

By: Hinojosa

S.B. No. 1769

A BILL TO BE ENTITLED

AN ACT

relating to the authorization of dual certification of convenience and necessity for water and sewer service in incorporated or annexed areas.

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

SECTION 1. Chapter 13, Water Code, is amended by adding Section 13.2552 to read as follows:

Sec. 13.2552. DUAL CERTIFICATION IN INCORPORATED OR ANNEXED AREAS. (a) This section applies only to a municipality:

(1) that is located entirely in a county:

(A) with a population of more than 500,000 that is served by a county elections administrator; and

(B) that does not contain a municipality with a population of more than 150,000; and

(C) that is a municipality with a population greater than 125,000 that is located in a county that borders the United Mexican States.

(b) In the event that an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality shall provide written notice to any retail public utility that provides water or sewer service to all or part of the area pursuant to a certificate of convenience and necessity that the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility.

1 The notice shall indicate which area, are parts thereof, will be  
2 served by a municipally owned utility. In this section, the phrase  
3 "franchised utility" shall mean a retail public utility that has  
4 been granted a franchise by a municipality to provide water or sewer  
5 service inside municipal boundaries. The notice may provide for  
6 single or dual certification of all or part of the area. The  
7 municipality and retail public utility may enter into an agreement  
8 for the purchase of facilities or property, and for such other or  
9 additional terms that the parties may agree on. If a franchised  
10 utility is to serve the area, the franchised utility shall also be a  
11 party to the agreement. The notice and executed agreement, if any,  
12 shall be filed with the utility commission, and the utility  
13 commission, on receipt of the notice or agreement, shall  
14 incorporate the terms of the notice or agreement into the  
15 respective certificates of convenience and necessity of the parties  
16 to the agreement.

17 (c) If the notice or agreement filed with the public utility  
18 commission in accordance with subsection (b) above is a notice  
19 filed to grant single certification to the municipally owned water  
20 or sewer utility or to a franchised utility, the utility commission  
21 shall fix a time and place for a hearing limited to the  
22 determination of the monetary amount that is adequate and just to  
23 compensate the retail public utility for property rendered useless  
24 or valueless pursuant to section (d) and give notice of the hearing  
25 to the municipality and franchised utility, if any, and notice of  
26 the application and hearing to the retail public utility.

27 (d) The utility commission shall grant single or dual

1 certification to the municipality as described in the notice  
2 required by subsection (b). The utility commission shall also  
3 determine whether single certification as noticed by the  
4 municipality would result in property of a retail public utility  
5 being rendered useless or valueless to the retail public utility,  
6 and shall determine in its order the monetary amount that is  
7 adequate and just to compensate the retail public utility for such  
8 property. If the municipality in its notice has requested the  
9 transfer of specified property of the retail public utility to the  
10 municipality or to a franchised utility, the utility commission  
11 shall also determine in its order the adequate and just  
12 compensation to be paid for such property pursuant to the  
13 provisions of this section, including an award for damages to  
14 property remaining in the ownership of the retail public utility  
15 after single certification. The order of the utility commission  
16 shall not be effective to transfer property. A transfer of property  
17 may only be obtained under this section by a court judgment rendered  
18 pursuant to Subsection (e) or (f). The grant of single  
19 certification by the utility commission shall go into effect on the  
20 date the municipality or franchised utility, as the case may be,  
21 pays adequate and just compensation pursuant to court order, or  
22 pays an amount into the registry of the court or to the retail  
23 public utility under Subsection (g). If the court judgment provides  
24 that the retail public utility is not entitled to any compensation,  
25 the grant of single certification shall go into effect when the  
26 court judgment becomes final. The municipality or franchised  
27 utility must provide to each customer of the retail public utility

1 being acquired an individual written notice within 60 days after  
2 the effective date for the transfer specified in the court  
3 judgment. The notice must clearly advise the customer of the  
4 identity of the new service provider, the reason for the transfer,  
5 the rates to be charged by the new service provider, and the  
6 effective date of those rates.

7 (e) In the event the final order of the utility commission  
8 is not appealed within 30 days, the municipality may request the  
9 district court of Travis County to enter a judgment consistent with  
10 the order of the utility commission. In such event, the court shall  
11 render a judgment that:

12 (1) transfers to the municipally owned utility or  
13 franchised utility title to property to be transferred to the  
14 municipally owned utility or franchised utility as delineated by  
15 the utility commission's final order and property determined by the  
16 utility commission to be rendered useless or valueless by the  
17 granting of single certification; and

18 (2) orders payment to the retail public utility of  
19 adequate and just compensation for the property as determined by  
20 the utility commission in its final order.

21 (f) Any party that is aggrieved by a final order of the  
22 utility commission under this section may file an appeal with the  
23 district court of Travis County within 30 days after the order  
24 becomes final. The hearing in such an appeal before the district  
25 court shall be by trial de novo on all issues. After the hearing, if  
26 the court determines that the municipally owned utility or  
27 franchised utility is entitled to single certification under the

1 provisions of this section, the court shall enter a judgment that:

2 (1) transfers to the municipally owned utility or  
3 franchised utility title to property requested by the municipality  
4 to be transferred to the municipally owned utility or franchised  
5 utility and located within the singly certificated area and  
6 property determined by the court or jury to be rendered useless or  
7 valueless by the granting of single certification; and

8 (2) orders payment in accordance with Subsection (h)  
9 to the retail public utility of adequate and just compensation for  
10 the property transferred and for the property damaged as determined  
11 by the court or jury.

12 (g) Transfer of property shall be effective on the date the  
13 judgment becomes final. However, after the judgment of the court is  
14 entered, the municipality or franchised utility may take possession  
15 of condemned property pending appeal if the municipality or  
16 franchised utility pays the retail public utility or pays into the  
17 registry of the court, subject to withdrawal by the retail public  
18 utility, the amount, if any, established in the court's judgment as  
19 just and adequate compensation. To provide security in the event an  
20 appellate court, or the trial court in a new trial or on remand,  
21 awards compensation in excess of the original award, the  
22 municipality or franchised utility, as the case may be, shall  
23 deposit in the registry of the court an additional sum in the amount  
24 of the award, or a surety bond in the same amount issued by a surety  
25 company qualified to do business in this state, conditioned to  
26 secure the payment of an award of damages in excess of the original  
27 award of the trial court. On application by the municipality or

1 franchised utility, the court shall order that funds deposited in  
2 the registry of the court be deposited in an interest-bearing  
3 account, and that interest accruing prior to withdrawal of the  
4 award by the retail public utility be paid to the municipality or to  
5 the franchised utility. In the event the municipally owned utility  
6 or franchised utility takes possession of property or provides  
7 utility service in the singly certificated area pending appeal, and  
8 a court in a final judgment in an appeal under this section holds  
9 that the grant of single certification was in error, the retail  
10 public utility is entitled to seek compensation for any damages  
11 sustained by it in accordance with Subsection (h) of this section.

12 (h) For the purpose of implementing this section, the value  
13 of real property owned and utilized by the retail public utility for  
14 its facilities shall be determined according to the standards set  
15 forth in Chapter 21, Property Code, governing actions in eminent  
16 domain; the value of personal property shall be determined  
17 according to the factors in this subsection. The factors ensuring  
18 that the compensation to a retail public utility is just and  
19 adequate, shall, at a minimum, include: impact on the existing  
20 indebtedness of the retail public utility and its ability to repay  
21 that debt, the value of the service facilities of the retail public  
22 utility located within the area in question, the amount of any  
23 expenditures for planning, design, or construction of service  
24 facilities outside the incorporated or annexed area that are  
25 allocable to service to the area in question, the amount of the  
26 retail public utility's contractual obligations allocable to the  
27 area in question, any demonstrated impairment of service or

1 increase of cost to consumers of the retail public utility  
2 remaining after the single certification, the impact on future  
3 revenues lost from existing customers, necessary and reasonable  
4 legal expenses and professional fees, factors relevant to  
5 maintaining the current financial integrity of the retail public  
6 utility, and other relevant factors.

7 (h-1) The utility commission shall adopt rules governing  
8 the evaluation of the factors to be considered in determining the  
9 monetary compensation under Subsection (h). The utility commission  
10 by rule shall adopt procedures to ensure that the total  
11 compensation to be paid to a retail public utility under Subsection  
12 (h) is determined not later than the 90th calendar day after the  
13 date on which the utility commission determines that the  
14 municipality's application is administratively complete.

15 (i) A municipality or a franchised utility may rescind  
16 notice for single or dual certification without prejudice at any  
17 time before a judgment becomes final provided the municipality or  
18 the franchised public utility has not taken physical possession of  
19 property of the retail public utility or made payment for such right  
20 pursuant to Subsection (g) of this section.

21 (j) In the event that a municipality files an application  
22 for single certification on behalf of a franchised utility, the  
23 municipality shall be joined in such application by such franchised  
24 utility, and the franchised utility shall make all payments  
25 required in the court's judgment to adequately and justly  
26 compensate the retail public utility for any taking or damaging of  
27 property and for the transfer of property to such franchised

1 utility.

2 (k) This section shall apply only in a case where:

3 (1) the retail public utility that is authorized to  
4 serve in the certificated area that is annexed or incorporated by  
5 the municipality is a nonprofit water supply or sewer service  
6 corporation, a special utility district under Chapter 65, Water  
7 Code, or a fresh water supply district under Chapter 53, Water Code;  
8 or

9 (2) the retail public utility that is authorized to  
10 serve in the certificated area that is annexed or incorporated by  
11 the municipality is a retail public utility, other than a nonprofit  
12 water supply or sewer service corporation, and whose service area  
13 is located entirely within the boundaries of a municipality with a  
14 population of 1.7 million or more according to the most recent  
15 federal census.

16 (1) The following conditions apply when a municipality or  
17 franchised utility makes an application to acquire the service area  
18 or facilities of a retail public utility described in Subsection  
19 (k)(2):

20 (1) the utility commission or court must determine  
21 that the service provided by the retail public utility is  
22 substandard or its rates are unreasonable in view of the reasonable  
23 expenses of the utility;

24 (2) if the municipality abandons its application, the  
25 court or the utility commission is authorized to award to the retail  
26 public utility its reasonable expenses related to the proceeding  
27 hereunder, including attorney fees; and



1           (3) unless otherwise agreed by the retail public  
2 utility, the municipality must take the entire utility property of  
3 the retail public utility in a proceeding hereunder.

4           (m) For an area incorporated by a municipality, the  
5 compensation provided under Subsection (h) shall be determined by a  
6 qualified individual or firm to serve as independent appraiser, who  
7 shall be selected by the affected retail public utility, and the  
8 costs of the appraiser shall be paid by the municipality. For an  
9 area annexed by a municipality, the compensation provided under  
10 Subsection (h) shall be determined by a qualified individual or  
11 firm to which the municipality and the retail public utility agree  
12 to serve as independent appraiser. If the retail public utility and  
13 the municipality are unable to agree on a single individual or firm  
14 to serve as the independent appraiser before the 11th day after the  
15 date the retail public utility or municipality notifies the other  
16 party of the impasse, the retail public utility and municipality  
17 each shall appoint a qualified individual or firm to serve as  
18 independent appraiser. On or before the 10th business day after the  
19 date of their appointment, the independent appraisers shall meet to  
20 reach an agreed determination of the amount of compensation. If the  
21 appraisers are unable to agree on a determination before the 16th  
22 business day after the date of their first meeting under this  
23 subsection, the retail public utility or municipality may petition  
24 the utility commission or a person the utility commission  
25 designates for the purpose to appoint a third qualified independent  
26 appraiser to reconcile the appraisals of the two originally  
27 appointed appraisers. The determination of the third appraiser may

1 not be less than the lesser or more than the greater of the two  
2 original appraisals. The costs of the independent appraisers for an  
3 annexed area shall be shared equally by the retail public utility  
4 and the municipality. The determination of compensation under this  
5 subsection is binding on the utility commission.

6 (n) The utility commission shall reject a notice for single  
7 or dual certification by a municipality that fails to demonstrate  
8 compliance with the commission's minimum requirements for public  
9 drinking water systems.

10 SECTION 2. This Act takes effect September 1, 2021.