

## **BILL ANALYSIS**

C.S.S.B. 1842  
By: Lucio  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that a partnership between certain utilities and municipal utility districts could alleviate some of the debt burden of the municipal utility districts and allow investment in other community projects and facilities. C.S.S.B. 1842 seeks to address this issue by providing for an application for the amendment of certain certificates of convenience and necessity.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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**

C.S.S.B. 1842 amends the Water Code to authorize a Class A utility to apply to the Texas Commission on Environmental Quality (TCEQ) for an amendment of a certificate of convenience and necessity held by a municipal utility district not located wholly or partly inside of the corporate limits or extraterritorial jurisdiction of a municipality with a population of two million or more to allow the utility to have the same rights and powers under the certificate as the district. The bill requires the application to be accompanied by information identifying the applicant, the identifying number of the certificate of convenience and necessity to be amended, the written consent of the district that holds the certificate of convenience and necessity, a written statement by the district that the application is supported by a contract between the district and the utility for the utility to provide services inside the certificated area and inside the boundaries of the district, and a description of the proposed service area. The bill prohibits the Public Utility Commission of Texas (PUC) from requiring any information for an application other than the information required by the bill.

C.S.S.B. 1842 requires the PUC to review whether the application is complete, not later than the 60th day after the date an applicant files an application for an amendment. The bill requires the PUC, if the PUC finds that the application is complete, to find that the amendment of the certificate is necessary for the service, accommodation, convenience, or safety of the public and grant the application and amend the certificate. The bill makes the PUC decision final after reconsideration, if any, authorized by PUC rule and prohibits the decision from being appealed. The bill establishes that the consent of a municipality is not required for the PUC to amend a certificate for an area that is in the municipality's extraterritorial jurisdiction. The bill exempts an application from certain provisions relating to granting a new certificate of convenience and necessity which may require construction of a physically separate water or sewer system and

relating to granting a certificate for a service area within the municipal boundaries or extraterritorial jurisdiction of municipalities with a population of 500,000 or more. The bill exempts an application for an amendment of a certificate of convenience and necessity under the bill's provisions from the Administrative Procedure Act.

C.S.S.B. 1842 amends the Health and Safety Code to include among the entities exempt from the requirement to file a business plan for a public drinking water supply system with the executive director of TCEQ a Class A utility that has applied for or been granted an amendment of a certificate of convenience and necessity under the bill's provisions for the area in which the construction of the system will operate.

**EFFECTIVE DATE**

September 1, 2017.

**COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 1842 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 13.002, Water Code, is amended.

SECTION 1. Same as engrossed version.

No equivalent provision.

SECTION 2. Section 13.244(a), Water Code, is amended to read as follows:

(a) Except as provided by Section 13.258, to [Fø] obtain a certificate of public convenience and necessity or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the utility commission an application for a certificate or for an amendment as provided by this section.

No equivalent provision.

SECTION 3. Section 13.246, Water Code, is amended by adding Subsection (j) to read as follows:

(j) This section does not apply to an application under Section 13.258.

SECTION 2. Subchapter G, Chapter 13, Water Code, is amended by adding Section 13.258 to read as follows:

Sec. 13.258. UTILITY'S APPLICATION FOR SERVICE INSIDE MUNICIPAL UTILITY DISTRICT UNDER CONTRACT.

(a) Notwithstanding any other provision of this chapter, a Class A utility may apply to

SECTION 4. Subchapter G, Chapter 13, Water Code, is amended by adding Section 13.258 to read as follows:

Sec. 13.258. UTILITY'S APPLICATION FOR AMENDMENT AND USE OF MUNICIPAL UTILITY DISTRICT'S CERTIFICATE UNDER CONTRACT.

(a) Notwithstanding any other provision of this chapter, a Class A utility may apply to

the commission to provide services inside the boundaries of a municipal utility district.

(b) An application under this section must be accompanied by:

- (1) information identifying the applicant;
- (2) the name of the municipal utility district;

(3) the written consent of the municipal utility district that holds the certificate of convenience and necessity;

(4) a written statement by the municipal utility district that the application is supported by a contract between the municipal utility district and the utility for the utility to provide services inside the boundaries of the municipal utility district; and

(5) a description of the proposed service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including roads, creeks, or railroad lines; or

(D) if a recorded plat of the area exists, lot and block number.

(c) For an application under this section, the utility commission may not require any information other than the information required by this section.

(d) Not later than the 60th day after the date an applicant files an application under this section, the utility commission shall review whether the application is complete. If the utility commission finds that the application is complete, the utility commission shall:

(1) find that the application is necessary for the service, accommodation, convenience, or safety of the public; and

(2) grant the application.

the commission for an amendment of a certificate of convenience and necessity held by a municipal utility district to allow the utility to have the same rights and powers under the certificate as the municipal utility district.

(b) This section does not apply to a certificate of convenience and necessity held by a municipal utility district located wholly or partly inside of the corporate limits or extraterritorial jurisdiction of a municipality with a population of two million or more.

(c) An application under this section must be accompanied by:

- (1) information identifying the applicant;
- (2) the identifying number of the certificate of convenience and necessity to be amended;

(3) the written consent of the municipal utility district that holds the certificate of convenience and necessity;

(4) a written statement by the municipal utility district that the application is supported by a contract between the municipal utility district and the utility for the utility to provide services inside the certificated area and inside the boundaries of the municipal utility district; and

(5) a description of the proposed service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including roads, creeks, or railroad lines; or

(D) if a recorded plat of the area exists, lot and block number.

(d) For an application under this section, the utility commission may not require any information other than the information required by this section.

(e) Not later than the 60th day after the date an applicant files an application for an amendment under this section, the utility commission shall review whether the application is complete. If the utility commission finds that the application is complete, the utility commission shall:

(1) find that the amendment of the certificate is necessary for the service, accommodation, convenience, or safety of the public; and

(2) grant the application and amend the

(e) The utility commission's decision under this section becomes final after reconsideration, if any, authorized by utility commission rule, and may not be appealed.

(f) The consent of a municipality is not required for the utility commission to grant an application as provided by Subsection (a) for an area that is in the municipality's extraterritorial jurisdiction.

(g) Sections 13.241(d) and 13.245 do not apply to an application under this section.

(h) Chapter 2001, Government Code, does not apply to an application for an amendment of a certificate of public convenience and necessity under this section.

SECTION 3. Section 341.035(d), Health and Safety Code, is amended to read as follows:

(d) A person is not required to file a business plan under Subsection (a)(1) or (b) if the person:

(1) is a county;

(2) is a retail public utility as defined by Section 13.002, Water Code, unless that person is a utility as defined by that section;

(3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision; [øf]

(4) is a Class A utility, as defined by Section 13.002, Water Code, that has applied for or been granted an application to provide service under Section 13.258, Water Code, for the area in which the construction of the public drinking water supply system will operate; or

(5) is a noncommunity nontransient water system and the person has demonstrated financial assurance under Chapter 361 or 382 of this code or Chapter 26, Water Code.

SECTION 4. The change in law made by this Act applies only to an application for an amendment of a certificate of public convenience and necessity filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application is filed, and the

certificate.

(f) The utility commission's decision under this section becomes final after reconsideration, if any, authorized by utility commission rule, and may not be appealed.

(g) The consent of a municipality is not required for the utility commission to amend a certificate as provided by Subsection (a) for an area that is in the municipality's extraterritorial jurisdiction.

(h) Sections 13.241(d) and 13.245 do not apply to an application under this section.

(i) Chapter 2001, Government Code, does not apply to an application for an amendment of a certificate of convenience and necessity under this section.

SECTION 5. Section 341.035(d), Health and Safety Code, is amended to read as follows:

(d) A person is not required to file a business plan under Subsection (a)(1) or (b) if the person:

(1) is a county;

(2) is a retail public utility as defined by Section 13.002, Water Code, unless that person is a utility as defined by that section;

(3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision; [øf]

(4) is a Class A utility, as defined by Section 13.002, Water Code, that has applied for or been granted an amendment of a certificate of convenience and necessity under Section 13.258, Water Code, for the area in which the construction of the public drinking water supply system will operate; or

(5) is a noncommunity nontransient water system and the person has demonstrated financial assurance under Chapter 361 or 382 of this code or Chapter 26, Water Code.

SECTION 6. Same as engrossed version.

former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2017.

SECTION 7. Same as engrossed version.