

BILL ANALYSIS

C.S.H.B. 1669
By: Callegari
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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.

C.S.H.B. 1669 sets forth provisions authorizing TCEQ to grant a certificate to a retail public utility inside the extraterritorial jurisdiction of a municipality.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1669 amends the Water Code to authorize the Texas Commission on Environmental Quality (TCEQ) to grant a certificate of public convenience and necessity 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 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 or 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. The bill requires TCEQ to include as a condition of a certificate that the authorized water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

C.S.H.B. 1669 prohibits TCEQ from extending a municipality's certificate beyond its extraterritorial jurisdiction without the written consent of the landowner who owns the property in which the certificate is to be extended. The bill removes the requirement of a municipality that seeks to extend a certificate beyond the municipality's extraterritorial jurisdiction to ensure that the municipality complies with provisions relating to the area covered by the portion of the certificate that extends beyond the municipality's extraterritorial jurisdiction. The bill prohibits an applicant for a certificate that has land removed from its proposed certificated service area because of a landowner's election to exclude some or all of the landowner's property from the service area from being required to provide service to that land for any reason.

C.S.H.B. 1669 provides that the fact that a certificate holder is a borrower under a federal loan program is not a bar to a request for the release of a petitioner's land from a certificate and the receipt of services from an alternative utility provider if the petitioner is the owner of a tract of land that is at least 50 acres and is not in a platted subdivision actually receiving water or sewer service. The bill requires the copy of the petition to be sent via certified mail to the certificate holder on the day the petitioner submits the petition to TCEQ. The bill requires the petitioner to demonstrate that a written request for service, other than a request for standard residential or commercial service, has been submitted to a certificate holder, indentifying 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, in addition to existing criteria. The bill requires the petitioner to demonstrate that, in an alternative option for a required petition criterion, 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. The bill clarifies that a petitioner must also demonstrate that the alternative retail public utility from which the petitioner will be requesting service possesses the financial, managerial, and technical capability to provide continuous and adequate service, at the level, at the cost, and in the manner reasonably needed or requested by current and projected service demands in the area. The bill lowers from within 90 calendar days to within 60 calendar days from the date TCEQ determines the filed petition to be administratively complete, the time in which TCEQ is required to grant the petition unless certain requirements are not met.

C.S.H.B. 1669 provides that if the certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve to 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. The bill prohibits a certificate holder that has land removed from its certificated service area 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.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1669 removes provisions authorizing TCEQ to grant a certificate of public convenience and necessity irrespective of whether a municipality consents to the certification and authorizing a retail public utility to apply to the commission for a certificate to serve a property if the municipality refuses to provide service to a property within the municipality's extraterritorial jurisdiction. The substitute adds provisions not in the original authorizing TCEQ to grant a certificate to a retail public utility for a service area within a municipality's boundaries or extraterritorial jurisdiction before the 180th day after the municipality receives the utility's application under certain conditions. The substitute removes a provision in the original voiding the portion of any certificate that extends beyond the extraterritorial jurisdiction of the municipality without the consent of the landowner. The substitute omits certain decertification authority of TCEQ removed in the original. The substitute adds a provision prohibiting an applicant for a certificate that has land removed from its proposed certificated service area due to a landowner election to exclude property from being required to provide service to that property for any reason.

C.S.H.B. 1669 differs from the original by clarifying and adding to the requirements for a

petition to be released from a certificate submitted by an owner of a tract of land that is at least 50 acres and is not platted in a subdivision actually receiving water or sewer service. The substitute adds a provision prohibiting a certificate holder that has land removed from its certificated service area from being required to provide service to the land after removal for any reason.