

BILL ANALYSIS

Senate Research Center

S.B. 2272
By: Nichols; Creighton
Water & Rural Affairs
6/20/2019
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A Certificate of Convenience and Necessity (CCN), is a monopoly granted to a utility operator for exclusive service rights in a designated service area. CCNs guarantee an area of service for a utility provider. As urban areas have expanded into previously rural areas, conflicts may arise between landowners and CCN holders in those urbanizing areas. Current law authorizes landowners to be released from a CCN and for a process to determine whether compensation is owed to the CCN holder. S.B. 2272 makes changes to this compensation process. (Original Author's/Sponsor's Statement of Intent)

S.B. 2272 amends current law relating to the procedure for amending or revoking certificates of public convenience and necessity issued to certain water utilities.

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 the heading to Section 13.254, Water Code, to read as follows:

Sec. 13.254. DECERTIFICATION INITIATED BY UTILITY COMMISSION OR UTILITY; EXPEDITED RELEASE INITIATED BY LANDOWNER.

SECTION 2. Amends Sections 13.254(a-2) and (d), Water Code, as follows:

(a-2) Provides that a landowner is not entitled to file a petition under Subsection (a-1) (relating to authorizing the owner of certain land to petition the Public Utility Commission of Texas (PUC) for expedited release of the area from a certificate of public convenience and necessity) or Section 13.2541 but is entitled to contest under Subsection (a) (relating to authorizing the PUC to revoke or amend a certificate of public convenience and necessity) the involuntary certification of the landowner's property in a hearing held by the PUC if the landowner's property is located in an area fitting certain criteria, rather than providing that a landowner is not entitled to make the election described in Subsection (a-1) or (a-5) (relating to authorizing a landowner to petition for expedited release under certain conditions) but is entitled to contest under Subsection (a) the involuntary certification of its property in a hearing held by the PUC if the landowner's property is located in an area fitting certain criteria. Makes a nonsubstantive change.

(d) Prohibits a retail public utility from in any way rendering retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section (Revocation or Amendment of Certificate) unless just and adequate compensation required under Subsection (g) (relating to factors considered in appraising the value of real property for purposes of retail public utilities) has been paid to the decertified retail public utility, rather than prohibiting a retail public utility from in any way rendering retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that the

PUC determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

SECTION 3. Amends Subchapter G, Chapter 13, Water Code, by adding Section 13.2541, as follows:

Sec. 13.2541. STREAMLINED EXPEDITED RELEASE INITIATED BY LANDOWNER. (a) Provides that Sections 13.254(a-7) (relating to requiring a utility to provide a statement of intent to each landowner or ratepayer that contains certain information), (c) (relating to authorizing the PUC to require one or more retail public utilities to provide services in the area in question under certain conditions), (d), and (h) (relating to prohibiting a certificate holder that has land removed from its certificated service area from being required to provide service to the removed land if certain conditions are met) apply to a proceeding under this section.

SECTION 4. Transfers Sections 13.254(a-5) and (a-6), Water Code, to Section 13.2541, Water Code, as added by this Act, redesignates them as Sections 13.2541(b), (c), (d), (e), and (f), Water Code, and amends them, as follows:

(b) Authorizes the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service, as an alternative to decertification or expedited release under Section 13.254, to petition for expedited release of the area from a certificate of public convenience and necessity in the manner provided by this section and entitles the owner to that release if the landowner's property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,000 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more, and not in a county that has a population of more than 45,500 and less than 47,500, rather than authorizing the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service, as an alternative to decertification or under Subsection (a) and expedited release under Subsection (a-1), to petition for expedited release of the area from a certificate of public convenience and necessity and entitling the owner to that release if the landowner's property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,000 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more, and not in a county that has a population of more than 45,500 and less than 47,500.

(c) Requires the PUC to grant the petition not later than the 60th day after the date the landowner files the petition, rather than requiring the PUC to grant a petition received under Subsection (a-5) not later than the 60th day after the date the landowner files the petition.

(d) Creates this subsection from existing text. Prohibits the PUC from denying the petition based on the fact that the certificate holder is a borrower under a federal loan program, rather than prohibiting the PUC from denying a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program.

(e) Prohibits a certificate holder from initiating an application to borrow money under a federal loan program after the date the petition is filed until the PUC issues a decision on the petition.

(f) Creates this subsection from existing text. Authorizes the PUC to require an award of compensation by the petitioner to the certificate holder in the manner provided by this section, rather than authorizing the PUC to require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under Subsection (a-5) as otherwise provided by this section.

SECTION 5. Amends Section 13.2541, Water Code, as added by this Act, by adding Subsections (g), (h), (i), and (j), as follows:

(g) Requires the monetary amount of compensation, if any, to be determined by a qualified individual or firm serving as independent appraiser agreed upon by the certificate holder and the petitioner. Requires the determination of compensation by the independent appraiser to be binding on the PUC. Requires the costs of the independent appraiser to be borne by the petitioner.

(h) Provides that Section 13.254(g) applies to a determination of the monetary amount of compensation under this section.

(i) Requires the petitioner and the certificate holder, if the petitioner and the certificate holder cannot agree on an independent appraiser within 10 calendar days after the date on which the PUC approves the petition, to each engage its own appraiser at its own expense, and requires each appraisal be submitted to the PUC within 70 calendar days after the date on which the PUC approves the petition. Requires the PUC, after receiving the appraisals, to appoint a third appraiser who is required to make a determination of the compensation within 100 days after the date on which the utility commission approves the petition. Prohibits the determination from being less than the lower appraisal or more than the higher appraisal. Requires the petitioner and the certificate holder to each pay half the cost of the third appraisal.

(j) Requires the PUC to ensure that:

(1) the monetary amount of compensation is determined not later than the 60th day after the date the PUC receives the final appraisal; and

(2) the landowner pays the compensation to the certificate holder not later than the 90th calendar day after the date the monetary amount of compensation is determined.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2019.