

AN ACT

relating to certificates of public convenience and necessity for water or sewer services.

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

SECTION 1. Section 13.245, Water Code, is amended by amending Subsection (b) and adding Subsections (c-1) through (c-5) to read as follows:

(b) Except as provided by Subsections ~~[Subsection]~~ (c), (c-1), and (c-2), the commission may not grant to a retail public utility a certificate of public convenience and necessity for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(c-1) If a municipality has not consented under Subsection (b) before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission, including a capital improvements plan required by Section 13.244(d)(3) or a subdivision plat, the commission may

1 grant the certificate of public convenience and necessity without
2 the consent of the municipality if:

3 (1) the commission makes the findings required by
4 Subsection (c);

5 (2) the municipality has not entered into a binding
6 commitment to serve the area that is the subject of the retail
7 public utility's application to the commission before the 180th day
8 after the date the formal request was made; and

9 (3) the landowner or retail public utility that
10 submitted the formal request has not unreasonably refused to:

11 (A) comply with the municipality's service
12 extension and development process; or

13 (B) enter into a contract for water or sewer
14 services with the municipality.

15 (c-2) If a municipality refuses to provide service in the
16 proposed service area, as evidenced by a formal vote of the
17 municipality's governing body or an official notification from the
18 municipality, the commission is not required to make the findings
19 otherwise required by this section and may grant the certificate of
20 public convenience and necessity to the retail public utility at
21 any time after the date of the formal vote or receipt of the
22 official notification.

23 (c-3) The commission must include as a condition of a
24 certificate of public convenience and necessity granted under
25 Subsection (c-1) or (c-2) that all water and sewer facilities be
26 designed and constructed in accordance with the municipality's
27 standards for water and sewer facilities.

1 (c-4) Subsections (c-1), (c-2), and (c-3) do not apply to:

2 (1) a county that borders the United Mexican States
3 and the Gulf of Mexico or a county adjacent to such a county;

4 (2) a county with a population of more than 30,000 and
5 less than 35,000 that borders the Red River; or

6 (3) a county with a population of more than 100,000 and
7 less than 200,000 that borders a county described by Subdivision
8 (2).

9 (c-5) Subsections (c-1), (c-2), and (c-3) do not apply to:

10 (1) a county with a population of 130,000 or more that
11 is adjacent to a county with a population of 1.5 million or more
12 that is within 200 miles of an international border; or

13 (2) a county with a population of more than 40,000 and
14 less than 50,000 that contains a portion of the San Antonio River.

15 SECTION 2. Section 13.2451, Water Code, is amended by
16 amending Subsections (a) and (b) and adding Subsections (b-1),
17 (b-2), and (b-3) to read as follows:

18 (a) Except as provided by Subsection (b), if ~~if~~ a
19 municipality extends its extraterritorial jurisdiction to include
20 an area certificated to a retail public utility, the retail public
21 utility may continue and extend service in its area of public
22 convenience and necessity under the rights granted by its
23 certificate and this chapter.

24 (b) The commission may not extend a municipality's
25 certificate of public convenience and necessity beyond its
26 extraterritorial jurisdiction if an owner of land that is located
27 wholly or partly outside the extraterritorial jurisdiction elects

to exclude some or all of the landowner's property within a proposed service area in accordance with Section 13.246(h). This subsection does not apply to a transfer of a certificate as approved by the commission. ~~[A municipality that seeks to extend a certificate of public convenience and necessity beyond the municipality's extraterritorial jurisdiction must ensure that the municipality complies with Section 13.241 in relation to the area covered by the portion of the certificate that extends beyond the municipality's extraterritorial jurisdiction.]~~

(b-1) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county.

(b-2) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county:

(1) with a population of more than 30,000 and less than 35,000 that borders the Red River; or

(2) with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (1).

(b-3) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county:

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

(2) with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

SECTION 3. Subsection (h), Section 13.246, Water Code, is

amended to read as follows:

(h) Except as provided by Subsection (i), a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area. An applicant for a certificate of public convenience and necessity that has land removed from its proposed certificated service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by the water or sewer system of another person.

SECTION 4. Section 13.254, Water Code, is amended by amending Subsections (a), (a-1), (a-2), and (a-3) and adding Subsections (a-5) through (a-11) and (h) to read as follows:

(a) The commission at any time after notice and hearing may~~[, on its own motion or on receipt of a petition described by Subsection (a-1),]~~ revoke or amend any certificate of public convenience and necessity with the written consent of the

1 certificate holder or if it finds that:

2 (1) the certificate holder has never provided, is no
3 longer providing, is incapable of providing, or has failed to
4 provide continuous and adequate service in the area, or part of the
5 area, covered by the certificate;

6 (2) in an affected county as defined in Section
7 16.341, the cost of providing service by the certificate holder is
8 so prohibitively expensive as to constitute denial of service,
9 provided that, for commercial developments or for residential
10 developments started after September 1, 1997, in an affected county
11 as defined in Section 16.341, the fact that the cost of obtaining
12 service from the currently certificated retail public utility makes
13 the development economically unfeasible does not render such cost
14 prohibitively expensive in the absence of other relevant factors;

15 (3) the certificate holder has agreed in writing to
16 allow another retail public utility to provide service within its
17 service area, except for an interim period, without amending its
18 certificate; or

19 (4) the certificate holder has failed to file a cease
20 and desist action pursuant to Section 13.252 within 180 days of the
21 date that it became aware that another retail public utility was
22 providing service within its service area, unless the certificate
23 holder demonstrates good cause for its failure to file such action
24 within the 180 days.

25 (a-1) As an alternative to decertification under Subsection
26 (a), the owner of a tract of land that is at least 50 acres and that
27 is not in a platted subdivision actually receiving water or sewer

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

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

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

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

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

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

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

27 (F) [~~(D)~~] any additional information requested

1 by the certificate holder that is reasonably related to
2 determination of the capacity or cost for providing the service;

3 (2) the certificate holder has been allowed at least
4 90 calendar days to review and respond to the written request and
5 the information it contains;

6 (3) the certificate holder:

7 (A) has refused to provide the service;

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

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

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

23 (a-2) A landowner is not entitled to make the election
24 described in Subsection (a-1) or (a-5) but is entitled to contest
25 under Subsection (a) the involuntary certification of its property
26 in a hearing held by the commission if the landowner's property is
27 located:

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

5 (2) in a platted subdivision actually receiving water
6 or sewer service.

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

21 (a-5) As an alternative to decertification under Subsection
22 (a) and expedited release under Subsection (a-1), the owner of a
23 tract of land that is at least 25 acres and that is not receiving
24 water or sewer service may petition for expedited release of the
25 area from a certificate of public convenience and necessity and is
26 entitled to that release if the landowner's property is located in a
27 county with a population of at least one million, a county adjacent

1 to a county with a population of at least one million, or a county
2 with a population of more than 200,000 and less than 220,000 that
3 does not contain a public or private university that had a total
4 enrollment in the most recent fall semester of 40,000 or more, and
5 not in a county that has a population of more than 45,500 and less
6 than 47,500.

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

16 (a-7) The utility shall include with the statement of intent
17 provided to each landowner or ratepayer a notice of:

18 (1) a proceeding under this section related to
19 certification or decertification;

20 (2) the reason or reasons for the proposed rate
21 change; and

22 (3) any bill payment assistance program available to
23 low-income ratepayers.

24 (a-8) If a certificate holder has never made service
25 available through planning, design, construction of facilities, or
26 contractual obligations to serve the area a petitioner seeks to
27 have released under Subsection (a-1), the commission is not

1 required to find that the proposed alternative provider is capable
2 of providing better service than the certificate holder, but only
3 that the proposed alternative provider is capable of providing the
4 requested service.

5 (a-9) Subsection (a-8) does not apply to a county that
6 borders the United Mexican States and the Gulf of Mexico or a county
7 adjacent to a county that borders the United Mexican States and the
8 Gulf of Mexico.

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

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

12 (2) with a population of more than 100,000 and less
13 than 200,000 that borders a county described by Subdivision (1).

14 (a-11) Subsection (a-8) does not apply to a county:

15 (1) with a population of 130,000 or more that is
16 adjacent to a county with a population of 1.5 million or more that
17 is within 200 miles of an international border; or

18 (2) with a population of more than 40,000 and less than
19 50,000 that contains a portion of the San Antonio River.

20 (h) A certificate holder that has land removed from its
21 certificated service area in accordance with this section may not
22 be required, after the land is removed, to provide service to the
23 removed land for any reason, including the violation of law or
24 commission rules by a water or sewer system of another person.

25 SECTION 5. The changes made by this Act to Sections 13.245,
26 13.2451, 13.246, and 13.254, Water Code, apply only to:

27 (1) a retail public utility's application for a

1 certificate of public convenience and necessity for a service area
2 in the extraterritorial jurisdiction of a municipality that is made
3 on or after the effective date of this Act;

4 (2) an extension of a municipality's certificate of
5 public convenience and necessity for a service area in the
6 extraterritorial jurisdiction of the municipality on or after the
7 effective date of this Act; and

8 (3) a petition to release an area from a certificate of
9 public convenience and necessity that is made on or after the
10 effective date of this Act.

11 SECTION 6. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 573 passed the Senate on April 26, 2011, by the following vote: Yeas 26, Nays 5; and that the Senate concurred in House amendments on May 26, 2011, by the following vote: Yeas 25, Nays 6.

Secretary of the Senate

I hereby certify that S.B. No. 573 passed the House, with amendments, on May 25, 2011, by the following vote: Yeas 126, Nays 22, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor