

By: Callegari

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) and (c-2) 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) The commission may grant a certificate of public convenience and necessity to a retail public utility for a service area inside the boundaries or extraterritorial jurisdiction of a municipality before the 180th day after the date the municipality receives the retail public utility's application if:

(1) the municipality has not entered into a binding commitment to serve the area that is the subject of the application on or before the 180th day after the date a formal request for

1 service is made on the same or substantially similar terms as  
2 provided by the retail public utility's application, including a  
3 capital improvements plan as required by Section 13.244(d)(3); or

4 (2) the municipality has refused to provide the  
5 service applied for as evidenced by a formal vote of the  
6 municipality's governing body or by an official notification from  
7 the municipality.

8 (c-2) The commission must include as a condition of a  
9 certificate of public convenience and necessity granted under  
10 Subsection (c-1) that the authorized water and sewer facilities be  
11 designed and constructed in accordance with the municipality's  
12 standards for water and sewer facilities.

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

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

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

1 ~~convenience and necessity beyond the municipality's~~  
2 ~~extraterritorial jurisdiction must ensure that the municipality~~  
3 ~~complies with Section 13.241 in relation to the area covered by the~~  
4 ~~portion of the certificate that extends beyond the municipality's~~  
5 ~~extraterritorial jurisdiction.]~~

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

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

27 SECTION 4. Section 13.254, Water Code, is amended by

1 amending Subsections (a-1) and (a-3) and adding Subsection (h) to  
2 read as follows:

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

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

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

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

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

26 (D) the approximate cost for the alternative  
27 provider to provide the service at the same level and manner that is

1 requested from the certificate holder;

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

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

8 (2) the certificate holder has been allowed at least  
9 90 calendar days to review and respond to the written request and  
10 the information it contains;

11 (3) the certificate holder:

12 (A) has refused to provide the service;

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

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

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

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.