

By: Callegari, Thompson, Orr, Ritter

H.B. No. 3668

Substitute the following for H.B. No. 3668:

By: Miller of Comal

C.S.H.B. No. 3668

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 amending Subsection (b) and adding Subsections (c-1), (c-2), and (c-3) to read as follows:

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

(c-1) If a municipality has not consented under Subsection (b) before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission, including a capital improvements plan required by Section 13.244(d)(3) or a subdivision plat, the commission may

1 grant the certificate of public convenience and necessity without
2 the consent of the municipality if:

3 (1) the commission makes the findings required by
4 Subsection (c);

5 (2) the municipality has not entered into a binding
6 commitment to serve the area that is the subject of the retail
7 public utility's application to the commission before the 180th day
8 after the date the formal request was made; and

9 (3) the landowner or retail public utility that
10 submitted the formal request has not unreasonably refused to:

11 (A) comply with the municipality's service
12 extension and development process; or

13 (B) enter into a contract for water or sewer
14 services with the municipality.

15 (c-2) If a municipality refuses to provide service in the
16 proposed service area, as evidenced by a formal vote of the
17 municipality's governing body or an official notification from the
18 municipality, the commission is not required to make the findings
19 otherwise required by this section and may grant the certificate of
20 public convenience and necessity to the retail public utility at
21 any time after the date of the formal vote or receipt of the
22 official notification.

23 (c-3) The commission must include as a condition of a
24 certificate of public convenience and necessity granted under
25 Subsection (c-1) or (c-2) that all water and sewer facilities be
26 designed and constructed in accordance with the municipality's
27 standards for water and sewer facilities.

1 SECTION 2. Sections 13.2451(a) and (b), Water Code, are
2 amended to read as follows:

3 (a) Except as provided by Subsection (b), if [~~if~~] a
4 municipality extends its extraterritorial jurisdiction to include
5 an area certificated to a retail public utility, the retail public
6 utility may continue and extend service in its area of public
7 convenience and necessity under the rights granted by its
8 certificate and this chapter.

9 (b) The commission may not extend a municipality's
10 certificate of public convenience and necessity beyond its
11 extraterritorial jurisdiction if an owner of land that is located
12 wholly or partly outside the extraterritorial jurisdiction elects
13 to exclude some or all of the landowner's property within a proposed
14 service area in accordance with Section 13.246(h). This subsection
15 does not apply to a transfer of a certificate as approved by the
16 commission. [~~A municipality that seeks to extend a certificate of~~
17 ~~public convenience and necessity beyond the municipality's~~
18 ~~extraterritorial jurisdiction must ensure that the municipality~~
19 ~~complies with Section 13.241 in relation to the area covered by the~~
20 ~~portion of the certificate that extends beyond the municipality's~~
21 ~~extraterritorial jurisdiction.~~]

22 SECTION 3. Section 13.246(h), Water Code, is amended to
23 read as follows:

24 (h) Except as provided by Subsection (i), a landowner who
25 owns a tract of land that is at least 25 acres and that is wholly or
26 partially located within the proposed service area may elect to
27 exclude some or all of the landowner's property from the proposed

1 service area by providing written notice to the commission before
2 the 30th day after the date the landowner receives notice of a new
3 application for a certificate of public convenience and necessity
4 or for an amendment to an existing certificate of public
5 convenience and necessity. The landowner's election is effective
6 without a further hearing or other process by the commission. If a
7 landowner makes an election under this subsection, the application
8 shall be modified so that the electing landowner's property is not
9 included in the proposed service area. An applicant for a
10 certificate of public convenience and necessity that has land
11 removed from its proposed certificated service area because of a
12 landowner's election under this subsection may not be required to
13 provide service to the removed land for any reason, including the
14 violation of law or commission rules by the water or sewer system of
15 another person.

16 SECTION 4. Section 13.254, Water Code, is amended by
17 amending Subsections (a-1), (a-2), and (a-3) and adding Subsection
18 (h) to read as follows:

19 (a-1) As an alternative to decertification under Subsection
20 (a), the owner of a tract of land that is at least 50 acres and that
21 is not in a platted subdivision actually receiving water or sewer
22 service may petition the commission under this subsection for
23 expedited release of the area from a certificate of public
24 convenience and necessity so that the area may receive service from
25 another retail public utility. The fact that a certificate holder
26 is a borrower under a federal loan program is not a bar to a request
27 under this subsection for the release of the petitioner's land and

1 the receipt of services from an alternative provider. On the day
2 the petitioner submits the petition to the commission, the [The]
3 petitioner shall send [~~deliver~~], via certified mail, a copy of the
4 petition to the certificate holder, who may submit information to
5 the commission to controvert information submitted by the
6 petitioner. The petitioner must demonstrate that:

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

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

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

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

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

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

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

24 (2) the certificate holder has been allowed at least
25 90 calendar days to review and respond to the written request and
26 the information it contains;

27 (3) the certificate holder:

1 (A) has refused to provide the service;

2 (B) is not capable of providing the service on a
3 continuous and adequate basis within the timeframe, at the level,
4 at the approximate cost that the alternative provider is capable of
5 providing for a comparable level of service, or in the manner
6 reasonably needed or requested by current and projected service
7 demands in the area; or

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

11 (4) the alternate retail public utility from which the
12 petitioner will be requesting service possesses the financial,
13 managerial, and technical capability to provide [~~is capable of~~
14 ~~providing~~] continuous and adequate service within the timeframe, at
15 the level, at the cost, and in the manner reasonably needed or
16 requested by current and projected service demands in the area.

17 (a-2) A landowner is not entitled to make the election
18 described in Subsection (a-1) but is entitled to contest under
19 Subsection (a) the involuntary certification of its property in a
20 hearing held by the commission if the landowner's property is
21 located:

22 (1) within the boundaries of any municipality or the
23 extraterritorial jurisdiction of a municipality with a population
24 of more than 500,000 and the municipality or retail public utility
25 owned by the municipality is the holder of the certificate; or

26 (2) in a platted subdivision actually receiving water
27 or sewer service.

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

21 (h) A certificate holder that has land removed from its
22 certificated service area in accordance with this section may not
23 be required, after the land is removed, to provide service to the
24 removed land for any reason, including the violation of law or
25 commission rules by a water or sewer system of another person.

26 SECTION 5. The changes made by this Act to Sections 13.245,
27 13.2451, 13.246, and 13.254, Water Code, apply only to:

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

5 (2) an extension of a municipality's certificate of
6 public convenience and necessity for a service area in the
7 extraterritorial jurisdiction of the municipality on or after the
8 effective date of this Act; and

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

12 SECTION 6. This Act takes effect September 1, 2011.