

BILL ANALYSIS

Senate Research Center
80R7470 TAD-D

S.B. 875
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Natural Resources
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Chapter 13 (Water Rates and Services), Water Code, provides the statutory framework for the issuance of certificates of convenience and necessity (certificate) for water and sewer service by the Texas Commission on Environmental Quality (TCEQ). In general, a utility is prohibited from rendering water or sewer utility service to the public without first having obtained a certificate. A certificate entitles a utility to be the sole water or sewer utility provider in a certain area.

Currently, landowners have very few rights in the process of TCEQ granting a certificate over their property. H.B. 2876, 79th Legislature, Regular Session, 2005, created a process whereby a landowner of 50 acres or more would be notified via certified mail if a utility wanted to include the landowner's property in a proposed certificate. At that point, a landowner of 25 acres or more has 30 days to notify TCEQ if the landowner does not want the land to be included in the certificate. If the landowner fails to respond within 30 days, the land is included in the certificate. Under these provisions, a landowner could lose certain property rights for failure to opt out of the proposed certificate. This process inherently favors the certificate applicant and constitutes an unfair taking from the landowner. Measures are needed to be taken to protect private property rights by providing more inclusion for landowners in opting in to a certificate.

As proposed, S.B. 875 requires a landowner of 10 acres or more to opt in to a proposed certificate, rather than opt out. This bill further provides that a landowner has 120 days to opt in to the certificate.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 (Section 13.246(a-1), Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 13.244(d) Water Code, to require an application for a certificate of public convenience and necessity (certificate) or for an amendment to a certificate to contain a list of the owners of each tract of land that is at least 10, rather than 50, acres and wholly or partially located within the proposed service area according to the tax roll of the central appraisal district for each county in which the proposed service area is located.

SECTION 2. Amends Sections 13.246(a-1), (h), and (i), Water Code, as follows:

(a-1) Requires the Texas Commission on Environmental Quality (TCEQ), by rule, to prescribe a form that must be used to provide a notice to be mailed to each owner of a tract of land that is at least 10, rather than 50, acres and is wholly or partially included in the area proposed to be certified. Makes a conforming change.

(h) Requires, except as provided by Subsection (i), a landowner of a tract of at least 10 acres of land, any part of which is located in the proposed service area, to consent to the inclusion of the landowner's property in the proposed service area before TCEQ is authorized to issue a certificate or an amendment to a certificate for an area that includes that property. Authorizes a landowner to consent to the inclusion of all or part of the landowner's property. Prohibits property that a landowner does not provide to TCEQ written consent to include all or part of in the proposed service area on or before the 90th

day after the notice to the landowner is mailed under Subsection (a-1) from being included in the proposed service area. Provides that the landowner's timely written consent or the landowner's lack of consent takes effect for purposes of this subsection without further hearing or other proceeding by TCEQ.

Requires TCEQ, on or after the 120th day after the date the notice to the landowner is mailed, to modify the application to exclude the property of a landowner who does not provide written consent to include that property in the proposed service area. Deletes existing text authorizing a landowner who owns a tract of land that is at least 25 acres and is wholly or partially located within the proposed service area to elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to TCEQ before the 30th day after the date the landowner receives notice of a new application for a certificate or for an amendment to an existing certificate. Deletes existing text providing that the landowner's election is effective without a further hearing or other process by TCEQ. Deletes existing text requiring such an application to be modified so that the electing landowner's property is not included in the proposed service area if a landowner makes an election under this subsection.

(i) Makes nonsubstantive changes.

SECTION 3. Makes application of Sections 13.246(h) and (i), Water Code, as amended by this Act, prospective.

SECTION 4. Effective date: September 1, 2007.