

By: Gooden

H.B. No. 2937

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the grant or denial of a certificate of convenience and
3 necessity in certain counties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 13.241(e), Water Code, is amended to
6 read as follows:

7 (e) The commission by rule shall develop a standardized
8 method for determining under Section 13.246(f) or 13.2581(f), as
9 applicable, which of two or more retail public utilities or water
10 supply or sewer service corporations that apply for a certificate
11 of public convenience and necessity to provide water or sewer
12 utility service to an uncertificated area located in an
13 economically distressed area is more capable financially,
14 managerially, and technically of providing continuous and adequate
15 service. In this subsection, "economically distressed area" has
16 the meaning assigned by Section 15.001.

17 SECTION 2. Section 13.2451, Water Code, is amended by
18 adding Subsection (b-4) to read as follows:

19 (b-4) This section does not apply in a county:

20 (1) with a population of more than 100,000 and less
21 than 150,000; and

22 (2) that borders Cedar Creek Reservoir.

23 SECTION 3. Section 13.246, Water Code, is amended by adding
24 Subsection (a-2) to read as follows:

1 (a-2) This section does not apply in a county:

2 (1) with a population of more than 100,000 and less
3 than 150,000; and

4 (2) that borders Cedar Creek Reservoir.

5 SECTION 4. Section 13.251, Water Code, is amended to read as
6 follows:

7 Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE.

8 Except as provided by Section 13.255 of this code, a utility or a
9 water supply or sewer service corporation may not sell, assign, or
10 lease a certificate of public convenience and necessity or any
11 right obtained under a certificate unless the commission has
12 determined that the purchaser, assignee, or lessee is capable of
13 rendering adequate and continuous service to every consumer within
14 the certified area, after considering the factors under Section
15 13.246(c) or 13.2581(c), as applicable [~~of this code~~]. The sale,
16 assignment, or lease shall be on the conditions prescribed by the
17 commission.

18 SECTION 5. Section 13.254, Water Code, is amended by adding
19 Subsection (a-12) to read as follows:

20 (a-12) This section does not apply in a county:

21 (1) with a population of more than 100,000 and less
22 than 150,000; and

23 (2) that borders Cedar Creek Reservoir.

24 SECTION 6. Section 13.2551(a), Water Code, is amended to
25 read as follows:

26 (a) As a condition to decertification or single
27 certification under Section 13.254, [or] 13.255, or 13.2582, and on

1 request by an affected retail public utility, the commission may
2 order:

3 (1) the retail public utility seeking to provide
4 service to a decertified area to serve the entire service area of
5 the retail public utility that is being decertified; and

6 (2) the transfer of the entire certificate of public
7 convenience and necessity of a partially decertified retail public
8 utility to the retail public utility seeking to provide service to
9 the decertified area.

10 SECTION 7. Subchapter G, Chapter 13, Water Code, is amended
11 by adding Section 13.258 to read as follows:

12 Sec. 13.258. EXTENSION BEYOND EXTRATERRITORIAL
13 JURISDICTION. (a) This section applies only to an extension of
14 extraterritorial jurisdiction in a county:

15 (1) with a population of more than 100,000 and less
16 than 150,000; and

17 (2) that borders Cedar Creek Reservoir.

18 (a-1) If a municipality extends its extraterritorial
19 jurisdiction to include an area certificated to a retail public
20 utility, the retail public utility may continue and extend service
21 in its area of public convenience and necessity under the rights
22 granted by its certificate and this chapter.

23 (b) A municipality that seeks to extend a certificate of
24 public convenience and necessity beyond the municipality's
25 extraterritorial jurisdiction must ensure that the municipality
26 complies with Section 13.241 in relation to the area covered by the
27 portion of the certificate that extends beyond the municipality's

1 extraterritorial jurisdiction.

2 (c) The commission, after notice to the municipality and an
3 opportunity for a hearing, may decertify an area outside a
4 municipality's extraterritorial jurisdiction if the municipality
5 does not provide service to the area on or before the fifth
6 anniversary of the date the certificate of public convenience and
7 necessity was granted for the area. This subsection does not apply
8 to a certificate of public convenience and necessity for an area:

9 (1) that was transferred to a municipality on approval
10 of the commission; and

11 (2) in relation to which the municipality has spent
12 public funds.

13 SECTION 8. Subchapter G, Chapter 13, Water Code, is amended
14 by adding Section 13.2581 to read as follows:

15 Sec. 13.2581. NOTICE AND HEARING; ISSUANCE OR REFUSAL;
16 FACTORS CONSIDERED. (a) This section applies only in a county:

17 (1) with a population of more than 100,000 and less
18 than 150,000; and

19 (2) that borders Cedar Creek Reservoir.

20 (a-1) If an application for a certificate of public
21 convenience and necessity or for an amendment to a certificate is
22 filed, the commission shall cause notice of the application to be
23 given to affected parties and to each county and groundwater
24 conservation district that is wholly or partly included in the area
25 proposed to be certified. If requested, the commission shall fix a
26 time and place for a hearing and give notice of the hearing. Any
27 person affected by the application may intervene at the hearing.

1 (a-2) Except as otherwise provided by this subsection, in
2 addition to the notice required by Subsection (a-1), the commission
3 shall require notice to be mailed to each owner of a tract of land
4 that is at least 25 acres and is wholly or partly included in the
5 area proposed to be certified. Notice required under this
6 subsection must be mailed by first class mail to the owner of the
7 tract according to the most current tax appraisal rolls of the
8 applicable central appraisal district at the time the commission
9 received the application for the certificate or amendment. Good
10 faith efforts to comply with the requirements of this subsection
11 shall be considered adequate notice to landowners. Notice under
12 this subsection is not required for a matter filed with the
13 commission under:

14 (1) Section 13.248 or 13.255; or

15 (2) Chapter 65.

16 (b) The commission may grant applications and issue
17 certificates and amendments to certificates only if the commission
18 finds that a certificate or amendment is necessary for the service,
19 accommodation, convenience, or safety of the public. The commission
20 may issue a certificate or amendment as requested, or refuse to
21 issue it, or issue it for the construction of only a portion of the
22 contemplated system or facility or extension, or for the partial
23 exercise only of the right or privilege and may impose special
24 conditions necessary to ensure that continuous and adequate service
25 is provided.

26 (c) Certificates of public convenience and necessity and
27 amendments to certificates shall be granted on a nondiscriminatory

1 basis after consideration by the commission of:

2 (1) the adequacy of service currently provided to the
3 requested area;

4 (2) the need for additional service in the requested
5 area, including whether any landowners, prospective landowners,
6 tenants, or residents have requested service;

7 (3) the effect of the granting of a certificate or of
8 an amendment on the recipient of the certificate or amendment, on
9 the landowners in the area, and on any retail public utility of the
10 same kind already serving the proximate area;

11 (4) the ability of the applicant to provide adequate
12 service, including meeting the standards of the commission, taking
13 into consideration the current and projected density and land use
14 of the area;

15 (5) the feasibility of obtaining service from an
16 adjacent retail public utility;

17 (6) the financial ability of the applicant to pay for
18 the facilities necessary to provide continuous and adequate service
19 and the financial stability of the applicant, including, if
20 applicable, the adequacy of the applicant's debt-equity ratio;

21 (7) environmental integrity;

22 (8) the probable improvement of service or lowering of
23 cost to consumers in that area resulting from the granting of the
24 certificate or amendment; and

25 (9) the effect on the land to be included in the
26 certificated area.

27 (d) The commission may require an applicant for a

1 certificate or for an amendment to provide a bond or other financial
2 assurance in a form and amount specified by the commission to ensure
3 that continuous and adequate utility service is provided.

4 (e) Where applicable, in addition to the other factors in
5 this section the commission shall consider the efforts of the
6 applicant:

7 (1) to extend service to any economically distressed
8 areas located within the service areas certificated to the
9 applicant; and

10 (2) to enforce the rules adopted under Section 16.343.

11 (f) If two or more retail public utilities or water supply
12 or sewer service corporations apply for a certificate of public
13 convenience and necessity to provide water or sewer utility service
14 to an uncertificated area located in an economically distressed
15 area and otherwise meet the requirements for obtaining a new
16 certificate, the commission shall grant the certificate to the
17 retail public utility or water supply or sewer service corporation
18 that is more capable financially, managerially, and technically of
19 providing continuous and adequate service.

20 (g) In this section, "economically distressed area" has the
21 meaning assigned by Section 15.001.

22 (h) A landowner who owns a tract of land that is at least 25
23 acres and that is wholly or partly located within the proposed
24 service area may elect to exclude some or all of the landowner's
25 property from the proposed service area by providing written notice
26 to the commission before the 30th day after the date the landowner
27 receives notice of a new application for a certificate of public

1 convenience and necessity or for an amendment to an existing
2 certificate of public convenience and necessity. The landowner's
3 election is effective without a further hearing or other process by
4 the commission. If a landowner makes an election under this
5 subsection, the application shall be modified so that the electing
6 landowner's property is not included in the proposed service area.

7 SECTION 9. Subchapter G, Chapter 13, Water Code, is amended
8 by adding Section 13.2582 to read as follows:

9 Sec. 13.2582. REVOCATION OR AMENDMENT OF CERTIFICATE. (a)
10 This section applies only in a county:

11 (1) with a population of more than 100,000 and less
12 than 150,000; and

13 (2) that borders Cedar Creek Reservoir.

14 (a-1) The commission at any time after notice and hearing
15 may, on its own motion or on receipt of a petition described by
16 Subsection (a-2), revoke or amend any certificate of public
17 convenience and necessity with the written consent of the
18 certificate holder or if it finds that:

19 (1) the certificate holder has never provided, is no
20 longer providing, is incapable of providing, or has failed to
21 provide continuous and adequate service in the area, or part of the
22 area, covered by the certificate;

23 (2) in an affected county as defined in Section
24 16.341, the cost of providing service by the certificate holder is
25 so prohibitively expensive as to constitute denial of service,
26 provided that, for commercial developments or for residential
27 developments started after September 1, 1997, in an affected county

1 as defined in Section 16.341, the fact that the cost of obtaining
2 service from the currently certificated retail public utility makes
3 the development economically unfeasible does not render such cost
4 prohibitively expensive in the absence of other relevant factors;

5 (3) the certificate holder has agreed in writing to
6 allow another retail public utility to provide service within its
7 service area, except for an interim period, without amending its
8 certificate; or

9 (4) the certificate holder has failed to file a cease
10 and desist action under Section 13.252 within 180 days of the date
11 that it became aware that another retail public utility was
12 providing service within its service area, unless the certificate
13 holder demonstrates good cause for its failure to file such action
14 within the 180 days.

15 (a-2) As an alternative to decertification under Subsection
16 (a-1), the owner of a tract of land that is at least 50 acres and
17 that is not in a platted subdivision actually receiving water or
18 sewer service may petition the commission under this subsection for
19 expedited release of the area from a certificate of public
20 convenience and necessity so that the area may receive service from
21 another retail public utility. The petitioner shall deliver, via
22 certified mail, a copy of the petition to the certificate holder,
23 who may submit information to the commission to controvert
24 information submitted by the petitioner. The petitioner must
25 demonstrate that:

26 (1) a written request for service, other than a
27 request for standard residential or commercial service, has been

1 submitted to the certificate holder, identifying:

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

3 (B) the time frame within which service is needed
4 for current and projected service demands in the area;

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

7 (D) any additional information requested by the
8 certificate holder that is reasonably related to determination of
9 the capacity or cost for providing the service;

10 (2) the certificate holder has been allowed at least
11 90 days to review and respond to the written request and the
12 information it contains;

13 (3) the certificate holder:

14 (A) has refused to provide the service;

15 (B) is not capable of providing the service on a
16 continuous and adequate basis within the time frame, at the level,
17 or in the manner reasonably needed or requested by current and
18 projected service 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 is capable of providing
24 continuous and adequate service within the time frame, at the
25 level, and in the manner reasonably needed or requested by current
26 and projected service demands in the area.

27 (a-3) A landowner is not entitled to make the election

1 described in Subsection (a-2) but is entitled to contest the
2 involuntary certification of the landowner's property in a hearing
3 held by the commission if the landowner's property is located in a
4 platted subdivision actually receiving water or sewer service.

5 (a-4) Within 90 days from the date the commission determines
6 the petition filed under Subsection (a-2) to be administratively
7 complete, the commission shall grant the petition unless the
8 commission makes an express finding that the petitioner failed to
9 satisfy the elements required in Subsection (a-2) and supports its
10 finding with separate findings and conclusions for each element
11 based solely on the information provided by the petitioner and the
12 certificate holder. The commission may grant or deny a petition
13 subject to terms and conditions specifically related to the service
14 request of the petitioner and all relevant information submitted by
15 the petitioner and the certificate holder. In addition, the
16 commission may require an award of compensation as otherwise
17 provided by this section.

18 (a-5) Chapter 2001, Government Code, does not apply to any
19 petition filed under Subsection (a-2). The decision of the
20 commission on the petition is final after any reconsideration
21 authorized by the commission's rules and may not be appealed.

22 (b) On written request from the certificate holder, the
23 executive director may cancel the certificate of a utility or water
24 supply corporation authorized by rule to operate without a
25 certificate of public convenience and necessity under Section
26 13.242(c).

27 (c) If the certificate of any retail public utility is

1 revoked or amended, the commission may require one or more retail
2 public utilities with their consent to provide service in the area
3 in question. The order of the commission shall not be effective to
4 transfer property.

5 (d) A retail public utility may not in any way render retail
6 water or sewer service directly or indirectly to the public in an
7 area that has been decertified under this section without providing
8 compensation for any property that the commission determines is
9 rendered useless or valueless to the decertified retail public
10 utility as a result of the decertification.

11 (e) The determination of the monetary amount of
12 compensation, if any, shall be determined at the time another
13 retail public utility seeks to provide service in the previously
14 decertified area and before service is actually provided. The
15 commission shall ensure that the monetary amount of compensation is
16 determined not later than 90 days after the date on which a retail
17 public utility notifies the commission of its intent to provide
18 service to the decertified area.

19 (f) The monetary amount shall be determined by a qualified
20 individual or firm serving as independent appraiser agreed upon by
21 the decertified retail public utility and the retail public utility
22 seeking to serve the area. The determination of compensation by the
23 independent appraiser shall be binding on the commission. The costs
24 of the independent appraiser shall be borne by the retail public
25 utility seeking to serve the area.

26 (g) For the purpose of implementing this section, the value
27 of real property owned and used by the retail public utility for its

1 facilities shall be determined according to the standards set forth
2 in Chapter 21, Property Code, governing actions in eminent domain,
3 and the value of personal property shall be determined according to
4 the factors in this subsection. The factors ensuring that the
5 compensation to a retail public utility is just and adequate shall
6 include: the amount of the retail public utility's debt allocable
7 for service to the area in question; the value of the service
8 facilities of the retail public utility located within the area in
9 question; the amount of any expenditures for planning, design, or
10 construction of service facilities that are allocable to service to
11 the area in question; the amount of the retail public utility's
12 contractual obligations allocable to the area in question; any
13 demonstrated impairment of service or increase of cost to consumers
14 of the retail public utility remaining after the decertification;
15 the impact on future revenues lost from existing customers;
16 necessary and reasonable legal expenses and professional fees; and
17 other relevant factors. The commission shall adopt rules governing
18 the evaluation of these factors.

19 (g-1) If the retail public utilities cannot agree on an
20 independent appraiser within 10 days after the date on which the
21 retail public utility notifies the commission of its intent to
22 provide service to the decertified area, each retail public utility
23 shall engage its own appraiser at its own expense, and each
24 appraisal shall be submitted to the commission within 60 days.
25 After receiving the appraisals, the commission shall appoint a
26 third appraiser who shall make a determination of the compensation
27 within 30 days. The determination may not be less than the lower

1 appraisal or more than the higher appraisal. Each retail public
2 utility shall pay half the cost of the third appraisal.

3 SECTION 10. Section 13.301(e), Water Code, is amended to
4 read as follows:

5 (e) Before the expiration of the 120-day notification
6 period, the executive director shall notify all known parties to
7 the transaction of the executive director's decision whether to
8 request that the commission hold a public hearing to determine if
9 the transaction will serve the public interest. The executive
10 director may request a hearing if:

11 (1) the application filed with the commission or the
12 public notice was improper;

13 (2) the person purchasing or acquiring the water or
14 sewer system has not demonstrated adequate financial, managerial,
15 and technical capability for providing continuous and adequate
16 service to the service area being acquired and to any areas
17 currently certificated to the person;

18 (3) the person or an affiliated interest of the person
19 purchasing or acquiring the water or sewer system has a history of:

20 (A) noncompliance with the requirements of the
21 commission or the Texas Department of Health; or

22 (B) continuing mismanagement or misuse of
23 revenues as a utility service provider;

24 (4) the person purchasing or acquiring the water or
25 sewer system cannot demonstrate the financial ability to provide
26 the necessary capital investment to ensure the provision of
27 continuous and adequate service to the customers of the water or

1 sewer system; or

2 (5) there are concerns that the transaction may not
3 serve the public interest, after the application of the
4 considerations provided by Section 13.246(c) or 13.2581(c), as
5 applicable, for determining whether to grant a certificate of
6 convenience and necessity.

7 SECTION 11. The changes in law made by this Act by amending
8 Sections 13.241, 13.2451, 13.246, 13.251, 13.254, 13.2551, and
9 13.301, Water Code, and by adding Sections 13.258, 13.2581, and
10 13.2582, Water Code, apply only to:

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

15 (2) an extension of a municipality's certificate of
16 public convenience and necessity for a service area in the
17 extraterritorial jurisdiction of the municipality that is made on
18 or after the effective date of this Act; and

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

22 SECTION 12. This Act takes effect September 1, 2013.