

## **BILL ANALYSIS**

Senate Research Center  
83R26063 RWG-F

C.S.H.B. 1160  
By: Geren (Nelson)  
Natural Resources  
5/7/2013  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

A municipality in Texas can obtain the exclusive right to provide water or sewer service inside newly annexed territory. However, interested parties have observed that outside the boundaries of most cities the only incumbent utilities that may be displaced by a municipality are water and sewer supply corporations, special utility districts, and fresh water supply districts. These parties contend that municipalities may not seek single certification in areas served by investor-owned utilities, which often charge rates significantly higher than other municipally owned water utilities in the same county.

C.S.H.B. 1160 seeks to address this issue by allowing the transfer of a certificate of convenience and necessity in certain municipalities in certain counties to provide residents of those municipalities continuous and adequate water and sewer service and equitable rates.

C.S.H.B. 1160 amends current law relating to the transfer of a certificate of convenience and necessity in certain municipalities.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 552, Local Government Code, by adding Section 552.024, as follows:

Sec. 552.024. TRANSFER OF CERTIFICATE OF CONVENIENCE AND NECESSITY IN CERTAIN MUNICIPALITIES. (a) Provides that this section applies to a municipality that:

- (1) has a population of not more than 2,500;
- (2) is located in a county that has a population of 1.7 million or more and has two municipalities with a population of 300,000 or more; and
- (3) is served by a public utility that provides service to the entire municipality and charges rates for 5,000 gallons of water for residential customers that are at least 50 percent higher than the rates charged by a municipally owned utility that serves another part of the county in which the municipality is located.

(b) Requires the agency with authority over certificates of convenience and necessity for water and sewer service, on application by a municipality described by Subsection (a), notwithstanding any other law, to transfer at such time and under such circumstances as specified by a trial court a certificate of convenience and necessity for water and sewer service from a public utility to the municipality for the public utility's service area located in the municipality's corporate limits, if the municipality:

(1) has instituted a condemnation proceeding under Chapter 21 (Eminent Domain), Property Code, to acquire the property of the public utility's water and sewer system in the municipality's corporate limits; and

(2) will possess the financial, managerial, and technical capability to provide continuous and adequate water and sewer service to the area to the satisfaction of or in accordance with the orders of a trial court at the time of transfer.

(c) Requires that the transfer of the certificate not be effective unless:

(1) a judgment that transfers the real property of the public utility to the municipality becomes final and is not subject to further appeal; and

(2) the municipality has paid to the public utility the fair market value compensation due, as set by agreement or as ordered by a court judgment, for that taking of real property.

(d) Provides that this section does not expand, restrict, or otherwise alter the law with regard to a municipality's right to exercise the power of eminent domain under Chapter 21, Property Code.

SECTION 2. Amends Section 13.247(a), Water Code, to prohibit a municipally owned or operated utility, except as provided by Section 13.2475 or 13.255 (Single Certification in Incorporated or Annexed Areas), from providing retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the Texas Commission on Environmental Quality (TCEQ) a certificate of public convenience and necessity that includes the areas to be served.

SECTION 3. Amends Subchapter G, Chapter 13, Water Code, by adding Section 13.2475, as follows:

Sec. 13.2475. CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE SEWER SERVICE IN CERTAIN MUNICIPALITIES. (a) Provides that this section applies only to a municipality:

(1) with a population of more than 95,000;

(2) located in a county that borders Lake Palestine and has a population of more than 200,000;

(3) that owns and operates a utility that provides sewer service; and

(4) that has an area within the boundaries of the municipality that is certificated to another retail public utility that provides sewer service.

(b) Authorizes a municipality to provide sewer service to an area entirely within the municipality's boundaries without first having to obtain from TCEQ a certificate of public convenience and necessity that includes the area to be served, regardless of whether the area to be served is certificated to another retail public utility.

SECTION 4. Provides that Section 552.024, Local Government Code, as added by this Act, applies only to a condemnation proceeding in which the petition is filed on or after September 1, 2011. Provides that a condemnation proceeding in which the petition is filed before September 1, 2011, is governed by the law in effect on the date the petition was filed, and that law is continued in effect for that purpose.

SECTION 5. Effective date: upon passage or September 1, 2013.