

By: Lucio III

H.B. No. 2187

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the revocation or amendment of a certificate of public
3 convenience and necessity for water utilities in a service area.

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

5 SECTION 1. Section 13.254, Water Code, is amended by
6 amending Subsections (a-3), (a-4), (d), (e), (f), and (g) and
7 adding Subsection (a-12) to read as follows:

8 (a-3) Within 90 [~~60~~] calendar days from the date the utility
9 commission determines the petition filed pursuant to Subsection
10 (a-1) to be administratively complete, the utility commission shall
11 grant the petition unless the utility commission makes an express
12 finding that the petitioner failed to satisfy the elements required
13 in Subsection (a-1) and supports its finding with separate findings
14 and conclusions for each element based solely on the information
15 provided by the petitioner and the certificate holder. The utility
16 commission may grant or deny a petition subject to terms and
17 conditions specifically related to the service request of the
18 petitioner and all relevant information submitted by the petitioner
19 and the certificate holder. In addition, the utility commission
20 may require an award of compensation as otherwise provided by this
21 section.

22 (a-4) Chapter 2001, Government Code, does not apply to any
23 petition filed under Subsection (a-1). [~~The decision of the~~
24 ~~utility commission on the petition is final after any~~

1 ~~reconsideration authorized by the utility commission's rules and~~
2 ~~may not be appealed.]~~

3 (a-12) The utility commission may not grant a petition
4 received under Subsection (a-5) if, before the 30th day after the
5 date the landowner files the petition under Subsection (a-5), the
6 certificate holder demonstrates that the certificate holder,
7 through planning, design, construction of facilities, or
8 contractual obligations to serve the tract of land, has made
9 service available to the tract. On the utility commission's
10 determination that the certificate holder has made the
11 demonstration, the utility commission shall inform the petitioner
12 that:

13 (1) the tract of land is not eligible for expedited
14 release under Subsection (a-5); and

15 (2) the landowner may seek expedited release under
16 Subsection (a-1) if that subsection is applicable.

17 (d) A petitioner whose petition under Subsection (a-1) or
18 (a-5) has been granted shall provide just and adequate [retail
19 ~~public utility may not in any way render retail water or sewer~~
20 ~~service directly or indirectly to the public in an area that has~~
21 ~~been decertified under this section without providing]~~
22 compensation in accordance with Subsection (g), as determined by
23 [for any property that] the utility commission [determines is
24 ~~rendered useless or valueless to the decertified retail public~~
25 ~~utility as a result of the decertification]. A utility commission~~
26 order following a petition under Subsection (a-1) or (a-5) to
27 revoke or amend a certificate takes effect on the date the

1 petitioner pays the compensation or deposits an equal amount into
2 the registry of the district court under Subsection (f).

3 (e) The utility commission shall conduct a hearing to
4 determine [~~determination of~~] the monetary amount of compensation a
5 petitioner under Subsection (a-1) or (a-5) must pay in accordance
6 with Chapter 2001, Government Code. The utility commission shall
7 make the determination [~~, if any, shall be determined at the time~~
8 ~~another retail public utility seeks to provide service in the~~
9 ~~previously decertified area and before service is actually~~
10 ~~provided. The utility commission shall ensure that the monetary~~
11 ~~amount of compensation is determined]~~ not later than the 90th
12 calendar day after the date on which [~~a retail public utility~~
13 ~~notifies~~] the utility commission revokes or amends a certificate
14 [~~of its intent to provide service to the decertified area~~].

15 (f) If either party to a proceeding following a petition
16 under Subsection (a-1) or (a-5) appeals the utility commission
17 order to revoke or amend a certificate or the compensation order,
18 the [~~The~~] monetary amount of compensation [~~shall be~~] determined by
19 the utility commission shall be deposited into the registry of the
20 district court of Travis County pending the outcome of the appeal [~~a~~
21 ~~qualified individual or firm serving as independent appraiser~~
22 ~~agreed upon by the decertified retail public utility and the retail~~
23 ~~public utility seeking to serve the area. The determination of~~
24 ~~compensation by the independent appraiser shall be binding on the~~
25 ~~utility commission. The costs of the independent appraiser shall~~
26 ~~be borne by the retail public utility seeking to serve the area~~].

27 (g) For the purpose of implementing this section, the value

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

21 SECTION 2. Section 13.255, Water Code, is amended by
22 amending Subsections (g) and (l) to read as follows:

23 (g) For the purpose of implementing this section, the value
24 of real property owned and utilized by the retail public utility for
25 its facilities shall be determined according to the standards set
26 forth in Chapter 21, Property Code, governing actions in eminent
27 domain; the value of personal property shall be determined

1 according to the factors in this subsection. The factors ensuring
2 that the compensation to a retail public utility is just and
3 adequate, shall, at a minimum, include: impact on the existing
4 indebtedness of the retail public utility and its ability to repay
5 that debt, the value of the service facilities of the retail public
6 utility located within the area in question, the amount of any
7 expenditures for planning, design, or construction of service
8 facilities outside the incorporated or annexed area that are
9 allocable to service to the area in question, the amount of the
10 retail public utility's contractual obligations allocable to the
11 area in question, any demonstrated impairment of service or
12 increase of cost to consumers of the retail public utility
13 remaining after the single certification, the impact of ~~on~~ future
14 revenues lost ~~[from existing customers]~~, necessary and reasonable
15 legal expenses and professional fees, factors relevant to
16 maintaining the current financial integrity of the retail public
17 utility, and other relevant factors.

18 (1) For an area incorporated or annexed by a municipality,
19 the compensation provided under Subsection (g) shall be determined
20 by the utility commission in accordance with Chapter 2001,
21 Government Code ~~[a qualified individual or firm to serve as~~
22 ~~independent appraiser, who shall be selected by the affected retail~~
23 ~~public utility, and the costs of the appraiser shall be paid by the~~
24 ~~municipality. For an area annexed by a municipality, the~~
25 ~~compensation provided under Subsection (g) shall be determined by a~~
26 ~~qualified individual or firm to which the municipality and the~~
27 ~~retail public utility agree to serve as independent appraiser. If~~

~~1 the retail public utility and the municipality are unable to agree
2 on a single individual or firm to serve as the independent appraiser
3 before the 11th day after the date the retail public utility or
4 municipality notifies the other party of the impasse, the retail
5 public utility and municipality each shall appoint a qualified
6 individual or firm to serve as independent appraiser. On or before
7 the 10th business day after the date of their appointment, the
8 independent appraisers shall meet to reach an agreed determination
9 of the amount of compensation. If the appraisers are unable to
10 agree on a determination before the 16th business day after the date
11 of their first meeting under this subsection, the retail public
12 utility or municipality may petition the utility commission or a
13 person the utility commission designates for the purpose to appoint
14 a third qualified independent appraiser to reconcile the appraisals
15 of the two originally appointed appraisers. The determination of
16 the third appraiser may not be less than the lesser or more than the
17 greater of the two original appraisals. The costs of the
18 independent appraisers for an annexed area shall be shared equally
19 by the retail public utility and the municipality. The
20 determination of compensation under this subsection is binding on
21 the utility commission].~~

22 SECTION 3. Section 13.254(g-1), Water Code, is repealed.

23 SECTION 4. The change in law made by this Act applies only
24 to a proceeding affecting a certificate of public convenience and
25 necessity that commences on or after the effective date of this Act.
26 A proceeding affecting a certificate of public convenience and
27 necessity that commenced before the effective date of this Act is

1 governed by the law in effect on the date the proceeding commenced,
2 and that law is continued in effect for that purpose.

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