

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 19, 2009

TO: Honorable Kip Averitt, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1669 by Callegari (Relating to certificates of public convenience and necessity for water or sewer services.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would prohibit the Texas Commission on Environmental Quality (TCEQ) from granting a certificate of public convenience and necessity (CCN) for an area within the corporate boundaries or extraterritorial jurisdiction (ETJ) of a municipality without the municipality's consent before the 180th day after the municipality receives the retail public utility's application unless: 1) the municipality has not entered into a binding agreement to serve the area on or before the 180th day after a formal request for service was made on the same or substantially similar terms as provided by the retail public utility's application; 2) the municipality refused to provide the service applied for as evidenced by a formal vote from city council or by an official notification from the city. The bill would also require that as a condition to obtaining a CCN area within the corporate boundaries or ETJ of a municipality water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

The bill would prohibit the TCEQ from extending a municipality's CCN area beyond its ETJ without the written consent of the landowner who owns the property in which the CCN is to be extended or if a landowner elects to exclude some or all of the landowner's property from the municipality's CCN. The bill would also provide that if an applicant for a CCN is required to remove a landowner from its proposed CCN service area because of a landowner's election to opt out of the proposed CCN area, then the applicant would not be required to provide service to the removed land for any reason. Further, the bill would amend the requirements for requesting service from the CCN holder by requiring the petitioner to include an approximate cost of the alternative service, and whether the petitioner intends for fire protection to be part of the requested level of service. The bill also adds the approximate cost of service from the alternative service provider for a comparable level of service as one of the elements that may be included in the petition and considered by the TCEQ.

The bill would require the TCEQ to conduct a review of financial, managerial, and technical information from alternate service providers, and it would require the TCEQ to make determinations as to whether an alternate provider is capable of providing better service than the current CCN holder if the certificate holder has made service available through planning, design, construction of facilities, or contractual obligation to serve the area. Any costs to the TCEQ in conducting these activities are not expected to be significant.

Local Government Impact

Under current law, a retail public utility which proposes to provide service within the city limits of a municipality must receive consent from the municipality, which helps ensure that the retail public utility is not interfering or duplicating current municipal services provided in the area (if any) or with the municipality's future plans to serve water and/or sewer service to the area. Consent is also used as a means of notifying the municipality that they may exercise original jurisdiction over the rates and services of the retail public utility provider serving within their municipal boundaries. If the bill's passage results in an area being removed from a municipality's service area, then the municipality

could experience a loss of revenue from the potential customers it would have otherwise served in the future or for stranded costs of infrastructure already located in area that would be removed from the municipality's service area.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, SD, TL, SZ