

SUBJECT: Municipal provision of water and sewer service outside of a city's ETJ

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 7 ayes — Puente, Hamilton, Creighton, Gallego, Guillen, Hilderbran, Laubenberg

0 nays

2 absent — Gattis, O'Day

WITNESSES: For — David Bristol, Town of Prosper; Arturo D. Rodriguez, Jr., Cities Coalition on CCNs; Mark Zeppa (*Registered, but did not testify*: Monte Ashcroft, City of Honey Grove; Charles Canady, City of Liberty Hill; Wayne Cavalier, City of Jarrell; Gwen Evans, City of Whitney; Roy Floyd, City of Bonham; Frank Knittel, City of Alvord; Mark Millar, City of Gunter; Ricky Tow, City of Alvord; Clark Vandergriff, City of Meridian; Larry Whitaker, City of Chico

Against — None

On — Doug Holcomb, Texas Commission on Environmental Quality

BACKGROUND: Water Code, ch. 13, subch. G governs certificates of convenience and necessity (CCNs) for water and sewer service providers. Sec. 13.242 prohibits a water utility or supplier from rendering service to the public without first obtaining from the Texas Commission on Environmental Quality (TCEQ) a certificate that public convenience and necessity will require that service. A retail public utility cannot serve any area to which service is being provided by another utility without first having obtained a CCN.

Under sec. 13.2451, TCEQ may not extend the CCN of a municipality beyond that municipality's extraterritorial jurisdiction (ETJ) without the written consent of the owner of the property in which the CCN would be extended. Any CCN extending beyond the extraterritorial jurisdiction of a municipality without the consent of the landowner is void under current law.

DIGEST: HB 2655 would eliminate provisions in current law that prohibit TCEQ from extending the CCN of a municipality beyond that municipality's ETJ without the written consent of the owner of the property into which the CCN would be extended. The bill also would eliminate the provision that voids any CCN extending beyond the ETJ of a municipality that lacked the consent of a landowner.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS SAY: HB 2655 would improve laws governing a municipality's use of a CCN outside of that entity's ETJ, clearing up an area of regulatory confusion. After the 79th Legislature in 2005 enacted HB 2876 by Callegari, a municipality was restricted from seeking a CCN outside of its ETJ. The law included a provision voiding a CCN that had not been consented to by a landowner. The restrictions place a burden on municipal water utilities, interfering with a municipality's ability to manage growth and serve residents living in future areas of expansion.

Under current law, TCEQ could not extend a municipality's CCN beyond that municipality's ETJ without the written consent of the landowner who owned the property that the CCN extension would encompass. This places a municipality in a more restricted position for expanding its service area than any municipal utility district, special utility district, or other water district. HB 2655 would restore municipal water utilities to the same legal status as other utilities with respect to CCN expansion.

Current law causes a problem for a municipality that already has pipes in the ground in a CCN-area beyond its ETJ because any such CCN is retroactively voided if a landowner had not consented to it. Some municipalities are at risk of losing the investment they already have made to service areas outside of their ETJ. If a municipality's CCN is voided, that municipality lacks the protections needed to make the kinds of infrastructure investments necessary to plan and grow. It also is difficult for a municipality consensually to buy a utility outside its ETJ.

HB 2655 would be a narrow adjustment of the laws governing municipal use of CCNs. It would retain the customer safeguards put into place under HB 2876 last session. A customer still could opt out of a CCN, and a

municipality still would have to demonstrate its willingness and ability to extend service in its CCN area before an expansion was authorized.

Adopting a proposal to void a CCN upon written objection by a landowner would be impractical. A municipality could be faced with a situation in which it had extended service throughout an area on the basis of a commitment by landowners, only to have that consent revoked, a costly proposition that would discourage service expansion by cities. HB 2655 is necessary to avoid a patchwork, inefficient, and confusing system of CCN coverage in areas outside of municipal ETJs.

**OPPONENTS
SAY:**

HB 2655 would weaken reforms enacted in 2005 under HB 2876 by Callegari. Those reforms were designed to prevent a city from creating a CCN beyond that city's ETJ. Before HB 2876, some cities were abusing their CCN powers, expanding their reach beyond the city's ETJ and constraining development by failing to serve an area while preventing any other water utility from providing service. By allowing a municipality to hold a CCN beyond its ETJ without the written consent of a landowner, HB 2655 would reopen the door to this type of abuse.

**OTHER
OPPONENTS
SAY:**

Rather than repealing the reforms of last session, a better approach would be to allow a municipality to retain its CCN if a landowner outside of a municipality's ETJ were receiving service from the municipality, unless that landowner objected to the municipality's service. This approach would protect a municipality providing adequate water service as well as customers who were unhappy with the service provided by a municipality.

NOTES:

A related bill, HB 642 by Callegari, which would consider a landowner to have consented to a municipality's CCN unless the landowner specifically had objected to the municipality's service in writing, was considered in a public hearing by the House Natural Resources Committee on March 28 and left pending.