

By: Callegari, Smith of Harris,  
Howard of Fort Bend, Pitts, Ritter

H.B. No. 1669

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to certificates of public convenience and necessity for  
3 water or sewer services.

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

5 SECTION 1. Section 13.245, Water Code, is amended by  
6 amending Subsection (b) and adding Subsections (c-1) and (c-2) to  
7 read as follows:

8 (b) Except as provided by Subsections [~~Subsection~~] (c),  
9 (c-1), and (c-2), the commission may not grant to a retail public  
10 utility a certificate of public convenience and necessity for a  
11 service area within the boundaries or extraterritorial  
12 jurisdiction of a municipality without the consent of the  
13 municipality. The municipality may not unreasonably withhold the  
14 consent. As a condition of the consent, a municipality may require  
15 that all water and sewer facilities be designed and constructed in  
16 accordance with the municipality's standards for facilities.

17 (c-1) The commission may grant a certificate to a retail  
18 public utility for a service area within the boundaries or  
19 extraterritorial jurisdiction of a municipality before the 180th  
20 day after the municipality receives the retail public utility's  
21 application if:

22 (1) the municipality has not entered into a binding  
23 commitment to serve the area that is the subject of the application  
24 on or before the 180th day after the date a formal request for

1 service is made on the same or substantially similar terms as  
2 provided by the retail public utility's application, including a  
3 capital improvements plan as required by Section 13.244(d)(3); or  
4 (2) the municipality has refused to provide the  
5 service applied for as evidenced by a formal vote of the  
6 municipality's governing body or by an official notification from  
7 the municipality.

8 (c-2) The commission must include as a condition of a  
9 certificate of convenience and necessity granted under Subsection  
10 (c-1) that the authorized water and sewer facilities be designed  
11 and constructed in accordance with the municipality's standards for  
12 water and sewer facilities.

13 SECTION 2. Sections 13.2451(a) and (b), Water Code, are  
14 amended to read as follows:

15 (a) Except as provided by Subsection (b), if [if] a  
16 municipality extends its extraterritorial jurisdiction to include  
17 an area certificated to a retail public utility, the retail public  
18 utility may continue and extend service in its area of public  
19 convenience and necessity under the rights granted by its  
20 certificate and this chapter.

21 (b) The commission may not extend a municipality's  
22 certificate of public convenience and necessity beyond its  
23 extraterritorial jurisdiction if a landowner elects to exclude some  
24 or all of the landowner's property within a proposed service area in  
25 accordance with Section 13.246(h). This subsection does not apply  
26 to a transfer of a certificate as approved by the commission [A  
27 municipality that seeks to extend a certificate of public

1 ~~convenience and necessity beyond the municipality's~~  
2 ~~extraterritorial jurisdiction must ensure that the municipality~~  
3 ~~complies with Section 13.241 in relation to the area covered by the~~  
4 ~~portion of the certificate that extends beyond the municipality's~~  
5 ~~extraterritorial jurisdiction].~~

6 SECTION 3. Sections 13.246(a) and (h), Water Code, are  
7 amended to read as follows:

8 (a) If an application for a certificate of public  
9 convenience and necessity or for an amendment to a certificate is  
10 filed, the commission shall cause notice of the application to be  
11 given to affected parties and to each county and groundwater  
12 conservation district that is wholly or partly included in the area  
13 proposed to be certified. If [~~if~~] requested, the commission shall  
14 fix a time and place for a hearing and give notice of the hearing.  
15 Any person affected by the application may intervene at the  
16 hearing.

17 (h) Except as provided by Subsection (i), a landowner who  
18 owns a tract of land that is at least 25 acres and that is wholly or  
19 partially located within the proposed service area may elect to  
20 exclude some or all of the landowner's property from the proposed  
21 service area by providing written notice to the commission before  
22 the 30th day after the date the landowner receives notice of a new  
23 application for a certificate of public convenience and necessity  
24 or for an amendment to an existing certificate of public  
25 convenience and necessity. The landowner's election is effective  
26 without a further hearing or other process by the commission. If a  
27 landowner makes an election under this subsection, the application

1 shall be modified so that the electing landowner's property is not  
2 included in the proposed service area. An applicant for a  
3 certificate of public convenience and necessity that has land  
4 removed from its proposed certificated service area because of a  
5 landowner's election under this subsection may not be required to  
6 provide service to the removed land for any reason, including the  
7 violation of law or commission rules by the water or sewer system of  
8 another person.

9 SECTION 4. Section 13.254, Water Code, is amended by  
10 amending Subsections (a-1) and (a-3) and adding Subsection (h) to  
11 read as follows:

12 (a-1) As an alternative to decertification under Subsection  
13 (a), the owner of a tract of land that is at least 50 acres and that  
14 is not in a platted subdivision actually receiving water or sewer  
15 service may petition the commission under this subsection for  
16 expedited release of the area from a certificate of public  
17 convenience and necessity so that the area may receive service from  
18 another retail public utility. The fact that a certificate holder  
19 is a borrower under a federal loan program is not a bar to a request  
20 under this subsection for the release of the petitioner's land and  
21 the receipt of services from an alternative provider. On the day  
22 the petitioner submits the petition to the commission, the [The]  
23 petitioner shall send [~~deliver~~], via certified mail, a copy of the  
24 petition to the certificate holder, who may submit information to  
25 the commission to controvert information submitted by the  
26 petitioner. The petitioner must demonstrate that:

27 (1) a written request for service, other than a

1 request for standard residential or commercial service, has been  
2 submitted to the certificate holder, identifying:

3 (A) the area for which service is sought;

4 (B) the timeframe within which service is needed  
5 for current and projected service demands in the area;

6 (C) the level and manner of service needed for  
7 current and projected service demands in the area;

8 (D) the approximate cost for the alternative  
9 service provider to provide the service at the same level and manner  
10 that is requested from the certificate holder;

11 (E) the flow and pressure requirements and  
12 specific infrastructure needs, including line size and system  
13 capacity for the required level of fire protection requested; and

14 (F) [~~(D)~~] any additional information requested  
15 by the certificate holder that is reasonably related to  
16 determination of the capacity or cost for providing the service;

17 (2) the certificate holder has been allowed at least  
18 90 calendar days to review and respond to the written request and  
19 the information it contains;

20 (3) the certificate holder:

21 (A) has refused to provide the service;

22 (B) is not capable of providing the service on a  
23 continuous and adequate basis within the timeframe, at the level,  
24 at the approximate cost that the alternative provider is capable of  
25 providing for a comparable level of service, or in the manner  
26 reasonably needed or requested by current and projected service  
27 demands in the area; or

1 (C) conditions the provision of service on the  
2 payment of costs not properly allocable directly to the  
3 petitioner's service request, as determined by the commission; and

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

10 (a-3) Within 60 [~~90~~] calendar days from the date the  
11 commission determines the petition filed pursuant to Subsection  
12 (a-1) to be administratively complete, the commission shall grant  
13 the petition unless the commission makes an express finding that  
14 the petitioner failed to satisfy the elements required in  
15 Subsection (a-1) and supports its finding with separate findings  
16 and conclusions for each element based solely on the information  
17 provided by the petitioner and the certificate holder. The  
18 commission may grant or deny a petition subject to terms and  
19 conditions specifically related to the service request of the  
20 petitioner and all relevant information submitted by the petitioner  
21 and the certificate holder. In addition, the commission may  
22 require an award of compensation as otherwise provided by this  
23 section. If the certificate holder has never made service  
24 available through planning, design, construction of facilities, or  
25 contractual obligations to serve the area the petitioner seeks to  
26 have released, the commission is not required to find that the  
27 proposed alternative provider is capable of providing better

1 service than the certificate holder, but only that the proposed  
2 alternative provider is capable of providing the requested service.

3 (h) A certificate holder that has land removed from its  
4 certificated service area in accordance with this section may not  
5 be required, after the land is removed, to provide service to the  
6 removed land for any reason, including the violation of law or  
7 commission rules by a water or sewer system of another person.

8 SECTION 5. The changes made by this Act to Sections 13.245,  
9 13.2451, 13.246, and 13.254, Water Code, apply only to:

10 (1) a retail public utility's application for a  
11 certificate of public convenience and necessity for a service area  
12 in the extraterritorial jurisdiction of a municipality that is made  
13 on or after the effective date of this Act;

14 (2) an extension of a municipality's certificate of  
15 public convenience and necessity for a service area in the  
16 extraterritorial jurisdiction of the municipality on or after the  
17 effective date of this Act; and

18 (3) a petition to release an area from a certificate of  
19 public convenience and necessity that is made on or after the  
20 effective date of this Act.

21 SECTION 6. This Act takes effect September 1, 2009.