

# 1 AN ACT

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

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

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

17           (c-1) If a municipality has not consented under Subsection  
18       (b) before the 180th day after the date a landowner or a retail  
19       public utility submits to the municipality a formal request for  
20       service according to the municipality's application requirements  
21       and standards for facilities on the same or substantially similar  
22       terms as provided by the retail public utility's application to the  
23       commission, including a capital improvements plan required by  
24       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

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

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

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

16 (1) with a population of more than 30,000 and less than  
17 35,000 that borders the Red River; or  
18 (2) with a population of more than 100,000 and less  
19 than 200,000 that borders a county described by Subdivision (1).

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

22 (1) with a population of 130,000 or more that is  
23 adjacent to a county with a population of 1.5 million or more that  
24 is within 200 miles of an international border; or  
25 (2) with a population of more than 40,000 and less than  
26 50,000 that contains a portion of the San Antonio River.

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

1 amended to read as follows:

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

24 (a) The commission at any time after notice and hearing  
25 may [ ~~, on its own motion or on receipt of a petition described by~~ ]  
26 ~~Subsection (a-1),~~ revoke or amend any certificate of public  
27 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) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

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

S.B. No. 573

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.

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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.

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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.

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Chief Clerk of the House

Approved:

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Date

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Governor