

By: Hinojosa

S.B. No. 1310

A BILL TO BE ENTITLED

AN ACT

relating to the procedure for amending or revoking certificates of public convenience and necessity issued to certain water utilities.

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

SECTION 1. Section 13.254, Water Code, is amended to read as follows:

Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE. (a) The utility commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity:

(1) with the written consent of the certificate holder; or

(2) if the utility commission finds that:

(A) ~~[(1)]~~ the certificate holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate;

(B) ~~[(2)]~~ in an affected county as defined in Section 16.341, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county as defined in Section 16.341, the fact that the cost of obtaining service from the currently certificated retail public

1 utility makes the development economically unfeasible does not
2 render such cost prohibitively expensive in the absence of other
3 relevant factors;

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

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

14 (b) For a proceeding under Subsection (a) in which another
15 retail public utility proposes to provide service in the
16 decertified area and the certificate holder has not agreed to the
17 decertification, the utility commission shall issue an initial
18 order to revoke or amend the certificate and follow the process in
19 this section to require that the alternate retail public utility
20 provide compensation to the certificate holder.

21 (c) [~~(a-1)~~] As an alternative to decertification under
22 Subsection (a), the owner of a tract of land that is at least 50
23 acres and that is not in a platted subdivision actually receiving
24 water or sewer service may petition the utility commission under
25 this subsection for expedited release of the area from a
26 certificate of public convenience and necessity so that the area
27 may receive service from another retail public utility. The fact

1 that a certificate holder is a borrower under a federal loan program
2 is not a bar to a request under this subsection for the release of
3 the petitioner's land and the receipt of services from an
4 alternative provider. [~~On the day the petitioner submits the~~
5 ~~petition to the utility commission, the petitioner shall send, via~~
6 ~~certified mail, a copy of the petition to the certificate holder,~~
7 ~~who may submit information to the utility commission to controvert~~
8 ~~information submitted by the petitioner.~~] The petitioner must
9 demonstrate in the petition that:

10 (1) a written request for service, other than a
11 request for standard residential or commercial service, has been
12 submitted to the certificate holder, identifying:

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

14 (B) the timeframe within which service is needed
15 for current and projected service demands in the area;

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

18 (D) the approximate cost for the alternative
19 provider to provide the service at the same level and manner that is
20 requested from the certificate holder;

21 (E) the flow and pressure requirements and
22 specific infrastructure needs, including line size and system
23 capacity for the required level of fire protection requested; and

24 (F) any additional information requested by the
25 certificate holder that is reasonably related to determination of
26 the capacity or cost for providing the service;

27 (2) the certificate holder has been allowed at least

1 90 calendar days to review and respond to the written request and
2 the information it contains;

3 (3) the certificate holder:

4 (A) has refused to provide the service;

5 (B) is not capable of providing the service on a
6 continuous and adequate basis within the timeframe, at the level,
7 at the approximate cost that the alternative provider is capable of
8 providing for a comparable level of service, or in the manner
9 reasonably needed or requested by current and projected service
10 demands in the area; or

11 (C) conditions the provision of service on the
12 payment of costs not properly allocable directly to the
13 petitioner's service request, as determined by the utility
14 commission; and

15 (4) the alternate retail public utility from which the
16 petitioner will be requesting service possesses the financial,
17 managerial, and technical capability to provide continuous and
18 adequate service within the timeframe, at the level, at the cost,
19 and in the manner reasonably needed or requested by current and
20 projected service demands in the area.

21 (d) A landowner who intends to file a petition under
22 Subsection (c) shall provide to the certificate holder notice of
23 the landowner's intent to file the petition at least 30 days before
24 the date the landowner files the petition. The notice must specify
25 the tract of land to be decertified. On the day the landowner
26 submits the petition to the utility commission under Subsection
27 (c), the landowner by certified mail shall send a copy of the

1 petition to the certificate holder. The certificate holder may
2 submit to the utility commission information to controvert
3 information submitted by the landowner.

4 (e) [~~(a-2)~~] A landowner is not entitled to make the election
5 described in Subsection (c) [~~(a-1)~~] or (h) [~~(a-5)~~] but is entitled
6 to contest under Subsection (a) the involuntary certification of
7 its property in a hearing held by the utility commission if the
8 landowner's property is located:

9 (1) within the boundaries of any municipality or the
10 extraterritorial jurisdiction of a municipality with a population
11 of more than 500,000 and the municipality or retail public utility
12 owned by the municipality is the holder of the certificate; or

13 (2) in a platted subdivision actually receiving water
14 or sewer service.

15 (f) Not later than the 60th day after [~~(a-3) Within 60~~
16 ~~calendar days from~~] the date the utility commission determines a
17 [~~the~~] petition filed pursuant to Subsection (c) [~~(a-1)~~] to be
18 administratively complete, the utility commission shall issue an
19 initial order granting [~~grant~~] the petition unless the utility
20 commission makes an express finding that the petitioner failed to
21 satisfy the elements required in Subsection (c) [~~(a-1)~~] and
22 supports its finding with separate findings and conclusions for
23 each element based solely on the information provided by the
24 petitioner and the certificate holder. The utility commission may
25 grant or deny a petition subject to terms and conditions
26 specifically related to the service request of the petitioner and
27 all relevant information submitted by the petitioner and the

1 certificate holder. [~~In addition, the utility commission may~~
2 ~~require an award of compensation as otherwise provided by this~~
3 ~~section.~~]

4 (g) [~~(a-4)~~] Chapter 2001, Government Code, does not apply to
5 a [~~any~~] petition filed under Subsection (c) [~~(a-1)~~]. The decision
6 of the utility commission on the petition is final after any
7 reconsideration authorized by the utility commission's rules and
8 may not be appealed.

9 (h) [~~(a-5)~~] As an alternative to decertification under
10 Subsection (a) and expedited release under Subsection (c) [~~(a-1)~~],
11 the owner of a tract of land that is at least 25 acres and that is
12 not receiving water or sewer service may petition for expedited
13 release of the area from a certificate of public convenience and
14 necessity and is entitled to that release if the landowner's
15 property:

16 (1) is located in a county:

17 (A) with a population of at least one million or
18 that is [~~, a county~~] adjacent to a county with a population of at
19 least one million; or

20 (B) [~~, or a county~~] with a population of more than
21 200,000 and less than 220,000 that does not contain a public or
22 private university that had a total enrollment in the most recent
23 fall semester of 40,000 or more; and

24 (2) is not located [~~, and not~~] in a county that has a
25 population of more than 45,500 and less than 47,500.

26 (i) A landowner who intends to file a petition under
27 Subsection (h) shall provide to the certificate holder notice of

1 the landowner's intent to file the petition at least 30 days before
2 the date the landowner files the petition. The notice must specify
3 the tract of land to be decertified.

4 (j) [~~(a-6)~~] The utility commission shall issue an initial
5 order granting [~~grant~~] a petition received under Subsection (h)
6 [~~(a-5)~~] not later than the 60th day after the date the landowner
7 files the petition. The utility commission may not deny a petition
8 received under Subsection (h) [~~(a-5)~~] based on the fact that a
9 certificate holder is a borrower under a federal loan program. [~~The~~
10 ~~utility commission may require an award of compensation by the~~
11 ~~petitioner to a decertified retail public utility that is the~~
12 ~~subject of a petition filed under Subsection (a-5) as otherwise~~
13 ~~provided by this section.~~]

14 (k) A [~~(a-7) The~~] utility shall include with the statement
15 of intent provided to each landowner or ratepayer a notice of:

16 (1) a proceeding under this section related to
17 certification or decertification;

18 (2) the reason or reasons for the proposed rate
19 change; and

20 (3) any bill payment assistance program available to
21 low-income ratepayers.

22 (l) [~~(a-8)~~] If a certificate holder has never made service
23 available through planning, design, construction of facilities, or
24 contractual obligations to serve the area a petitioner seeks to
25 have released under Subsection (c) [~~(a-1)~~], the utility commission
26 is not required to find that the proposed alternative provider is
27 capable of providing better service than the certificate holder,

1 but only that the proposed alternative provider is capable of
2 providing the requested service.

3 (m) [~~(a-9)~~] Subsection (1) [~~(a-8)~~] does not apply to a
4 county:

5 (1) that borders the United Mexican States and the
6 Gulf of Mexico or a county adjacent to a county that borders the
7 United Mexican States and the Gulf of Mexico;

8 (2) [~~(1)~~]

9 [~~(a-10)~~ Subsection (a-8) does not apply to a county:

10 [~~(1)~~] with a population of more than 30,000 and less
11 than 35,000 that borders the Red River;

12 (3) [~~(2)~~]

13 [~~(2)~~] with a population of more than 100,000 and less
14 than 200,000 that borders a county described by Subdivision (2);

15 (4) [~~(1)~~]

16 [~~(a-11)~~ Subsection (a-8) does not apply to a county:

17 [~~(1)~~] with a population of 130,000 or more that is
18 adjacent to a county with a population of 1.5 million or more that
19 is within 200 miles of an international border; or

20 (5) [~~(2)~~] with a population of more than 40,000 and
21 less than 50,000 that contains a portion of the San Antonio River.

22 (n) [~~(b)~~] Upon written request from the certificate holder,
23 the utility commission may cancel the certificate of a utility or
24 water supply corporation authorized by rule to operate without a
25 certificate of public convenience and necessity under Section
26 [13.242\(c\)](#).

27 (o) [~~(c)~~] If the certificate of any retail public utility is

1 revoked or amended under this section, the utility commission may
2 require one or more retail public utilities with their consent to
3 provide service in the decertified area [~~in question~~]. An [~~The~~]
4 order of the utility commission issued under this subsection shall
5 not be effective to transfer property.

6 (p) In an initial order issued under Subsection (b), (f), or
7 (j), the utility commission shall require the certificate holder,
8 not later than the 20th day after the date the order is issued, to
9 submit to the utility commission and, as applicable, the petitioner
10 and any retail public utility that intends to provide service to the
11 decertified area the following information, which must be current
12 as of the date the information is provided:

13 (1) the number of potable water connections the
14 certificate holder could have served in the decertified area at a
15 density of one connection per acre while maintaining 0.6 gallons
16 per minute of potable water supply to each connection with the
17 groundwater supply, surface water supply, and treated water
18 purchase contract supply available to the certificate holder;

19 (2) the number of wastewater connections the
20 certificate holder could have served in the decertified area at a
21 density of one connection per acre while maintaining 200 gallons
22 per day of wastewater treatment capacity to each connection with
23 the combined wastewater treatment plant capacity and wastewater
24 treatment wholesale contract capacity available to the certificate
25 holder;

26 (3) the certificate holder's base monthly retail rate;
27 and

1 (4) any additional supporting evidence or
2 documentation for the information described by Subdivision (1),
3 (2), or (3) if required by the utility commission.

4 (g) Not later than the 30th day after the date the utility
5 commission receives the information required to be submitted under
6 Subsection (p), the utility commission shall issue a second order
7 requiring that just and adequate compensation be paid to the
8 certificate holder and establishing the amount of compensation.
9 Compensation is just and adequate if the compensation is in an
10 amount equal to the certificate holder's base monthly retail rate
11 multiplied by the number of water and wastewater connections the
12 certificate holder could have served in the decertified area for a
13 period of 10 years. For an area decertified under Subsection (a),
14 the alternate retail public utility that intends to serve the area
15 shall pay the compensation. For an area decertified under
16 Subsection (c) or (h), the petitioner shall pay the compensation.

17 (r) Notwithstanding Subsection (q), the retail public
18 utility or petitioner may, before the date the utility commission
19 is authorized to issue a second order under Subsection (q), request
20 that the utility commission notify the retail public utility or
21 petitioner of the amount of compensation the utility commission
22 intends to order and request a hearing on the issue of compensation
23 before the utility commission to be held before the second order may
24 be issued. The utility commission is not required to hold the
25 hearing unless the requestor deposits the amount of compensation
26 the utility commission intends to order into the registry of the
27 district court of Travis County, pending the outcome of the

1 hearing.

2 (s) The utility commission shall conduct a hearing under
3 Subsection (r) not later than the 60th day after the date of the
4 request. At the hearing, the utility commission shall consider
5 evidence relating to all information submitted under Subsection
6 (p). The utility commission shall issue the second order after the
7 hearing.

8 (t) When compensation has been paid according to the
9 requirements of the second order, the utility commission shall
10 issue a third order to finalize the decertification of the retail
11 public utility. The third order must be made effective as of the
12 date the compensation is paid.

13 (u) [~~(d)~~ A retail public utility may not in any way render
14 ~~retail water or sewer service directly or indirectly to the public~~
15 ~~in an area that has been decertified under this section without~~
16 ~~providing compensation for any property that the utility commission~~
17 ~~determines is rendered useless or valueless to the decertified~~
18 ~~retail public utility as a result of the decertification.~~

19 [~~(c)~~ The determination of the monetary amount of

20 ~~compensation, if any, shall be determined at the time another~~

21 ~~retail public utility seeks to provide service in the previously~~

22 ~~decertified area and before service is actually provided. The~~

23 ~~utility commission shall ensure that the monetary amount of~~

24 ~~compensation is determined not later than the 90th calendar day~~

25 ~~after the date on which a retail public utility notifies the utility~~

26 ~~commission of its intent to provide service to the decertified~~

27 ~~area.~~

1 ~~[(f) The monetary amount shall be determined by a qualified~~
2 ~~individual or firm serving as independent appraiser agreed upon by~~
3 ~~the decertified retail public utility and the retail public utility~~
4 ~~seeking to serve the area. The determination of compensation by the~~
5 ~~independent appraiser shall be binding on the utility commission.~~
6 ~~The costs of the independent appraiser shall be borne by the retail~~
7 ~~public utility seeking to serve the area.~~

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

1 ~~factors.~~

2 ~~[(g-1) If the retail public utilities cannot agree on an~~
3 ~~independent appraiser within 10 calendar days after the date on~~
4 ~~which the retail public utility notifies the utility commission of~~
5 ~~its intent to provide service to the decertified area, each retail~~
6 ~~public utility shall engage its own appraiser at its own expense,~~
7 ~~and each appraisal shall be submitted to the utility commission~~
8 ~~within 60 calendar days. After receiving the appraisals, the~~
9 ~~utility commission shall appoint a third appraiser who shall make a~~
10 ~~determination of the compensation within 30 days. The determination~~
11 ~~may not be less than the lower appraisal or more than the higher~~
12 ~~appraisal. Each retail public utility shall pay half the cost of the~~
13 ~~third appraisal.~~

14 ~~[(h)]~~ A certificate holder that has land removed from its
15 certificated service area in accordance with this section may not
16 be required, after the land is removed, to provide service to the
17 removed land for any reason, including the violation of law or
18 utility commission or commission rules by a water or sewer system of
19 another person.

20 SECTION 2. The changes in law made by this Act apply only to
21 a proceeding affecting a certificate of public convenience and
22 necessity that commences on or after the effective date of this Act.
23 A proceeding affecting a certificate of public convenience and
24 necessity that commenced before the effective date of this Act is
25 governed by the law in effect on the date the proceeding is
26 commenced, and that law is continued in effect for that purpose.

27 SECTION 3. This Act takes effect September 1, 2019.