

By: Callegari

H.B. No. 1669

A BILL TO BE ENTITLED

AN ACT

relating to certificates of public convenience and necessity for water or sewer services.

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

SECTION 1. Section 13.245, Water Code, is amended by adding Subsection (f) to read as follows:

(f) If a municipality refuses to provide service to property located in the municipality's extraterritorial jurisdiction, a retail public utility may apply to the commission for a certificate of public convenience and necessity to serve the property. The commission may grant the certificate irrespective of whether the municipality consents to the certification.

SECTION 2. Section 13.2451, Water Code, is amended to read as follows:

Sec. 13.2451. EXTENSION BEYOND EXTRATERRITORIAL JURISDICTION. (a) Except as provided by Subsection (b), if ~~if~~ a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(b) The commission may not extend a municipality's certificate of public convenience and necessity beyond its extraterritorial jurisdiction without the written consent of the

1 landowner who owns the property in which the certificate is to be
2 extended. The portion of any certificate of public convenience and
3 necessity that extends beyond the extraterritorial jurisdiction of
4 the municipality without the consent of the landowner is void. [A
5 ~~municipality that seeks to extend a certificate of public~~
6 ~~convenience and necessity beyond the municipality's~~
7 ~~extraterritorial jurisdiction must ensure that the municipality~~
8 ~~complies with Section 13.241 in relation to the area covered by the~~
9 ~~portion of the certificate that extends beyond the municipality's~~
10 ~~extraterritorial jurisdiction.~~

11 [~~(c) The commission, after notice to the municipality and an~~
12 ~~opportunity for a hearing, may decertify an area outside a~~
13 ~~municipality's extraterritorial jurisdiction if the municipality~~
14 ~~does not provide service to the area on or before the fifth~~
15 ~~anniversary of the date the certificate of public convenience and~~
16 ~~necessity was granted for the area. This subsection does not apply~~
17 ~~to a certificate of public convenience and necessity for an area.~~

18 [~~(1) that was transferred to a municipality on~~
19 ~~approval of the commission, and~~

20 [~~(2) in relation to which the municipality has spent~~
21 ~~public funds.~~

22 [~~(d) To the extent of a conflict between this section and~~
23 ~~Section 13.245, Section 13.245 prevails.]~~

24 SECTION 3. Sections 13.254(a-1) and (a-3), Water Code, are
25 amended to read as follows:

26 (a-1) As an alternative to decertification under Subsection
27 (a), the owner of a tract of land that is at least 50 acres and that

1 is not in a platted subdivision actually receiving water or sewer
2 service may petition the commission under this subsection for
3 expedited release of the area from a certificate of public
4 convenience and necessity so that the area may receive service from
5 another retail public utility. The fact that a certificate holder
6 is a borrower under a federal loan program is not a bar to a request
7 under this subsection for the release of the petitioner's land and
8 the receipt of services from an alternative provider. On the day
9 the petitioner submits the petition to the commission, the [The]
10 petitioner shall send [~~deliver~~], via certified mail, a copy of the
11 petition to the certificate holder, who may submit information to
12 the commission to controvert information submitted by the
13 petitioner. The petitioner must demonstrate that:

14 (1) a written request for service, other than a
15 request for standard residential or commercial service, has been
16 submitted to the certificate holder, identifying:

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

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

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

22 (D) the approximate cost of the alternative
23 service;

24 (E) whether the petitioner intends for fire
25 protection to be part of the requested level of service; and

26 (F) [~~(D)~~] any additional information requested
27 by the certificate holder that is reasonably related to

1 determination of the capacity or cost for providing the service;

2 (2) the certificate holder has been allowed at least
3 90 calendar days to review and respond to the written request and
4 the information it contains;

5 (3) the certificate holder:

6 (A) has refused to provide the service;

7 (B) is not capable of providing the service on a
8 continuous and adequate basis within the timeframe, at the level,
9 at the same or a lower cost than the alternative provider is
10 capable, or in the manner reasonably needed or requested by current
11 and projected service demands in the area; or

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

15 (4) the alternate retail public utility from which the
16 petitioner will be requesting service is capable of providing
17 continuous and adequate service within the timeframe, at the level,
18 at the cost, and in the manner reasonably needed or requested by
19 current and projected service demands in the area.

20 (a-3) Within 60 [~~90~~] calendar days from the date the
21 commission determines the petition filed pursuant to Subsection
22 (a-1) to be administratively complete, the commission shall grant
23 the petition unless the commission makes an express finding that
24 the petitioner failed to satisfy the elements required in
25 Subsection (a-1) and supports its finding with separate findings
26 and conclusions for each element based solely on the information
27 provided by the petitioner and the certificate holder. The

1 commission may grant or deny a petition subject to terms and
2 conditions specifically related to the service request of the
3 petitioner and all relevant information submitted by the petitioner
4 and the certificate holder. In addition, the commission may
5 require an award of compensation as otherwise provided by this
6 section. If the certificate holder has never provided service to
7 the area the petitioner seeks to have released, the commission is
8 not required to find that the proposed alternative provider is
9 capable of providing better service than the certificate holder,
10 but only that the proposed alternative provider is capable of
11 providing the requested service.

12 SECTION 4. The changes made by this Act to Sections 13.245,
13 13.2451, and 13.254, Water Code, apply only to:

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

18 (2) an extension of a municipality's certificate of
19 public convenience and necessity for a service area in the
20 extraterritorial jurisdiction of the municipality on or after the
21 effective date of this Act; and

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

25 SECTION 5. This Act takes effect September 1, 2009.