area to match the municipality's extensions

1 of its extraterritorial jurisdiction.

2 (b) To qualify for the extension under Subsection (a), the  
3 municipality must:

4 (1) have a population greater than 750,000;

5 (2) hold a certificate of public convenience and  
6 necessity for all or a portion of the municipality's  
7 extraterritorial jurisdiction; and

8 (3) include with the municipality's application for  
9 the amendment a map, following property boundaries identified by  
10 county tax appraisal records, that defines the area proposed to be  
11 certificated.

12 (c) An extension of the certificated area granted under  
13 Subsection (a) may not include any area that is included in a  
14 certificate of public convenience and necessity held by another  
15 retail public utility.

16 (d) The commission shall issue the amended certificate of  
17 public convenience and necessity extending the certificated area as  
18 provided by this section not later than the 180th day after the  
19 commission receives the municipality's application.

20 SECTION 4. Section 13.246, Water Code, is amended by adding  
21 Subsection (a-1) and amending Subsections (b) and (c) to read as  
22 follows:

23 (a-1) In addition to the notice required by Subsection (a),  
24 the commission by rule shall require notice to be mailed to each  
25 owner of a tract of land included in the area proposed to be  
26 certificated that is 100 acres or larger in size. Notice required  
27 under this subsection must be mailed by first class mail to the

1 owners of the tracts according to the most current tax appraisal  
2 rolls at the time the commission received the application for the  
3 certificate. Notice under this subsection is not required for a  
4 matter filed with the commission under:

5 (1) Section 13.248, 13.255, or 13.301; or

6 (2) Chapter 65.

7 (b) The commission may grant applications and issue  
8 certificates only if the commission finds that a certificate is  
9 necessary for the service, accommodation, convenience, or safety of  
10 the public. The commission may issue a certificate as requested, or  
11 refuse to issue it, or issue it for the construction of only a  
12 portion of the contemplated system or facility or extension, or for  
13 the partial exercise only of the right or privilege and may impose  
14 special conditions necessary to ensure that continuous and adequate  
15 service is provided. The commission may not grant to more than one  
16 retail public utility serving or proposing to serve an area a  
17 certificate authorizing service to the area unless all retail  
18 public utilities serving and proposing to serve the area consent to  
19 that action.

20 (c) Certificates of convenience and necessity shall be  
21 granted on a nondiscriminatory basis after consideration by the  
22 commission of the adequacy of service currently provided to the  
23 requested area, the need for additional service in the requested  
24 area, the effect of the granting of a certificate on the recipient  
25 of the certificate and on any retail public utility of the same kind  
26 already serving the proximate area, the ability of the applicant to  
27 provide adequate service, the feasibility of obtaining service from

1 an adjacent retail public utility, the financial stability of the  
2 applicant, including, if applicable, the adequacy of the  
3 applicant's debt-equity ratio, environmental integrity, and the  
4 probable improvement of service or lowering of cost to consumers in  
5 that area resulting from the granting of the certificate. In  
6 determining the need for additional service in a requested area  
7 under this subsection, the commission shall consider projected  
8 growth in service demand, the benefits of regionalization of  
9 service to present and projected customers by incorporation of the  
10 requested area into an existing certificated area, and the  
11 potential that denial of the certificate for the requested area may  
12 increase the costs of and delays in providing service to the area.  
13 The commission may consider documentary evidence of the current  
14 demand for service in the requested area, but the absence of  
15 documentation of current demand does not preclude certification of  
16 the requested area.

17 SECTION 5. Section 13.254, Water Code, is amended by  
18 amending Subsections (a), (e), (f), and (g) and adding Subsections  
19 (a-1) and (g-1) to read as follows:

20 (a) The commission at any time after notice and hearing may  
21 revoke or amend any certificate of public convenience and necessity  
22 with the written consent of the certificate holder or if it finds  
23 that:

24 (1) the certificate holder has never provided, is no  
25 longer providing, is incapable of providing, or has failed to  
26 provide continuous and adequate service in the area, or part of the  
27 area, covered by the certificate;

1           (2) [~~in an affected county as defined in Section~~  
2 ~~16.341,~~] the cost of providing service by the certificate holder is  
3 so prohibitively expensive as to constitute denial of service,  
4 provided that~~[, for commercial developments or for residential~~  
5 ~~developments started after September 1, 1997, in an affected county~~  
6 ~~as defined in Section 16.341,~~] the fact that the cost of obtaining  
7 service from the currently certificated retail public utility makes  
8 the development economically unfeasible does not render such cost  
9 prohibitively expensive in the absence of other relevant factors;

10           (3) the certificate holder has agreed in writing to  
11 allow another retail public utility to provide service within its  
12 service area, except for an interim period, without amending its  
13 certificate; or

14           (4) the certificate holder has failed to file a cease  
15 and desist action pursuant to Section 13.252 within 180 days of the  
16 date that it became aware that another retail public utility was  
17 providing service within its service area, unless the certificate  
18 holder demonstrates good cause for its failure to file such action  
19 within the 180 days.

20           (a-1) In determining whether the certificate holder is  
21 incapable of providing continuous and adequate service, the  
22 commission shall consider:

23           (1) whether the certificate holder demonstrates  
24 adequate financial, managerial, and technical capability;

25           (2) whether the certificate holder has responded  
26 appropriately to requests for service;

27           (3) whether the certificate holder maintains an

1 adequate supply of water or sewer treatment and disposal capacity  
2 for current and projected service demands;

3 (4) the effects on regionalization of service that  
4 revocation or amendment of the certificate may have; and

5 (5) other relevant factors.

6 (e) The determination of the monetary amount of  
7 compensation, if any, shall be determined at the time another  
8 retail public utility seeks to provide service in the previously  
9 decertified area and before service is actually provided. The  
10 commission shall ensure that the monetary amount of compensation is  
11 determined not later than the 90th day after the date on which a  
12 retail public utility notifies the commission of its intent to  
13 provide service to the decertified area.

14 (f) The monetary amount shall be determined by a qualified  
15 individual or firm serving as independent appraiser agreed upon by  
16 the decertified retail public utility and the retail public utility  
17 seeking to serve the area, or, if the retail public utilities do not  
18 agree, by an independent appraiser designated by the commission.  
19 The determination of compensation by the independent appraiser  
20 shall be binding on the commission. The costs of the independent  
21 appraiser shall be borne by the retail public utility seeking to  
22 serve the area.

23 (g) For the purpose of implementing this section, the value  
24 of real property shall be determined according to the standards set  
25 forth in Chapter 21, Property Code, governing actions in eminent  
26 domain and the value of personal property and the retail public  
27 utility's business shall be determined according to the factors in

1 this subsection. The factors ensuring that the compensation to a  
2 retail public utility for the taking, damaging, or loss of personal  
3 property, including the retail public utility's business, is just  
4 and adequate shall at a minimum include: the impact on the existing  
5 indebtedness of the retail public utility and its ability to repay  
6 that debt; the value of the service facilities of the retail public  
7 utility located within the area in question; the amount of any  
8 expenditures for planning, design, or construction of service  
9 facilities that are allocable to service to the area in question;  
10 the amount of the retail public utility's contractual obligations  
11 allocable to the area in question; any demonstrated impairment of  
12 service or increase of cost to consumers of the retail public  
13 utility remaining after the decertification; the impact on future  
14 revenues and expenses of the retail public utility; necessary and  
15 reasonable legal expenses and professional fees; factors relevant  
16 to maintaining the current financial integrity of the retail public  
17 utility; and other relevant factors.

18 (g-1) The commission shall adopt rules governing the  
19 evaluation of the factors considered in determining the monetary  
20 value of personal property and a retail public utility's business  
21 under Subsection (g).

22 SECTION 6. Section 13.2541(d), Water Code, is amended to  
23 read as follows:

24 (d) The compensation paid to the decertified public utility  
25 for its facilities shall be determined by a qualified individual or  
26 firm serving as independent appraiser agreed upon by the  
27 decertified public utility and the municipality, or, if the retail



1 public utilities do not agree, by an independent appraiser  
2 designated by the commission. The determination of compensation by  
3 the independent appraiser shall be binding on the commission. The  
4 municipality shall pay the costs of the independent appraiser. For  
5 the purpose of implementing this section, the value of real  
6 property shall be determined according to the standards prescribed  
7 by Chapter 21, Property Code, governing actions in eminent domain.

8 SECTION 7. Section 13.255, Water Code, is amended by  
9 amending Subsection (g) and adding Subsection (g-1) to read as  
10 follows:

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

1 increase of cost to consumers of the retail public utility  
2 remaining after the single certification, the impact on future  
3 revenues and expenses of the retail public utility, necessary and  
4 reasonable legal expenses and professional fees, factors relevant  
5 to maintaining the current financial integrity of the retail public  
6 utility, and other relevant factors.

7 (g-1) The commission shall adopt rules governing the  
8 evaluation of the factors to be considered in determining the  
9 monetary value of personal property and a retail public utility's  
10 business under Subsection (g). The commission by rule shall adopt  
11 procedures to ensure that the determination of the total  
12 compensation to be paid to a retail public utility under Subsection  
13 (g) is paid not later than the 90th day after the date on which the  
14 commission determines that the municipality's application is  
15 administratively complete.

16 SECTION 8. Section 13.257, Water Code, is amended by  
17 amending Subsections (a) and (b) and adding Subsection (r) to read  
18 as follows:

19 (a) In this section, "utility service provider" means a  
20 retail public utility [~~a water supply or sewer service~~  
21 ~~corporation, or a special utility district organized and operating~~  
22 ~~under Chapter 65]~~.

23 (b) If a person proposes to sell or convey [~~unimproved~~] real  
24 property located in a certificated service area of a utility  
25 service provider, the person must give to the purchaser written  
26 notice as prescribed by this section. An executory contract for the  
27 purchase and sale of real property that has a performance period of

1 more than six months is considered a sale of real property under  
2 this section.

3 (r) A utility service provider must file a copy of its  
4 current certificated service area map, as contained in the  
5 commission's records, in the real property records of all counties  
6 in which any part of the certificated service area is located. Each  
7 county shall accept and file in its real property records a utility  
8 service provider's map presented to the county clerk under this  
9 subsection.

10 SECTION 9. The changes in law made by this Act apply only  
11 to:

12 (1) an application for a certificate of public  
13 convenience and necessity or for an amendment to a certificate of  
14 public convenience and necessity presented to the Public Utility  
15 Commission of Texas on or after January 1, 2006;

16 (2) a proceeding to amend or revoke a certificate of  
17 public convenience and necessity initiated on or after January 1,  
18 2006; and

19 (3) a proposal to sell or convey real property that  
20 occurs on or after January 1, 2006.

21 SECTION 10. This Act takes effect September 1, 2005.