

BILL ANALYSIS

Senate Research Center

S.B. 573

By: Nichols et al.

Natural Resources

9/2/2011

Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 573 amends current law relating to certificates of public convenience and necessity for water or sewer services.

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 Section 13.245, Water Code, by amending Subsection (b) and adding Subsections (c-1) through (c-5), as follows:

(b) Prohibits the Texas Commission on Environmental Quality (TCEQ), except as provided by Subsections (c) (relating to granting a certificate of public convenience and necessity with the consent of a municipality), (c-1), and (c-2), from granting 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.

(c-1) Authorizes TCEQ, 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 TCEQ, including a capital improvements plan required by Section 13.244(d)(3) (relating to a capital improvements plan) or a subdivision plat, to grant the certificate of public convenience and necessity without the consent of the municipality if:

- (1) TCEQ makes the findings required by Subsection (c);
- (2) the municipality has not entered into a binding commitment to serve the area that is the subject of the retail public utility's application to TCEQ before the 180th day after the date the formal request was made; and
- (3) the landowner or retail public utility that submitted the formal request has not unreasonably refused to comply with the municipality's service extension and development process, or enter into a contract for water or sewer services with the municipality.

(c-2) Provides that if a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, TCEQ is not required to make the findings otherwise required by this section and is authorized to grant the certificate of public convenience and necessity to the retail public utility at any time after the date of the formal vote or receipt of the official notification.

(c-3) Requires TCEQ to include as a condition of a certificate of public convenience and necessity granted under Subsection (c-1) or (c-2) that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

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

- (1) a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county;
- (2) a county with a population of more than 30,000 and less than 35,000 that borders the Red River; or
- (3) a county with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (2).

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

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

SECTION 2. Amends Section 13.2451, Water Code, by amending Subsections (a) and (b) and adding Subsections (b-1), (b-2), and (b-3), as follows:

(a) Authorizes a retail public utility, except as provided by Subsection (b), if a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, to continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(b) Prohibits TCEQ from extending a municipality's certificate of public convenience and necessity beyond its extraterritorial jurisdiction if an owner of land that is located 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). Provides that this subsection does not apply to a transfer of a certificate as approved by TCEQ. Deletes existing text requiring a municipality that seeks to extend a certificate of public convenience and necessity beyond the municipality's extraterritorial jurisdiction to ensure that the municipality complies with Section 13.241 (Granting Certificates) in relation to the area covered by the portion of the certificate that extends beyond the municipality's extraterritorial jurisdiction.

(b-1) Provides that 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) Provides that 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) Provides that 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. Amends Section 13.246(h), Water Code, to prohibit 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 from being 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. Amends Section 13.254, Water Code, by amending Subsections (a), (a-1) (a-2), and (a-3), and adding Subsections (a-5) through (a-11) and (h), as follows:

(a) Authorizes TCEQ, at any time after notice and hearing, rather than at any time after notice and hearing on its own motion or on receipt of a petition described by Subsection (a-1), to revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if it makes certain findings.

(a-1) Provides that the fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of services from an alternative provider. Requires the petitioner, on the day the petitioner submits the petition to TCEQ, to send, rather than to deliver, via certified mail, a copy of the petition to the certificate holder, who may submit information to TCEQ to controvert information submitted by the petitioner. Requires the petitioner to demonstrate that:

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

- (A) the area for which service is sought;
- (B) the timeframe within which service is needed for current and projected service demands in the area;
- (C) the level and manner of service needed for current and projected service demands in the area;
- (D) the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder;
- (E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested; and
- (F) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

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

- (3) the certificate holder:

- (A) has refused to provide the service;

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

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

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

(a-2) Provides that a landowner is not entitled to make the election described in Subsection (a-1) or (a-5), but is entitled to contest under Subsection (a) the involuntary certification of its property in a hearing held by TCEQ, if the landowner's property is 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

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

(a-3) Requires TCEQ, within 60 calendar days, rather than 90 calendar days, from the date TCEQ determines the petition filed pursuant to Subsection (a-1) to be administratively complete, to grant the petition unless TCEQ makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder.

(a-5) Authorizes an 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 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 is entitled 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.

(a-6) Requires TCEQ to grant a petition received under Subsection (a-5) not later than the 60th day after the date the landowner files the petition. Prohibits TCEQ 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. Authorizes TCEQ 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.

(a-7) Requires the utility to include with the statement of intent provided to each landowner or ratepayer a notice of a proceeding under this section related to certification or decertification, the reason or reasons for the proposed rate change, and any bill payment assistance program available to low-income ratepayers.

(a-8) Provides that if a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under Subsection (a-1), TCEQ is not required to find that the proposed alternative provider is capable of providing better service than the

certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

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

(a-10) Provides that Subsection (a-8) does not apply to 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).

(a-11) Provides that Subsection (a-8) does not apply to 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.

(h) Prohibits a certificate holder that has land removed from its certificated service area in accordance with this section from being required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or TCEQ rules by a water or sewer system of another person.

SECTION 5. Provides that the changes made by this Act to Sections 13.245, 13.2451, 13.246, and 13.254, Water Code, apply only to:

(1) a retail public utility's application for a certificate of public convenience and necessity for a service area in the extraterritorial jurisdiction of a municipality that is made on or after the effective date of this Act;

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

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

SECTION 6. Effective date: September 1, 2011.