

Suspending limitations on conference committee
jurisdiction, H.B. No. 3526 (Callegari/Averitt)

By: Averitt

S.R. No. 1100

R E S O L U T I O N

1 BE IT RESOLVED by the Senate of the State of Texas, 81st
2 Legislature, Regular Session, 2009, That Senate Rule 12.03 be
3 suspended in part as provided by Senate Rule 12.08 to enable the
4 conference committee appointed to resolve the differences on House
5 Bill 3526 (the adoption of rules by the Texas Water Development
6 Board regarding supplemental funding resulting from federal
7 economic recovery legislation) to consider and take action on the
8 following matter:

9 Senate Rule 12.03(4) is suspended to permit the committee to
10 add text on matters which are not included in either the house or
11 senate version of the bill by adding the following ARTICLES to the
12 bill:

13 ARTICLE 8. RAINWATER HARVESTING AND WATER CONSERVATION

14 INITIATIVES

15 SECTION 8.01. Subchapter A, Chapter 59, Finance Code, is
16 amended by adding Section 59.012 to read as follows:

17 Sec. 59.012. LOANS FOR DEVELOPMENTS THAT USE HARVESTED
18 RAINWATER. Financial institutions may consider making loans for
19 developments that will use harvested rainwater as the sole source
20 of water supply.

21 SECTION 8.02. Section 447.004, Government Code, is amended
22 by amending Subsection (c-1) and adding Subsection (c-3) to read as
23 follows:

24 (c-1) The procedural standards adopted under this section

1 must require that:

2 (1) on-site reclaimed system technologies, including
3 rainwater harvesting, condensate collection, or cooling tower blow
4 down, or a combination of those system technologies, for nonpotable
5 indoor use and landscape watering be incorporated into the design
6 and construction of:

7 (A) [~~(1)~~] each new state building with a roof
8 measuring at least 10,000 square feet; and

9 (B) [~~(2)~~] any other new state building for which
10 the incorporation of such systems is feasible;

11 (2) rainwater harvesting system technology for
12 nonpotable indoor use and landscape watering be incorporated into
13 the design and construction of each new state building with a roof
14 measuring at least 10,000 square feet that is located in an area of
15 this state in which the average annual rainfall is at least 20
16 inches; and

17 (3) at least 25 percent of the roof area of a building
18 described by Subdivision (2) be used for rainwater collection.

19 (c-3) The procedural standards required by Subsections
20 (c-1)(2) and (3) apply to a building described by Subsection
21 (c-1)(2) unless Subsection (c-2) applies or the state agency or
22 institution of higher education constructing the building provides
23 the state energy conservation office evidence that the amount of
24 rainwater that will be harvested from one or more existing
25 buildings at the same location is equivalent to the amount of
26 rainwater that could have been harvested from the new building had
27 rainwater harvesting system technology been incorporated into its

1 design and construction.

2 SECTION 8.03. Section 341.042(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) The commission by rule shall provide that if a structure
5 is connected to a public water supply system and has a rainwater
6 harvesting system, ~~[for indoor use:~~

7 [~~(1)~~] the structure must have appropriate
8 cross-connection safeguards~~;~~ and

9 [~~(2) the rainwater harvesting system may be used only~~
10 ~~for nonpotable indoor purposes]~~.

11 SECTION 8.04. Chapter 580, Local Government Code, is
12 amended by adding Section 580.004 to read as follows:

13 Sec. 580.004. RAINWATER HARVESTING. (a) Each municipality
14 and county is encouraged to promote rainwater harvesting at
15 residential, commercial, and industrial facilities through
16 incentives such as the provision at a discount of rain barrels or
17 rebates for water storage facilities.

18 (b) Each municipality or county that has adopted impervious
19 cover or density restrictions shall consider the use in a
20 development of harvested rainwater as an on-site water supply
21 source in determining whether to grant the development a credit
22 against or exemption from the restrictions.

23 (c) The Texas Water Development Board shall ensure that
24 training on rainwater harvesting is available for the members of
25 the permitting staffs of municipalities and counties at least
26 quarterly. Members of the permitting staffs of counties and
27 municipalities are encouraged to receive the training. The Texas

1 Water Development Board may provide the training by seminars or by
2 videotape or functionally similar and widely available media
3 without cost.

4 (d) A municipality or county may not deny a building permit
5 solely because the facility will implement rainwater harvesting.

6 (e) Each school district is encouraged to implement
7 rainwater harvesting at facilities of the district.

8 SECTION 8.05. Section 202.007(d), Property Code, is amended
9 to read as follows:

10 (d) This section does not:

11 (1) restrict a property owners' association from
12 regulating the requirements, including size, type, shielding, and
13 materials, for or the location of a composting device [~~rain~~
14 ~~barrel, rain harvesting device, or any other appurtenance~~] if the
15 restriction does not prohibit the economic installation of the
16 device [~~or appurtenance~~] on the property owner's property where
17 there is reasonably sufficient area to install the device [~~or~~
18 ~~appurtenance~~];

19 (2) require a property owners' association to permit a
20 device [~~or appurtenance~~] described by Subdivision (1) to be
21 installed in or on property:

22 (A) owned by the property owners' association;

23 (B) owned in common by the members of the
24 property owners' association; or

25 (C) in an area other than the fenced yard or patio
26 of a property owner;

27 (3) prohibit a property owners' association from

1 regulating the installation of efficient irrigation systems,
2 including establishing visibility limitations for aesthetic
3 purposes;

4 (4) prohibit a property owners' association from
5 regulating the installation or use of gravel, rocks, or cacti; ~~[or]~~

6 (5) restrict a property owners' association from
7 regulating yard and landscape maintenance if the restrictions or
8 requirements do not restrict or prohibit turf or landscaping design
9 that promotes water conservation; or

10 (6) require a property owners' association to permit a
11 rain barrel or rainwater harvesting system to be installed in or on
12 property if:

13 (A) the property is:

14 (i) owned by the property owners'
15 association;

16 (ii) owned in common by the members of the
17 property owners' association; or

18 (iii) located between the front of the
19 property owner's home and the adjacent street; or

20 (B) the barrel or system:

21 (i) is of a color other than:

22 (a) the original manufacturer's
23 color; or

24 (b) a color consistent with the color
25 scheme of the property owner's home; or

26 (ii) displays any language or other content
27 that is not typically displayed by such a barrel or system as it is

1 manufactured.

2 SECTION 8.06. Section 1.003, Water Code, is amended to read
3 as follows:

4 Sec. 1.003. PUBLIC POLICY. It is the public policy of the
5 state to provide for the conservation and development of the
6 state's natural resources, including:

7 (1) the control, storage, preservation, and
8 distribution of the state's storm and floodwaters and the waters of
9 its rivers and streams for irrigation, power, and other useful
10 purposes;

11 (2) the reclamation and irrigation of the state's
12 arid, semiarid, and other land needing irrigation;

13 (3) the reclamation and drainage of the state's
14 overflowed land and other land needing drainage;

15 (4) the conservation and development of its forest,
16 water, and hydroelectric power;

17 (5) the navigation of the state's inland and coastal
18 waters;

19 (6) the maintenance of a proper ecological environment
20 of the bays and estuaries of Texas and the health of related living
21 marine resources; ~~and~~

22 (7) the voluntary stewardship of public and private
23 lands to benefit waters of the state; and

24 (8) the promotion of rainwater harvesting for potable
25 and nonpotable purposes at public and private facilities in this
26 state, including residential, commercial, and industrial
27 buildings.

1 SECTION 8.07. Section 16.0121, Water Code, is amended by
2 amending Subsection (b) and adding Subsection (g) to read as
3 follows:

4 (b) Except as provided by Subsection (g) [Every five years],
5 a retail public utility providing potable water shall perform and
6 file with the board, every five years, a water audit computing the
7 utility's most recent annual system water loss.

8 (g) A retail public utility shall perform and file with the
9 board a water loss audit annually if the utility is receiving any
10 financial assistance from the board.

11 SECTION 8.08. If the 81st Legislature makes an
12 appropriation to the Texas Water Development Board to provide
13 matching grants to political subdivisions of this state for
14 rainwater harvesting demonstration projects, the board shall, not
15 later than December 1, 2010, provide a report to the lieutenant
16 governor and the speaker of the house of representatives regarding
17 the projects for which the board has provided grants, including:

- 18 (1) a description of each project; and
19 (2) the amount of the grant provided for each project.

20 SECTION 8.09. This article does not make an appropriation.
21 A provision of this article that creates a new governmental
22 program, creates a new entitlement, or imposes a new duty on a
23 governmental entity is not mandatory during a fiscal period for
24 which the legislature has not made a specific appropriation to
25 implement the provision.

26 SECTION 8.10. This article takes effect September 1, 2009.

1 ARTICLE 9. CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR
2 WATER OR SEWER SERVICES

3 SECTION 9.01. Section 13.245, Water Code, is amended by
4 amending Subsection (b) and adding Subsections (c-1) and (c-2) to
5 read as follows:

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

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

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

26 (2) the municipality has refused to provide the
27 service applied for as evidenced by a formal vote of the

1 municipality's governing body or by an official notification from
2 the municipality.

3 (c-2) The commission must include as a condition of a
4 certificate of convenience and necessity granted under Subsection
5 (c-1) that the authorized water and sewer facilities be designed
6 and constructed in accordance with the municipality's standards for
7 water and sewer facilities.

8 SECTION 9.02. Sections 13.2451(a) and (b), Water Code, are
9 amended to read as follows:

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

16 (b) The commission may not extend a municipality's
17 certificate of public convenience and necessity beyond its
18 extraterritorial jurisdiction if a landowner elects to exclude some
19 or all of the landowner's property within a proposed service area in
20 accordance with Section 13.246(h). This subsection does not apply
21 to a transfer of a certificate as approved by the commission [~~A~~
22 ~~municipality that seeks to extend a certificate of public~~
23 ~~convenience and necessity beyond the municipality's~~
24 ~~extraterritorial jurisdiction must ensure that the municipality~~
25 ~~complies with Section 13.241 in relation to the area covered by the~~
26 ~~portion of the certificate that extends beyond the municipality's~~
27 ~~extraterritorial jurisdiction].~~

1 SECTION 9.03. Sections 13.246(a) and (h), Water Code, are
2 amended to read as follows:

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

12 (h) Except as provided by Subsection (i), a landowner who
13 owns a tract of land that is at least 25 acres and that is wholly or
14 partially located within the proposed service area may elect to
15 exclude some or all of the landowner's property from the proposed
16 service area by providing written notice to the commission before
17 the 30th day after the date the landowner receives notice of a new
18 application for a certificate of public convenience and necessity
19 or for an amendment to an existing certificate of public
20 convenience and necessity. The landowner's election is effective
21 without a further hearing or other process by the commission. If a
22 landowner makes an election under this subsection, the application
23 shall be modified so that the electing landowner's property is not
24 included in the proposed service area. An applicant for a
25 certificate of public convenience and necessity that has land
26 removed from its proposed certificated service area because of a
27 landowner's election under this subsection may not be required to

1 provide service to the removed land for any reason, including the
2 violation of law or commission rules by the water or sewer system of
3 another person.

4 SECTION 9.04. Section 13.254, Water Code, is amended by
5 amending Subsections (a-1) and (a-3) and adding Subsection (h) to
6 read as follows:

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

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

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

26 (B) the timeframe within which service is needed

27 for current and projected service demands in the area;

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

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

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

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

12 (2) the certificate holder has been allowed at least
13 90 calendar days to review and respond to the written request and
14 the information it contains;

15 (3) the certificate holder:

16 (A) has refused to provide the service;

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

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

26 (4) the alternate retail public utility from which the
27 petitioner will be requesting service possesses the financial,

1 managerial, and technical capability to provide [~~is capable of~~
2 ~~providing~~] continuous and adequate service within the timeframe, at
3 the level, at the cost, and in the manner reasonably needed or
4 requested by current and projected service demands in the area.

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

25 (h) A certificate holder that has land removed from its
26 certificated service area in accordance with this section may not
27 be required, after the land is removed, to provide service to the

1 removed land for any reason, including the violation of law or
2 commission rules by a water or sewer system of another person.

3 SECTION 9.05. The changes made by this article to Sections
4 13.245, 13.2451, 13.246, and 13.254, Water Code, apply only to:

5 (1) a retail public utility's application for a
6 certificate of public convenience and necessity for a service area
7 in the extraterritorial jurisdiction of a municipality that is made
8 on or after the effective date of this article;

9 (2) an extension of a municipality's certificate of
10 public convenience and necessity for a service area in the
11 extraterritorial jurisdiction of the municipality on or after the
12 effective date of this article; and

13 (3) a petition to release an area from a certificate of
14 public convenience and necessity that is made on or after the
15 effective date of this article.

16 Explanation: The language is necessary to encourage
17 rainwater harvesting and other water conservation initiatives and
18 to provide for the issuance of certificates of public convenience
19 and necessity for water and sewer service in the extraterritorial
20 jurisdiction of a municipality.