

## **BILL ANALYSIS**

Senate Research Center

H.B. 1669  
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Natural Resources  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

A certificate of public convenience and necessity is a franchise granted to a retail public utility by the Texas Commission on Environmental Quality (TCEQ) to provide water and wastewater service to a given area. If a utility has a certificate for a certain area it may serve as the sole service provider for that area. Before 2005, large, speculative certificates were granted for large tracts of land without any intention by the utility to provide water or wastewater service. Landowners were essentially stuck with their utility service provider, regardless of service quality; landowners wishing to remove their property from a service area had to pay the certificate holder significant sums of money to have their property released. Some cities obtained certificates outside of their extraterritorial jurisdiction in order to implement land use controls outside of their corporate limits.

This bill sets forth provisions authorizing TCEQ to grant a certificate to a retail public utility inside the extraterritorial jurisdiction of a municipality.

H.B. 1669 amends current law relating to certificates of public convenience and necessity for water or sewer services.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 13.245, Water Code, by amending Subsection (b) and adding Subsections (c-1) and (c-2), as follows:

(b) Creates an exception under Subsections (c-1) and (c-2). Makes a nonsubstantive change.

(c-1) Authorizes the Texas Commission on Environmental Quality (TCEQ) to grant a certificate to a retail public utility for a service area within the boundaries or extraterritorial jurisdiction of a municipality before the 180th day after the municipality receives the retail public utility's application if:

(1) the municipality has not entered into a binding commitment to serve the area that is the subject of the application on or before the 180th day after the date a formal request for service is made on the same or substantially similar terms as provided by the retail public utility's application, including a capital improvements plan as required by Section 13.244(d)(3) (relating to a capital improvements plan required on an application for a certificate of public convenience); or

(2) the municipality has refused to provide the service applied for as evidenced by a formal vote of the municipality's governing body or by an official notification from the municipality.

(c-2) Requires TCEQ to include as a condition of a certificate of convenience and necessity granted under Subsection (c-1) that the authorized water and sewer facilities be

designed and constructed in accordance with the municipality's standards for water and sewer facilities.

SECTION 2. Amends Sections 13.2451(a) and (b), Water Code, as follows:

(a) Creates an exception under Subsection (b).

(b) Prohibits TCEQ from extending a municipality's certificate of public convenience and necessity beyond its extraterritorial jurisdiction if a landowner elects to exclude some or all of the landowner's property within a proposed service area in accordance with Section 13.246(h) (relating to authorizing a landowner to exclude some or all of the landowner's property from the proposed service area by certain procedures). Provides that this subsection does not apply to a transfer of a certificate as approved by TCEQ. Deletes existing text requiring a municipality that seeks to extend a certificate of public convenience and necessity beyond the municipality's extraterritorial jurisdiction to ensure that the municipality complies with Section 13.241 (Granting Certificates) in relation to the area covered by the portion of the certificate that extends beyond the municipality's extraterritorial jurisdiction.

SECTION 3. Amends Sections 13.246(a) and (h), Water Code, as follows:

(a) Requires TCEQ, if an application for a certificate of public convenience and necessity or for an amendment to a certificate is filed, to cause notice of the application to be given to affected parties and to each county and groundwater conservation district that is wholly or partly included in the area proposed to be certified. Requires TCEQ, if requested, to fix a time and place for a hearing and give notice of the hearing.

(h) Prohibits an applicant for a certificate of public convenience and necessity that has land removed from its proposed certificated service area because of a landowner's election under this subsection from being required to provide service to the removed land for any reason, including the violation of law or TCEQ rules by the water or sewer system of another person.

SECTION 4. Amends Section 13.254, Water Code, by amending Subsections (a-1) and (a-3) and adding Subsection (h), as follows:

(a-1) Provides that the fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of services from an alternative provider. Requires the petitioner, on the day the petitioner submits the petition to TCEQ, to send, rather than deliver, via certified mail, a copy of the petition to the certificate holder, who is authorized to submit information to TCEQ to controvert information submitted by the petitioner. Requires the petitioner to demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying certain information, including the approximate cost for the alternative service provider to provide the service at the same level and manner that is requested from the certificate holder, and the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder is not capable of providing the service on a continuous and adequate basis within the timeframe, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service, or in the manner reasonably needed or requested by current and projected service demands in the area; and

(4) the alternate retail public utility from which the petitioner will be requesting service possesses the financial, managerial, and technical capability to provide, rather than is capable of providing, continuous and adequate service within the timeframe, at the level, at the cost, and in the manner reasonably needed or requested by current and projected service demands in the area.

(a-3) Requires TCEQ, within 60, rather than 90, calendar days from the date TCEQ determines the petition filed pursuant to Subsection (a-1) to be administratively complete, to grant the petition unless TCEQ makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. Provides that if the certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area the petitioner seeks to have released, TCEQ is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(h) Prohibits a certificate holder that has land removed from its certificated service area in accordance with this section from being required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or TCEQ rules by a water or sewer system of another person.

SECTION 5. Provides that the changes made by this Act to Sections 13.245, 13.2451, 13.246, and 13.254, Water Code, apply only to a retail public utility's application for a certificate of public convenience and necessity for a service area in the extraterritorial jurisdiction of a municipality that is made on or after the effective date of this Act; an extension of a municipality's certificate of public convenience and necessity for a service area in the extraterritorial jurisdiction of the municipality on or after the effective date of this Act; and a petition to release an area from a certificate of public convenience and necessity that is made on or after the effective date of this Act.

SECTION 6. Effective date: September 1, 2009.