

BILL ANALYSIS

C.S.H.B. 3668
By: Callegari
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A certificate of convenience and necessity, commonly referred to as a CCN, is a franchise granted to a retail public utility by the Texas Commission on Environmental Quality (TCEQ) to provide water and wastewater service to a given area. If a utility has a CCN for a certain area, then it may serve as the sole service provider for that area. Before 2005 certain problems existed with CCNs: large, speculative CCNs were formed over significant tracks of land without any intention of providing water or wastewater service; landowners were essentially stuck with their CCN service provider, regardless of service quality; landowners wishing to remove their property from a CCN had to pay the CCN-holder significant sums of money to have their property released; and some cities obtained CCNs outside of their extraterritorial jurisdiction (ETJ) in order to implement land use controls outside of their corporate limits or ETJ. In 2005 the Legislature passed HB 2876, which allowed landowners to opt out of having their property included in a new CCN, established a process for landowners of 50 acres or more to have their property decertified from an existing CCN, and, among other reforms, limited city-held CCNs to their corporate or ETJ boundaries.

Since HB 2876 was passed in 2005, TCEQ has received ten petitions to decertify land from an existing CCN, and over 100 requests from landowners to opt-out of a forming CCN. Of the ten decertification requests, five were withdrawn, three were rejected for not being administratively complete, one was denied, and one was approved. Furthermore, in 2007 the statute governing CCNs was changed to allow cities to obtain CCNs outside of their ETJ.

CSHB 3668 makes three changes to law governing CCNs. First, the bill provides that if a city with a population of 500,000 or more refuses to provide service to an area within its ETJ, an alternative service provider may apply for a CCN to provide service to that area. Second, the bill limits municipally-held CCNs that extend beyond municipal ETJs. Lastly, the bill allows TCEQ to consider factors such as cost and level of service when evaluating decertification requests from landowners of 50 acres or more. This last clarification would afford landowners greater latitude to have their property decertified from an existing CCN if they are capable of providing service to their property in a manner that is cheaper, and capable of meeting emergency service demands.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends §13.245, Water Code, to authorize TCEQ to grant a CCN to a retail public utility to serve an area located within the ETJ of a city with a population of 500,000 or more without the city's consent if the city has not consented to the granting of the CCN before the 180th day after the date a formal request for service by a landowner or retail public utility is made according to the city's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application, including a capital improvement plan or subdivision plat, if TCEQ finds that the city does not have the ability to provide service or has failed to make a good faith effort to provide service on reasonable terms and conditions, the city has not entered into a binding commitment to serve the area, and the landowner that submitted the request has not unreasonably refused to comply with

the city's service extension and development process or enter into a contract for water or sewer services with the city. The bill authorizes TCEQ to grant a CCN to a retail public utility at any time after the date the city refuses to provide requested service as evidenced by a formal vote of the city's council or by an official notice from the city, and clarifies that TCEQ is not required to make findings regarding the city's ability to serve the area or whether the landowner unreasonably refused to comply or contract with the city. The bill requires that TCEQ include as a condition of granting a CCN to a retail public utility that the water and sewer facilities be designed and constructed in accordance with city standards. The bill makes a conforming change.

SECTION 2. Amends §13.2451, Water Code, to prohibit TCEQ from extending a city's CCN beyond the city's ETJ without the written consent of owners of land or 25 acres or more that is located wholly or partly outside the ETJ in the city's proposed service area. The bill clarifies that this requirement does not apply to the transfer of a CCN approved by TCEQ. The bill strikes language requiring that a city seeking to extend their CCN beyond their ETJ comply with the requirement that the city has the financial, managerial, and technical capability to provide continuous and adequate service to that area. The bill makes a conforming change.

SECTION 3. Amends §13.246(h), Water Code, to provide that an applicant for a CCN that has land owned by a landowner of 25 acres or more removed from its proposed certificated area by the landowner's election may not be required to provide service to the removed land for any reason, including the violation of law or TCEQ rules by the water or sewer system of another person.

SECTION 4. Amends §13.254, Water Code, to provide that the fact that a CCN-holder is a borrower under a federal loan program is not a bar to a expedited decertification request by a landowner of 50 acres or more seeking to have their property removed from a certificated area and receive water or sewer services from an alternative provider. The bill clarifies that a petitioner shall send a copy of their decertification petition to the CCN-holder on the day the petitioner submits the petition to TCEQ. The bill expands the criteria that TCEQ shall consider when evaluating a decertification petition by a landowner of 50 acres or more to include the approximate cost for the alternative service provider to provide service at a level comparable to that requested from the CCN-holder, and the flow and pressure requirements and specific infrastructure needs for the required level of fire protection requested. The bill requires that a petition to decertify land from a CCN demonstrate that the alternate utility from which the petitioner will request service possesses the financial, managerial and technical capability to provide service, and at the cost reasonably needed or requested for the area. The bill clarifies that a landowner may contest the involuntary certification of their property if the property is located within the boundaries or ETJ of a city of 500,000 or more or in a platted subdivision receiving service on grounds that the certificate holder has not provided service, the cost of service is prohibitively expensive, the certificate holder agreed to allow another service provider to serve the area, or the certificate holder failed to provide a cease and desist action within 180 days of becoming aware that another provider was providing service to the area. The bill changes the deadline for TCEQ's processing a decertification request from 90 to 60 days after TCEQ determines that the decertification petition is administratively complete. The bill provides that TCEQ is not required to find that the proposed alternative provider is capable of providing better service than the CCN-holder, but only that the proposed alternative provider is capable of providing requested service if a CCN-holder has never made service available through planning, design, construction, or contractual obligations to serve the area the petitioner seeks to have released. The bill provides that a CCN-holder that has land owned by a landowner of 50 acres or more removed from its certificated area may not be required to provide service to that land for any reason, including the violation of law or TCEQ rules by a water or sewer system of another person.

SECTION 5. Implementation language providing that the changes made by the Act apply to affected actions after September 1, 2011.

SECTION 6. Provides for the effective date of this Act.

EFFECTIVE DATE

This Act takes effect September 1, 2011.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1 of the committee substitute adds provisions clarifying that a landowner or a retail public utility must submit a formal request for service to a city, and that the formal request must be in accordance with the city's application requirements and standards for facilities. The substitute adds the provision that a landowner's or utility's application for city service may include a subdivision plat. The committee substitute adds provisions relating to TCEQ's authority to grant a CCN to a retail public utility to serve an area located within the ETJ of a city with a population of 500,000 or more to require that TCEQ find that that the city does not have the ability to provide service or has failed to make a good faith effort to provide service on reasonable terms and conditions, and to allow TCEQ to grant the alternative certification if landowner that submitted the request has not unreasonably refused to comply with the city's service extension and development process or enter into a contract for water or sewer services with the city. The committee substitute adds a provision clarifying that TCEQ is not required to make findings regarding the city's ability to serve the area or whether the landowner unreasonably refused to comply or contract with the city when granting a CCN to a retail public utility after a city formally refuses to provide requested service. The original version of the bill includes no similar provisions.

SECTION 2 of the committee substitute clarifies that a owners of land or 25 acres or more located wholly or partly outside the ETJ are eligible to exclude their land from a city's proposed certificated area outside of its ETJ. The original version of the bill did not specify land located wholly or partly outside the ETJ.

SECTION 3 of the committee substitute adds a provision clarifying that a landowner may contest the involuntary certification of their property if the property is located within the boundaries or ETJ of a city of 500,000 or more or in a platted subdivision receiving service on grounds that the certificate holder has not provided service, the cost of service is prohibitively expensive, the certificate holder agreed to allow another service provider to serve the area, or the certificate holder failed to provide a cease and desist action within 180 days of becoming aware that another provider was providing service to the area. The original version of the bill included no similar provision.