

BILL ANALYSIS

Senate Research Center
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S.B. 572
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Natural Resources
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Chapter 13 (Water Rates and Service), Water Code, provides the statutory framework for the issuance of certificates of convenience and necessity (CCN) for water and sewer service by the Texas Commission on Environmental Quality (TCEQ). In general, a utility may not render retail water or sewer utility service to the public without first having obtained a CCN. A CCN entitles a utility to be the sole, monopoly water and sewer utility provider in a certain area.

Under current law, landowners have very few rights in the process of TCEQ granting a CCN over their property. H.B. 2876, enacted during the 79th Legislature, created a process whereby a landowner of 50 acres or more would be notified via certified mail if a utility wanted to include the land in a proposed CCN. At that point, a landowner has 30 days to notify TCEQ if the landowner does not want the land included in the CCN. If the landowner fails to respond within 30 days, the land is included in the CCN.

Under this provision, a landowner could lose certain rights to his property if he or she fails to opt out of the proposed CCN. This process inherently favors the CCN applicant, and constitutes an unfair taking from the landowner.

As proposed, S.B. 572 amends current law relating to certificates of public convenience and necessity to provide water or sewer utility service.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 2 (Section 13.246, 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 or for an amendment to a certificate to contain certain provisions, including 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), except as otherwise provided by this subsection, in addition to the notice required by Subsection (a) (relating to an application for a certificate of public convenience and necessity), to require notice to be mailed to each owner of a tract of land that is at least 10, rather than 25, acres and is wholly or partially included in the area proposed to be certified. Requires TCEQ by rule to prescribe a form that must be used to provide notice under this subsection.

(h) Provides that a landowner, except as provided by Subsection (i), of a tract of at least 10 acres of land any part of which is located in the proposed service area is required to consent to the inclusion of the landowner's property in the proposed service area before TCEQ is authorized to issue a certificate of public convenience and necessity or an

amendment to a certificate of public convenience and necessity for an area that includes that property, rather than provides that a landowner, except as provided by Subsection (i), who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area is authorized 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 fee for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. Authorizes a landowner to consent to the inclusion of all or part of the landowner's property. Deletes existing text providing that the landowner's election is effective without a further hearing or other process by TCEQ. Prohibits that property, if a landowner does not provide to TCEQ written consent to include all or part of the landowner's property in the proposed service area on or before the 120th day after the date the notice to the landowner is mailed under Subsection (a-1), to be 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 a further hearing or other proceeding by TCEQ. Requires TCEQ, on or after the 150th 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 requiring that the application be modified so that the electing landowner's property is not included in the proposed service area.

(i) Provides that Subsection (h) does not apply if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant. Entitles, however, the landowner to contest the inclusion of the landowner's property in the proposed service area at a hearing held by TCEQ regarding the application. Deletes existing text providing that a landowner is not entitled to make an election under Subsection (h) but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by TCEQ regarding the application.

SECTION 3. Provides that Sections 13.246(h) and (i), Water Code, as amended by this Act, apply only to an application for a certificate of public convenience and necessity for which TCEQ has not issued a final order before the effective of this Act. Provides that an application for a certificate of public convenience and necessity for which a final order was issued before the effective date of this Act is governed by the law in effect on the date the final order was issued, and the former law is continued in effect that purpose

SECTION 4. Effective date: September 1, 2011.