

By: Nichols

S.B. No. 718

A BILL TO BE ENTITLED

1 AN ACT
2 relating to certificates of public convenience and necessity to
3 provide water or sewer utility service.

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

5 SECTION 1. Section 13.244(d), Water Code, is amended to
6 read as follows:

7 (d) An application for a certificate of public convenience
8 and necessity or for an amendment to a certificate must contain:

9 (1) a description of the proposed service area by:

10 (A) a metes and bounds survey certified by a
11 licensed state land surveyor or a registered professional land
12 surveyor;

13 (B) the Texas State Plane Coordinate System;

14 (C) verifiable landmarks, including a road,
15 creek, or railroad line; or

16 (D) if a recorded plat of the area exists, lot and
17 block number;

18 (2) a description of any requests for service in the
19 proposed service area;

20 (3) a capital improvements plan, including a budget
21 and estimated timeline for construction of all facilities necessary
22 to provide full service to the entire proposed service area;

23 (4) a description of the sources of funding for all
24 facilities;

1 (5) to the extent known, a description of current and
2 projected land uses, including densities;

3 (6) a current financial statement of the applicant;

4 (7) according to the tax roll of the central appraisal
5 district for each county in which the proposed service area is
6 located, a list of the owners of each tract of land that is:

7 (A) at least 10 [~~50~~] acres; and

8 (B) wholly or partially located within the
9 proposed service area; and

10 (8) any other item required by the commission.

11 SECTION 2. Sections 13.246(a-1), (h), and (i), Water Code,
12 are amended to read as follows:

13 (a-1) Except as otherwise provided by this subsection, in
14 addition to the notice required by Subsection (a), the commission
15 shall require notice to be mailed to each owner of a tract of land
16 that is at least 10 [~~25~~] acres and is wholly or partially included
17 in the area proposed to be certified. The commission by rule shall
18 prescribe a form that must be used to provide notice under this
19 subsection. Notice required under this subsection must be mailed
20 by first class mail to the owner of the tract according to the most
21 current tax appraisal rolls of the applicable central appraisal
22 district at the time the commission received the application for
23 the certificate or amendment. Good faith efforts to comply with the
24 requirements of this subsection shall be considered adequate notice
25 to landowners. Notice under this subsection is not required for a
26 matter filed with the commission under:

27 (1) Section 13.248 or 13.255; or

1 (2) Chapter 65.

2 (h) Except as provided by Subsection (i), a landowner of
3 ~~[who owns]~~ a tract of ~~[land that is]~~ at least 10 ~~[25]~~ acres of land
4 any part of which ~~[and that]~~ is ~~[wholly or partially]~~ located in
5 ~~[within]~~ the proposed service area must consent to the inclusion
6 ~~[may elect to exclude some or all]~~ of the landowner's property in
7 ~~[from]~~ the proposed service area before ~~[by providing written~~
8 ~~notice to]~~ the commission may issue ~~[before the 30th day after the~~
9 ~~date the landowner receives notice of a new application for]~~ a
10 certificate of public convenience and necessity or ~~[for]~~ an
11 amendment to a ~~[an existing]~~ certificate of public convenience and
12 necessity for an area that includes that property. A landowner may
13 consent to the inclusion of all or part of the ~~[The]~~ landowner's
14 property ~~[election is effective without a further hearing or other~~
15 ~~process by the commission]~~. If a landowner does not provide to the
16 commission written consent to include all or part of the
17 landowner's property in the proposed service area on or before the
18 120th day after the notice to the landowner is mailed under
19 Subsection (a-1), that property may not be included in the proposed
20 service area. The landowner's timely written consent or the
21 landowner's lack of consent takes effect for purposes of this
22 subsection without a further hearing or other proceeding by the
23 commission. On or after the 150th day after the date the notice to
24 the landowner is mailed, the commission shall modify the
25 application to exclude the property of a landowner who does not
26 provide written consent to include that ~~[makes an election under~~
27 ~~this subsection, the application shall be modified so that the~~

1 ~~electing landowner's]~~ property [~~is not included]~~ in the proposed
2 service area.

3 (i) [~~A landowner is not entitled to make an election under]~~
4 Subsection (h) does not apply [~~but is entitled to contest the~~
5 ~~inclusion of the landowner's property in the proposed service area~~
6 ~~at a hearing held by the commission regarding the application]~~ if
7 the proposed service area is located within the boundaries or
8 extraterritorial jurisdiction of a municipality with a population
9 of more than 500,000 and the municipality or a utility owned by the
10 municipality is the applicant. However, the landowner is entitled
11 to contest the inclusion of the landowner's property in the
12 proposed service area at a hearing held by the commission regarding
13 the application.

14 SECTION 3. Sections 13.246(h) and (i), Water Code, as
15 amended by this Act, apply only to an application for a certificate
16 of public convenience and necessity for which the Texas Commission
17 on Environmental Quality has not issued a final order before the
18 effective date of this Act. An application for a certificate of
19 public convenience and necessity for which a final order was issued
20 before the effective date of this Act is governed by the law in
21 effect on the date the final order was issued, and the former law is
22 continued in effect for that purpose.

23 SECTION 4. This Act takes effect September 1, 2009.