



Control Number: 45848



Item Number: 44

Addendum StartPage: 0

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CITY OF CELINA'S NOTICE OF  
INTENT TO PROVIDE WATER AND  
SEWER SERVICE TO AREA  
DECERTIFIED FROM AQUA TEXAS,  
INC. IN DENTON COUNTY

§ PUBLIC UTILITY COMMISSION  
§  
§ OF TEXAS  
§  
§

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CITY OF CELINA'S  
MOTION FOR SUMMARY DECISION

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The City of Celina (the "City") files this Motion for Summary Decision pursuant to 16 Texas Admin. Code § 22.182(a)<sup>1</sup> on the following single issue: Does Texas Water Code §13.254(g) allow the recovery of future revenues lost from customers not in existence at the time of decertification? The City asserts that the answer is "No." In support thereof the City respectfully shows as follows:

**I. INTRODUCTION**

Rules of statutory construction dictate that Texas Water Code §13.254(g) prevents the recovery of lost future revenue from customers that do not exist in an area decertified from a retail public utility. Statutory construction "involves a question of law, not a question of fact."<sup>2</sup>

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<sup>1</sup> 16 Texas Admin. Code § 22.182(a) the presiding officer may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion.

<sup>2</sup> *In re Heavy Equip. Appraisal Litig.*, No. 12-0185, 2013 Tex. LEXIS 1079, at \*5 (Feb. 14, 2013) (citing *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006) (noting statutory construction is question of law); *Harper Park Two, LP v. City of Austin*, 359 S.W.3d 247, 254-55 (Tex. App.—Austin 2011, pet. denied) (holding application of statutory definition of "project" was question of statutory construction)).

Therefore, as a question of law, it is a question that is appropriate for determination by the ALJ pursuant to 16 Texas Admin. Code § 22.182(a).

## **II. ARGUMENT**

Aqua's argument for allowing future revenues from customers that do not exist at the time of decertification seems to depend on a very broad interpretation of the words "other relevant factors." Aqua attempts to buttress this argument by claiming that "lost economic opportunity" is a property right. Such an interpretation would require the ALJ ignore the plain language of the Texas Water Code and would violate several principles of statutory construction.

The Texas Water Code §13.254(g) provides that the value of personal property shall be determined according to specified factors. The statute provides:

The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; ***the impact on future revenues lost from existing customers***; necessary and reasonable legal expenses and professional fees; and other relevant factors.

Texas Water Code §13.254(g) (emphasis added).

In construing statutes, the goal is to give effect to the drafter's intent. *Texas Dep't of Protective & Regulatory Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, 176 (Tex. 2004). This determination begins with the wording of the statutes or regulations involved. *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 380 (Tex. 1998). In construing a statute, courts presume that the Legislature intended the entire statute to be effective. *See Tex. Gov't*

Code Ann §311.021(2) (West 1993). Accordingly, a court must interpret the statute as written. *See In re Doe*, 19 S.W.3d 346, 351 (Tex. 2000).

Every word in a statute is presumed to have been used for a purpose and every word excluded is presumed to have been excluded for a purpose. *Laidlaw Waste Sys., Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995). Thus, “a cardinal rule of statutory construction is that each sentence, clause and word is to be given effect if reasonable and possible.” *Texas Workers’ Compensation Ins. Fund v. Del Indus., Inc.*, 35 S.W.3d 591, 593 (Tex. 2000) (citing *Perkins v. State*, 367 S.W.2d 140, 146 (Tex. 1963)).

In other words, when construing a statute the entire statute is presumed to be effective and the court should not read a portion of the statute to be useless or a nullity.<sup>3</sup> A court must give effect to all words of a statute and not treat any language as surplusage.<sup>4</sup> The Texas Supreme Court has held, “It is a rule of statutory construction that every word of a statute must be presumed to have been used for a purpose. Likewise, we believe every word excluded from a statute must also be presumed to have been excluded for a purpose.”<sup>5</sup>

Aqua’s attempt to recoup for “lost economic opportunity” is an attempt to recoup for future revenues lost from future customers. Specifically Mr. Korman asserts in his appraisal that “Aqua Texas lost the economic opportunity of the reasonably probable 575 connections for both

<sup>3</sup> See *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580 (Tex. 2000); see also Tex. Gov’t Code Ann. § 311.021(2); *Leordeanu v. Am. Prot. Ins. Co.*, 330 S.W.3d 239, 248 (Tex. 2010); *Fresh Coat, Inc. v. K-2, Inc.*, 318 S.W.3d 893, 901 (Tex. 2010); *State v. K.E.W.*, 315 S.W.3d 16, 21 (Tex. 2010); *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010); *Phillips v. Bramlett*, 288 S.W.3d 876, 880–81 (Tex. 2009); *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009); *City of Marshall v. City of Uncertain*, 206 S.W.3d 97, 105 (Tex. 2006); *State v. Shumake*, 199 S.W.3d 279, 287 (Tex. 2006); *Cities of Austin v. Sw. Bell Tel. Co.*, 92 S.W.3d 434, 442–43 (Tex. 2002).

<sup>4</sup> *Meritor Auto., Inc. v. Ruan Leasing Co.*, 44 S.W.3d 86, 89–90 (Tex. 2001); *Tex. Workers’ Comp. Ins. Fund v. Del Indus., Inc.*, 35 S.W.3d 591, 593 (Tex. 2000); *Abrams v. Jones*, 35 S.W.3d 620, 625 (Tex. 2000); *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580 (Tex. 2000); *Nat’l Liah. & Fire Ins. Co. v. Allen*, 15 S.W.3d 525, 527 (Tex. 2000).

<sup>5</sup> *In re Bell*, 91 S.W.3d 784, 790 (Tex. 2002); see also *Kappus v. Kappus*, 284 S.W.3d 831, 835 (Tex. 2009); *City of Rockwall v. Hughes*, 246 S.W.3d 621, 629 (Tex. 2008); *City of Marshall v. City of Uncertain*, 206 S.W.3d 97, 105 (Tex. 2006); *Old Am. Cnty. Mut. Fire Ins. Co. v. Sanchez*, 149 S.W.3d 111, 115 (Tex. 2004); *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981).

water and waste water.” AQUA000007. In other words, Aqua asserts that it should be compensated for the loss of 575 *possible future* customers.

Aqua’s reading of the Water Code renders the following words “from existing customers,” found at Texas Water Code §13.254(g) a nullity and, therefore, violates basic principles of statutory construction.

A simple review of the history of TWC §13.254 is helpful. In the Omnibus water bill in the 75<sup>th</sup> Legislative Session in 1997, commonly called “SB 1,” the Legislature amended TWC §13.254 to add subsection (g) that included factors to consider in determining the monetary amount, if any, for a retail public utility that had part or all of its CCN decertificated. Exhibit A, attached hereto and incorporated herein by reference, is a copy of relevant portions of SB 1. One of the factors that SB 1 included in §13.254(g) was “the impact on future revenues and expenses of the retail public utility”.<sup>6</sup> Equally important is the language that SB 1 included in new subsection (h). New §13.254(h), added by SB 1, read as follows:<sup>7</sup>

(h) The commission shall determine whether payment of compensation shall be in a lump sum or paid out over a specified period of time. If there were no current customers in the area decertified and no immediate loss of revenues or if there are other valid reasons determined by the commission, installment payments as new customers are added in the decertified area may be an acceptable method of payment.

Reading TWC §13.254(g) and (h), as they were passed in 1997 pursuant to SB 1, it is clear that the Legislature contemplated a retail public utility that had its CCN, either totally or partially, decertificated, would be compensated, at least at some level, for lost revenues from customers that did not exist at the time of the decertification.

It is just as clear that in 2005, the 79<sup>th</sup> Legislature changed its mind and specifically did

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<sup>6</sup> Lines 166-21 to 166-22 of Exhibit A.

<sup>7</sup> Lines 167-1 to 167-7 of Exhibit A.

not intend for a retail public utility, when an area was decertificated, to be compensated for lost revenue for customers not in existence at the time of the decertification. The legislative vehicle for this was HB 2876. The enrolled version of HB 2876 is incorporated herein by reference and attached hereto as Exhibit B.

By enacting HB 2876, the Legislature expressed its clear intent by in two ways. First, the Legislature amended the relevant language of TWC §13.254(g) from “the impact on future revenues and expenses of the retail public utility” to “the impact on future revenues lost from existing customers.”<sup>8</sup> Second, the Legislature fully repealed TWC §13.254(h).<sup>9</sup>

If the Legislature had intended that lost economic opportunity, or future revenues from future customers, be made available, it would not have amended TWC §13.254(g) and/or repealed TWC §13.254(h). Instead, in HB 2876 the Legislature specifically limited the impact on “future revenues” to those lost “from existing customers.” Aqua would have the ALJ render “from existing customers” a nullity and would have the ALJ nullify the Legislature’s specific action.

If every word of a statute must be presumed to have been used for a purpose, then there must be a reason the Legislature included “from existing customers.” Likewise, if every word excluded from a statute must also be presumed to have been excluded for a purpose, there must be a reason why the Legislature did not include “from future customers.” Aqua’s own witness, Mr. Blackhurst, who testified that in 2005 the Legislature changed “the impact on future revenues and expenses of the retail public utility” with “the impact on future revenues lost from existing customers” adds support to the City’s argument. Blackhurst Testimony, Page 14, Lines 15-17.

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<sup>8</sup> Page 15, Lines 8-9 of Exhibit B.

<sup>9</sup> Page 21, Lines 7-9 of Exhibit B.

In enacting an amendment to an existing statute, the Legislature is presumed to have changed the law and a construction should be adopted that gives effect to the intended change rather than one that renders the amendment useless.<sup>10</sup> The general presumption is very persuasive, and a court should be particularly unwilling to revisit language that the Legislature has elected to delete.<sup>11</sup> In 2005, the Legislature elected to limit future revenues. This limitation was to the impact the decertification would have on “future revenues from existing customers.” The ALJ should not allow Aqua to revisit the Legislature’s 2005 amendment through a contorted reading of the statute and regulations.

Aqua’s justification for ignoring these principles of statutory construction is that their witness “determined this intangible property interest was compensable under the “other relevant factors” category set forth in Texas Water Code §13.254(g) and P.U.C SUBST. R. 24.113(k).” Korman Testimony, Page 12, Lines 19-21. This position, however, ignores another basic canon of statutory construction – that the express mention or enumeration of one person, thing, consequence, or class is the equivalent to an express exclusion of all others.<sup>12</sup> The Legislature identified a factor – “future revenues.” It expressly included “future revenues lost from existing customers.” Therefore, it expressly excluded other types of “future revenues” – including future revenues from future customers. “Other relevant factors” are other factors – not other “future revenues.” The Legislature’s amendment makes it clear that the “future revenues” factor is limited. The fact that in the same bill the Legislature fully repealed TWC §13.254(h), which

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<sup>10</sup> *Ex parte Trahan*, 591 S.W.2d 837, 842 (Tex. Crim. App. 1979) (en banc); *Pub. Util. Comm’n v. City of Harlingen*, 311 S.W.3d 610, 620 n.7 (Tex. App.—Austin 2010, no pet.); *Lal v. Harris Methodist Fort Worth*, 230 S.W.3d 468, 473–74 (Tex. App.—Fort Worth 2007, no pet.); *Walker v. City of Georgetown*, 86 S.W.3d 249, 259 (Tex. App.—Austin 2002, pet. denied); *Am. Honda Motor Co. v. Tex. Dep’t of Transp.—Motor Vehicle Div.*, 47 S.W.3d 614, 621 (Tex. App.—Austin 2001, pet. denied); see also *Jones v. Fowler*, 969 S.W.2d 429, 431–33 (Tex. 1998) (per curiam).

<sup>11</sup> See *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 443 (Tex. 2009).

<sup>12</sup> *Johnson v. Second Injury Fund*, 688 S.W.2d 107, 108–09 (Tex. 1985).

specifically included timing of payments when new customers are added, makes it abundantly clear that the Legislature abandoned the notion of compensation for future customers.

This prohibition on compensation for future customers holds regardless of whether “lost economic opportunity” is a property right. The City disputes Aqua’s argument that “lost economic opportunity” is a property right but, even if it is, TWC §13.254(g) does not provide for any compensation for “lost economic opportunity” from future customers in a matter involving water/sewer decertification compensation.

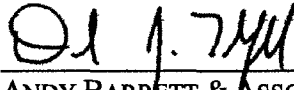
This reading also makes it clear that the Legislature intended for compensation to be limited to actual stranded assets that have been built in the area and to serve the area. *See* HRO Bill analysis, P. 6, which is incorporated herein by reference and attached as Exhibit C.

#### **PRAYER**

Based on the foregoing, the City hereby requests its Motion for Summary Decision be granted pursuant to 16 Texas Admin. Code § 22.182(a) on the single issue presented, and that the ALJ rule as follows: Rules of statutory construction dictate that Texas Water Code §13.254(g) does not allow the recovery of future revenues lost from customers not in existence at the time of decertification.



Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andy Barrett", is written over a horizontal line.

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ATTORNEYS FOR THE CITY OF CELINA

**CERTIFICATE OF SERVICE**

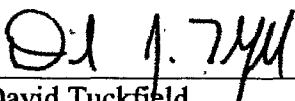
I, David Tuckfield, attorney for the City of Celina, certify that a copy of this document was served on all parties of record in this proceeding on September 13, 2016 in the following manner:

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Public Utility Commission of Texas  
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\_\_\_\_\_  
David Tuckfield

## **EXHIBIT A**

163-15 bond or other financial assurance in an amount determined by the  
163-16 commission not to exceed the amount of the bond or financial  
163-17 assurance. The order requiring the improvements may be an  
163-18 emergency order if it is issued after the retail public utility has  
163-19 had an opportunity to be heard by the commissioners at a commission  
163-20 meeting. After notice and hearing, the commission may require a  
163-21 retail public utility to obligate additional money to replace the  
163-22 financial assurance used for the improvements.

163-23 SECTION 6.10. Section 13.254, Water Code, is amended to read  
163-24 as follows:

163-25 Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE.

164-1 (a) The commission at any time after notice and hearing may revoke  
164-2 or amend any certificate of public convenience and necessity with  
164-3 the written consent of the certificate holder or if it finds that:  
164-4 (1) the certificate holder has never provided, is no  
164-5 longer providing, or has failed to provide continuous and adequate  
164-6 service in the area, or part of the area, covered by the  
164-7 certificate;

164-8 (2) in an affected county as defined in Section  
164-9 16.341, the cost of providing service by the certificate holder is  
164-10 so prohibitively expensive as to constitute denial of service,  
164-11 provided that, for commercial developments or for residential  
164-12 developments started after September 1, 1997, in an affected county  
164-13 as defined in Section 16.341, the fact that the cost of obtaining  
164-14 service from the currently certificated retail public utility makes  
164-15 the development economically unfeasible does not render such cost  
164-16 prohibitively expensive in the absence of other relevant factors;

164-17 (3) the certificate holder has agreed in writing to  
164-18 allow another retail public utility to provide service within its  
164-19 service area, except for an interim period, without amending its  
164-20 certificate; or

164-21 (4) the certificate holder has failed to file a cease  
164-22 and desist action pursuant to Section 13.252 within 180 days of the

164-23 date that it became aware that another retail public utility was  
164-24 providing service within its service area, unless the certificate  
164-25 holder demonstrates good cause for its failure to file such action  
165-1 within the 180 days.

165-2 (b) Upon written request from the certificate holder, the  
165-3 executive director may cancel the certificate of a utility or water  
165-4 supply corporation authorized by rule to operate without a  
165-5 certificate of public convenience and necessity under Section  
165-6 13.242(c).

165-7 (c) If the certificate of any retail public utility is  
165-8 revoked or amended, the commission may require one or more retail  
165-9 public utilities with their consent to provide service in the area  
165-10 in question. The order of the commission shall not be effective to  
165-11 transfer property.

165-12 (d) A retail public utility may not in any way render retail  
165-13 water or sewer service directly or indirectly to the public in an  
165-14 area that has been decertified under this section without providing  
165-15 compensation for any property that the commission determines is  
165-16 rendered useless or valueless to the decertified retail public  
165-17 utility as a result of the decertification.

165-18 (e) The determination of the monetary amount of  
165-19 compensation, if any, shall be determined at the time another  
165-20 retail public utility seeks to provide service in the previously  
165-21 decertified area and before service is actually provided.

165-22 (f) The monetary amount shall be determined by a qualified  
165-23 individual or firm serving as independent appraiser agreed upon by  
165-24 the decertified retail public utility and the retail public utility  
165-25 seeking to serve the area. The determination of compensation by  
166-1 the independent appraiser shall be binding on the commission. The  
166-2 costs of the independent appraiser shall be borne by the retail  
166-3 public utility seeking to serve the area.

166-4 (g) For the purpose of implementing this section, the value

166-5 of real property shall be determined according to the standards set  
166-6 forth in Chapter 21, Property Code, governing actions in eminent  
166-7 domain and the value of personal property shall be determined  
166-8 according to the factors in this subsection. The factors ensuring  
166-9 that the compensation to a retail public utility for the taking,  
166-10 damaging, or loss of personal property, including the retail public  
166-11 utility's business, is just and adequate shall at a minimum  
166-12 include: the impact on the existing indebtedness of the retail  
166-13 public utility and its ability to repay that debt; the value of the  
166-14 service facilities of the retail public utility located within the  
166-15 area in question; the amount of any expenditures for planning,  
166-16 design, or construction of service facilities that are allocable to  
166-17 service to the area in question; the amount of the retail public  
166-18 utility's contractual obligations allocable to the area in  
166-19 question; any demonstrated impairment of service or increase of  
166-20 cost to consumers of the retail public utility remaining after the  
166-21 decertification; the impact on future revenues and expenses of the  
166-22 retail public utility; necessary and reasonable legal expenses and  
166-23 professional fees; factors relevant to maintaining the current  
166-24 financial integrity of the retail public utility; and other  
166-25 relevant factors.

167-1 (h) The commission shall determine whether payment of  
167-2 compensation shall be in a lump sum or paid out over a specified  
167-3 period of time. If there were no current customers in the area  
167-4 decertified and no immediate loss of revenues or if there are other  
167-5 valid reasons determined by the commission, installment payments as  
167-6 new customers are added in the decertified area may be an  
167-7 acceptable method of payment.

167-8 SECTION 6.11. Section 13.301, Water Code, is amended to read  
167-9 as follows:

167-10 Sec. 13.301. REPORT OF SALE, MERGER, ETC.; INVESTIGATION;  
167-11 DISALLOWANCE OF TRANSACTION. (a) A utility or a water supply or  
167-12 sewer service corporation, on or before the 120th day before the

## **EXHIBIT B**

## AN ACT

relating to certificates of public convenience and necessity for water service and sewer service.

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

SECTION 1. Section 13.002, Water Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Affected person" means any landowner within an area for which a certificate of public convenience and necessity is filed, any retail public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(1-a) "Landowner," "owner of a tract of land," and "owners of each tract of land" include multiple owners of a single deeded tract of land.

SECTION 2. Section 13.241(a), Water Code, is amended to read as follows:

(a) In determining whether to grant or amend a certificate of public convenience and necessity, the commission shall ensure that the applicant possesses the financial, managerial, and



1 technical capability to provide continuous and adequate service.

2 SECTION 3. Section 13.242, Water Code, is amended by adding  
3 Subsection (d) to read as follows:

4 (d) A supplier of wholesale water or sewer service may not  
5 require a purchaser to obtain a certificate of public convenience  
6 and necessity if the purchaser is not otherwise required by this  
7 chapter to obtain the certificate.

8 SECTION 4. Section 13.244, Water Code, is amended to read as  
9 follows:

10 Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION;  
11 EVIDENCE AND CONSENT. (a) To obtain a certificate of public  
12 convenience and necessity or an amendment to a certificate, a [A]  
13 public utility or water supply or sewer service corporation shall  
14 submit to the commission an application for ~~[to obtain]~~ a  
15 certificate ~~[of public convenience and necessity]~~ or for an  
16 amendment as provided by this section ~~[of a certificate]~~.

17 (b) Each ~~[On request by the commission, each]~~ public utility  
18 and water supply or sewer service corporation shall file with the  
19 commission a map or maps showing all its facilities and  
20 illustrating separately facilities for production, transmission,  
21 and distribution of its services, and each certificated retail  
22 public utility shall file with the commission a map or maps showing  
23 any facilities, customers, or area currently being served outside  
24 its certificated areas.

25 (c) Each applicant for a certificate or for an amendment  
26 shall file with the commission evidence required by the commission  
27 to show that the applicant has received the required consent,

franchise, or permit of the proper municipality or other public authority.

(d) An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain:

(1) a description of the proposed service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) if a recorded plat of the area exists, lot and block number;

(2) a description of any requests for service in the proposed service area;

(3) a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area;

(4) a description of the sources of funding for all facilities;

(5) to the extent known, a description of current and projected land uses, including densities;

(6) a current financial statement of the applicant;

(7) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is:

(A) at least 50 acres; and

1                   (B) wholly or partially located within the  
2 proposed service area; and

3                   (8) any other item required by the commission.

4           SECTION 5. Subchapter G, Chapter 13, Water Code, is amended  
5 by adding Sections 13.245 and 13.2451 to read as follows:

6           Sec. 13.245. MUNICIPAL BOUNDARIES OR EXTRATERRITORIAL  
7 JURISDICTION OF CERTAIN MUNICIPALITIES. (a) This section applies  
8 only to a municipality with a population of 500,000 or more.

9           (b) Except as provided by Subsection (c), the commission may  
10 not grant to a retail public utility a certificate of public  
11 convenience and necessity for a service area within the boundaries  
12 or extraterritorial jurisdiction of a municipality without the  
13 consent of the municipality. The municipality may not unreasonably  
14 withhold the consent. As a condition of the consent, a municipality  
15 may require that all water and sewer facilities be designed and  
16 constructed in accordance with the municipality's standards for  
17 facilities.

18           (c) If a municipality has not consented under Subsection (b)  
19 before the 180th day after the date the municipality receives the  
20 retail public utility's application, the commission shall grant the  
21 certificate of public convenience and necessity without the consent  
22 of the municipality if the commission finds that the municipality:

23                   (1) does not have the ability to provide service; or

24                   (2) has failed to make a good faith effort to provide  
25 service on reasonable terms and conditions.

26           (d) A commitment described by Subsection (c)(2) must  
27 provide that the construction of service facilities will begin

1 within one year and will be substantially completed within two  
2 years after the date the retail public utility's application was  
3 filed with the municipality.

4 (e) If the commission makes a decision under Subsection (d)  
5 regarding the grant of a certificate of public convenience and  
6 necessity without the consent of the municipality, the municipality  
7 or the retail public utility may appeal the decision to the  
8 appropriate state district court. The court shall hear the petition  
9 within 120 days after the date the petition is filed. On final  
10 disposition, the court may award reasonable fees to the prevailing  
11 party.

12 Sec. 13.2451. EXTENSION BEYOND EXTRATERRITORIAL  
13 JURISDICTION. (a) Except as provided by Subsection (b), if a  
14 municipality extends its extraterritorial jurisdiction to include  
15 an area certificated to a retail public utility, the retail public  
16 utility may continue and extend service in its area of public  
17 convenience and necessity under the rights granted by its  
18 certificate and this chapter.

19 (b) The commission may not extend a municipality's  
20 certificate of public convenience and necessity beyond its  
21 extraterritorial jurisdiction without the written consent of the  
22 landowner who owns the property in which the certificate is to be  
23 extended. The portion of any certificate of public convenience and  
24 necessity that extends beyond the extraterritorial jurisdiction of  
25 the municipality without the consent of the landowner is void.

26 SECTION 6. Section 13.246, Water Code, is amended by  
27 amending Subsections (a), (b), (c), and (d) and adding Subsections

1 (a-1), (h), and (i) to read as follows:

2 (a) If an application for a certificate of  
3 public convenience and necessity or for an amendment to a  
4 certificate is filed, the commission shall cause notice of the  
5 application to be given to affected parties and, if requested,  
6 shall fix a time and place for a hearing and give notice of the  
7 hearing. Any person affected by the application may intervene at  
8 the hearing.

9 (a-1) Except as otherwise provided by this subsection, in  
10 addition to the notice required by Subsection (a), the commission  
11 shall require notice to be mailed to each owner of a tract of land  
12 that is at least 50 acres and is wholly or partially included in the  
13 area proposed to be certified. Notice required under this  
14 subsection must be mailed by first class mail to the owner of the  
15 tract according to the most current tax appraisal rolls of the  
16 applicable central appraisal district at the time the commission  
17 received the application for the certificate or amendment. Good  
18 faith efforts to comply with the requirements of this subsection  
19 shall be considered adequate notice to landowners. Notice under  
20 this subsection is not required for a matter filed with the  
21 commission under:

22 (1) Section 13.248 or 13.255; or

23 (2) Chapter 65.

24 (b) The commission may grant applications and issue  
25 certificates and amendments to certificates only if the commission  
26 finds that a certificate or amendment is necessary for the service,  
27 accommodation, convenience, or safety of the public. The

1 commission may issue a certificate or amendment as requested, or  
2 refuse to issue it, or issue it for the construction of only a  
3 portion of the contemplated system or facility or extension, or for  
4 the partial exercise only of the right or privilege and may impose  
5 special conditions necessary to ensure that continuous and adequate  
6 service is provided.

7 (c) Certificates of public convenience and necessity and  
8 amendments to certificates shall be granted on a nondiscriminatory  
9 basis after consideration by the commission of:

10 (1) the adequacy of service currently provided to the  
11 requested area;

12 (2) [ ] the need for additional service in the  
13 requested area, including whether any landowners, prospective  
14 landowners, tenants, or residents have requested service;

15 (3) [ ] the effect of the granting of a certificate  
16 or of an amendment on the recipient of the certificate or amendment;  
17 on the landowners in the area, and on any retail public utility of  
18 the same kind already serving the proximate area;

19 (4) [ ] the ability of the applicant to provide  
20 adequate service, including meeting the standards of the  
21 commission, taking into consideration the current and projected  
22 density and land use of the area;

23 (5) the feasibility of obtaining service from an  
24 adjacent retail public utility;

25 (6) the financial ability of the applicant to pay for  
26 the facilities necessary to provide continuous and adequate service  
27 and [ ] the financial stability of the applicant, including, if

1 applicable, the adequacy of the applicant's debt-equity ratio;

2 (7) [7] environmental integrity;

3 (8) [~~7~~ and] the probable improvement of service or  
4 lowering of cost to consumers in that area resulting from the  
5 granting of the certificate or amendment; and

6 (9) the effect on the land to be included in the  
7 certificated area.

8 (d) The commission may require an applicant for a  
9 certificate or for an amendment [utility] to provide a bond or other  
10 financial assurance in a form and amount specified by the  
11 commission to ensure that continuous and adequate utility service  
12 is provided.

13 (h) Except as provided by Subsection (i), a landowner who  
14 owns a tract of land that is at least 25 acres and that is wholly or  
15 partially located within the proposed service area may elect to  
16 exclude some or all of the landowner's property from the proposed  
17 service area by providing written notice to the commission before  
18 the 30th day after the date the landowner receives notice of a new  
19 application for a certificate of public convenience and necessity  
20 or for an amendment to an existing certificate of public  
21 convenience and necessity. The landowner's election is effective  
22 without a further hearing or other process by the commission. If a  
23 landowner makes an election under this subsection, the application  
24 shall be modified so that the electing landowner's property is not  
25 included in the proposed service area.

26 (i) A landowner is not entitled to make an election under  
27 Subsection (h) but is entitled to contest the inclusion of the

1 landowner's property in the proposed service area at a hearing held  
2 by the commission regarding the application if the proposed service  
3 area is located within the boundaries or extraterritorial  
4 jurisdiction of a municipality with a population of more than  
5 500,000 and the municipality or a utility owned by the municipality  
6 is the applicant.

7 SECTION 7. The heading to Section 13.247, Water Code, is  
8 amended to read as follows:

9 Sec. 13.247. AREA [~~INCLUDED~~] WITHIN MUNICIPALITY [~~CITY,~~  
10 ~~TOWN, OR VILLAGE~~].

11 SECTION 8. Section 13.247, Water Code, is amended by  
12 amending Subsections (a) and (c) and adding Subsection (d) to read  
13 as follows:

14 (a) If an area [~~has been or~~] is [~~included~~] within the  
15 boundaries of a municipality [~~city as the result of annexation,~~  
16 ~~incorporation, or otherwise~~], all retail public utilities  
17 certified or entitled to certification under this chapter to  
18 provide service or operate facilities in that area [~~before the~~  
19 ~~inclusion~~] may continue and extend service in its area of public  
20 convenience and necessity within the [~~annexed or incorporated~~] area  
21 pursuant to the rights granted by its certificate and this chapter,  
22 unless the municipality exercises its power of eminent domain to  
23 acquire the property of the retail public utility under Subsection  
24 (d). Except as provided by Section 13.255 [~~of this code~~], a  
25 municipally owned or operated utility may not provide retail water  
26 and sewer utility service within the area certificated to another  
27 retail public utility without first having obtained from the



1 commission a certificate of public convenience and necessity that  
2 includes the areas to be served.

3 (c) This section may not be construed as limiting the power  
4 of municipalities [~~cities~~] to incorporate or extend their  
5 boundaries by annexation, or as prohibiting any municipality [~~city~~]  
6 from levying taxes and other special charges for the use of the  
7 streets as are authorized by Section 182.025, Tax Code.

8 (d) In addition to any other rights provided by law, a  
9 municipality with a population of more than 500,000 may exercise  
10 the power of eminent domain in the manner provided by Chapter 21,  
11 Property Code, to acquire a substandard water or sewer system if all  
12 the facilities of the system are located entirely within the  
13 municipality's boundaries. The municipality shall pay just and  
14 adequate compensation for the property. In this subsection,  
15 "substandard water or sewer system" means a system that is not in  
16 compliance with the municipality's standards for water and  
17 wastewater service.

18 SECTION 9. Section 13.254, Water Code, is amended by  
19 amending Subsections (a), (e), and (g) and adding Subsections (a-1)  
20 through (a-4) and (g-1) to read as follows:

21 (a) The commission at any time after notice and hearing may,  
22 on its own motion or on receipt of a petition described by  
23 Subsection (a-1), revoke or amend any certificate of public  
24 convenience and necessity with the written consent of the  
25 certificate holder or if it finds that:

26 (1) the certificate holder has never provided, is no  
27 longer providing, is incapable of providing, or has failed to

1 provide continuous and adequate service in the area, or part of the  
2 area, covered by the certificate;

3 (2) in an affected county as defined in Section  
4 16.341, the cost of providing service by the certificate holder is  
5 so prohibitively expensive as to constitute denial of service,  
6 provided that, for commercial developments or for residential  
7 developments started after September 1, 1997, in an affected county  
8 as defined in Section 16.341, the fact that the cost of obtaining  
9 service from the currently certificated retail public utility makes  
10 the development economically unfeasible does not render such cost  
11 prohibitively expensive in the absence of other relevant factors;

12 (3) the certificate holder has agreed in writing to  
13 allow another retail public utility to provide service within its  
14 service area, except for an interim period, without amending its  
15 certificate; or

16 (4) the certificate holder has failed to file a cease  
17 and desist action pursuant to Section 13.252 within 180 days of the  
18 date that it became aware that another retail public utility was  
19 providing service within its service area, unless the certificate  
20 holder demonstrates good cause for its failure to file such action  
21 within the 180 days.

22 (a-1) As an alternative to decertification under Subsection  
23 (a), the owner of a tract of land that is at least 50 acres and that  
24 is not in a platted subdivision actually receiving water or sewer  
25 service may petition the commission under this subsection for  
26 expedited release of the area from a certificate of public  
27 convenience and necessity so that the area may receive service from

1 another retail public utility. The petitioner shall deliver, via  
2 certified mail, a copy of the petition to the certificate holder,  
3 who may submit information to the commission to controvert  
4 information submitted by the petitioner. The petitioner must  
5 demonstrate that:

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

9 (A) the area for which service is sought;

10 (B) the timeframe within which service is needed  
11 for current and projected service demands in the area;

12 (C) the level and manner of service needed for  
13 current and projected service demands in the area; and

14 (D) any additional information requested by the  
15 certificate holder that is reasonably related to determination of  
16 the capacity or cost for providing the service;

17 (2) the certificate holder has been allowed at least  
18 90 calendar days to review and respond to the written request and  
19 the information it contains;

20 (3) the certificate holder:

21 (A) has refused to provide the service;

22 (B) is not capable of providing the service on a  
23 continuous and adequate basis within the timeframe, at the level,  
24 or in the manner reasonably needed or requested by current and  
25 projected service demands in the area; or

26 (C) conditions the provision of service on the  
27 payment of costs not properly allocable directly to the

1 petitioner's service request, as determined by the commission; and

2 (4) the alternate retail public utility from which the  
3 petitioner will be requesting service is capable of providing  
4 continuous and adequate service within the timeframe, at the level,  
5 and in the manner reasonably needed or requested by current and  
6 projected service demands in the area.

7 (a-2) A landowner is not entitled to make the election  
8 described in Subsection (a-1) but is entitled to contest the  
9 involuntary certification of its property in a hearing held by the  
10 commission if the landowner's property is located:

11 (1) within the boundaries of any municipality or the  
12 extraterritorial jurisdiction of a municipality with a population  
13 of more than 500,000 and the municipality or retail public utility  
14 owned by the municipality is the holder of the certificate; or

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

17 (a-3) Within 90 calendar days from the date the commission  
18 determines the petition filed pursuant to Subsection (a-1) to be  
19 administratively complete, the commission shall grant the petition  
20 unless the commission makes an express finding that the petitioner  
21 failed to satisfy the elements required in Subsection (a-1) and  
22 supports its finding with separate findings and conclusions for  
23 each element based solely on the information provided by the  
24 petitioner and the certificate holder. The commission may grant or  
25 deny a petition subject to terms and conditions specifically  
26 related to the service request of the petitioner and all relevant  
27 information submitted by the petitioner and the certificate holder.

1 In addition, the commission may require an award of compensation as  
2 otherwise provided by this section.

3 (a-4) Chapter 2001, Government Code, does not apply to any  
4 petition filed under Subsection (a-1). The decision of the  
5 commission on the petition is final after any reconsideration  
6 authorized by the commission's rules and may not be appealed.

7 (e) The determination of the monetary amount of  
8 compensation, if any, shall be determined at the time another  
9 retail public utility seeks to provide service in the previously  
10 decertified area and before service is actually provided. The  
11 commission shall ensure that the monetary amount of compensation is  
12 determined not later than the 90th calendar day after the date on  
13 which a retail public utility notifies the commission of its intent  
14 to provide service to the decertified area.

15 (g) For the purpose of implementing this section, the value  
16 of real property owned and utilized by the retail public utility for  
17 its facilities shall be determined according to the standards set  
18 forth in Chapter 21, Property Code, governing actions in eminent  
19 domain and the value of personal property shall be determined  
20 according to the factors in this subsection. The factors ensuring  
21 that the compensation to a retail public utility [~~for the taking,~~  
22 ~~damaging, or loss of personal property, including the retail public~~  
23 ~~utility's business,~~] is just and adequate shall [~~at a minimum~~]  
24 include: the amount of the retail public utility's debt allocable  
25 for service to the area in question [~~the impact on the existing~~  
26 ~~indebtedness of the retail public utility and its ability to repay~~  
27 ~~that debt~~]; the value of the service facilities of the retail

1 public utility located within the area in question; the amount of  
2 any expenditures for planning, design, or construction of service  
3 facilities that are allocable to service to the area in question;  
4 the amount of the retail public utility's contractual obligations  
5 allocable to the area in question; any demonstrated impairment of  
6 service or increase of cost to consumers of the retail public  
7 utility remaining after the decertification; the impact on future  
8 revenues lost from existing customers ~~[and expenses of the retail~~  
9 ~~public utility]~~; necessary and reasonable legal expenses and  
10 professional fees; ~~[factors relevant to maintaining the current~~  
11 ~~financial integrity of the retail public utility]~~ and other  
12 relevant factors. The commission shall adopt rules governing the  
13 evaluation of these factors.

14 (g-1). If the retail public utilities cannot agree on an  
15 independent appraiser within 10 calendar days after the date on  
16 which the retail public utility notifies the commission of its  
17 intent to provide service to the decertified area, each retail  
18 public utility shall engage its own appraiser at its own expense,  
19 and each appraisal shall be submitted to the commission within 60  
20 calendar days. After receiving the appraisals, the commission  
21 shall appoint a third appraiser who shall make a determination of  
22 the compensation within 30 days. The determination may not be less  
23 than the lower appraisal or more than the higher appraisal. Each  
24 retail public utility shall pay half the cost of the third  
25 appraisal.

26 SECTION 10: Section 13.255, Water Code, is amended by  
27 amending Subsection (g) and by adding Subsection (g-1) to read as

1 follows:

2 (g) For the purpose of implementing this section, the value  
3 of real property owned and utilized by the retail public utility for  
4 its facilities shall be determined according to the standards set  
5 forth in Chapter 21, Property Code, governing actions in eminent  
6 domain; the value of personal property shall be determined  
7 according to the factors in this subsection. The factors ensuring  
8 that the compensation to a retail public utility [~~for the taking,~~  
9 ~~damaging, and/or loss of personal property, including the retail~~  
10 ~~public utility's business,~~] is just and adequate, shall, at a  
11 minimum, include: impact on the existing indebtedness of the  
12 retail public utility and its ability to repay that debt, the value  
13 of the service facilities of the retail public utility located  
14 within the area in question, the amount of any expenditures for  
15 planning, design, or construction of service facilities outside the  
16 incorporated or annexed area that are allocable to service to the  
17 area in question, the amount of the retail public utility's  
18 contractual obligations allocable to the area in question, any  
19 demonstrated impairment of service or increase of cost to consumers  
20 of the retail public utility remaining after the single  
21 certification, the impact on future revenues lost from existing  
22 customers [~~and expenses of the retail public utility~~], necessary  
23 and reasonable legal expenses and professional fees, factors  
24 relevant to maintaining the current financial integrity of the  
25 retail public utility, and other relevant factors.

26 (g-1) The commission shall adopt rules governing the  
27 evaluation of the factors to be considered in determining the

1 monetary compensation under Subsection (g). The commission by rule  
2 shall adopt procedures to ensure that the total compensation to be  
3 paid to a retail public utility under Subsection (g) is determined  
4 not later than the 90th calendar day after the date on which the  
5 commission determines that the municipality's application is  
6 administratively complete.

7 SECTION 11. Subchapter G, Chapter 13, Water Code, is  
8 amended by adding Section 13.2551 to read as follows:

9 Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a  
10 condition to decertification or single certification under Section  
11 13.254 or 13.255, and on request by an affected retail public  
12 utility, the commission may order:

13 (1) the retail public utility seeking to provide  
14 service to a decertified area to serve the entire service area of  
15 the retail public utility that is being decertified; and

16 (2) the transfer of the entire certificate of public  
17 convenience and necessity of a partially decertified retail public  
18 utility to the retail public utility seeking to provide service to  
19 the decertified area.

20 (b) The commission shall order service to the entire area  
21 under Subsection (a) if the commission finds that the decertified  
22 retail public utility will be unable to provide continuous and  
23 adequate service at an affordable cost to the remaining customers.

24 (c) The commission shall require the retail public utility  
25 seeking to provide service to the decertified area to provide  
26 continuous and adequate service to the remaining customers at a  
27 cost comparable to the cost of that service to its other customers



and shall establish the terms under which the service must be provided. The terms may include:

- (1) transferring debt and other contract obligations;
- (2) transferring real and personal property;
- (3) establishing interim service rates for affected customers during specified times; and
- (4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(d) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the commission, if applicable.

(e) The commission shall not order compensation to the decertificated retail utility if service to the entire service area is ordered under this section.

SECTION 12. Section 13.257, Water Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (r) and (s) to read as follows:

(a) In this section, "utility service provider" means a retail public utility other than a district subject to Section 49.452 of this code~~[, a water supply or sewer service corporation, or a special utility district organized and operating under Chapter 65].~~

(b) If a person proposes to sell or convey ~~[unimproved]~~ real property located in a certificated service area of a utility service provider, the person must give to the purchaser written

1 notice as prescribed by this section. An executory contract for the  
2 purchase and sale of real property that has a performance period of  
3 more than six months is considered a sale of real property under  
4 this section.

5 (d) The notice must be executed by the seller and read as  
6 follows: "The real property, described below, that you are about to  
7 purchase may be ~~[is]~~ located in a certificated ~~[the]~~ water or sewer  
8 service area ~~[of \_\_\_\_\_]~~ , which is ~~[the utility~~  
9 ~~service provider]~~ authorized by law to provide water or sewer  
10 service to the properties in the certificated area. If your  
11 property is located in a certificated area there ~~[. No other retail~~  
12 ~~public utility is authorized to provide water or sewer service to~~  
13 ~~your property. There]~~ may be special costs or charges that you will  
14 be required to pay before you can receive water or sewer service.  
15 There may be a period required to construct lines or other  
16 facilities necessary to provide water or sewer service to your  
17 property. You are advised to determine if the property is in a  
18 certificated area and contact the utility service provider to  
19 determine the cost that you will be required to pay and the period,  
20 if any, that is required to provide water or sewer service to your  
21 property.

22 "The undersigned purchaser hereby acknowledges receipt of  
23 the foregoing notice at or before the execution of a binding  
24 contract for the purchase of the real property described in the  
25 notice or at closing of purchase of the real property..

26 \_\_\_\_\_  
27 Date

Signature of Purchaser

"[~~(Note: Correct name of utility service provider is to be placed in the appropriate space.)~~] Except for notices included as an addendum to or paragraph of a purchase contract, the notice must be executed by the seller and purchaser, as indicated."

(r) A utility service provider shall:

(1) record in the real property records of each county in which the service area or a portion of the service area is located a certified copy of the map of the certificate of public convenience and necessity and of any amendment to the certificate as contained in the commission's records, and a boundary description of the service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) if a recorded plat of the area exists, lot and block number; and

(2) submit to the executive director evidence of the recording.

(s) Each county shall accept and file in its real property records a utility service provider's map presented to the county clerk under this section if the map meets filing requirements, does not exceed 11 inches by 17 inches in size, and is accompanied by the

1 appropriate fee. The recording required by this section must be  
2 completed not later than the 31st day after the date a utility  
3 service provider receives a final order from the commission  
4 granting an application for a new certificate or for an amendment to  
5 a certificate that results in a change in the utility service  
6 provider's service area.

7 SECTION 13. The following provisions of the Water Code are  
8 repealed:

9 (1) Section 13.254(h); and

10 (2) Section 13.2541.

11 SECTION 14. A holder of a certificate of public convenience  
12 and necessity on the effective date of this Act must comply with  
13 Section 13.257, Water Code, as amended by this Act, not later than  
14 January 1, 2007.

15 SECTION 15. The changes in law made by this Act apply only  
16 to:

17 (1) an application for a certificate of public  
18 convenience and necessity or for an amendment to a certificate of  
19 public convenience and necessity submitted to the Texas Commission  
20 on Environmental Quality on or after January 1, 2006; and

21 (2) a proceeding to amend or revoke a certificate of  
22 public convenience and necessity initiated on or after January 1,  
23 2006.

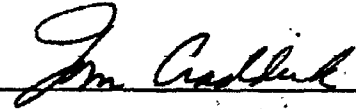
24 SECTION 16. The Texas Commission on Environmental Quality  
25 shall promulgate rules implementing the changes in law effected by  
26 this Act by January 1, 2006, or shall report to the governor,  
27 lieutenant governor, and speaker of the house any failure to comply

1 with this deadline.

2 SECTION 17. This Act takes effect September 1, 2005.

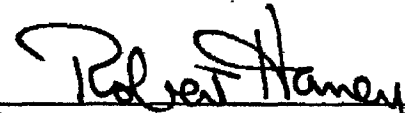


President of the Senate



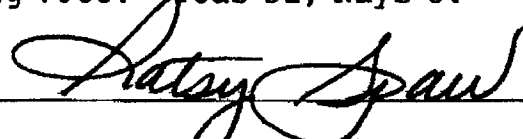
Speaker of the House

I certify that H.B. No. 2876 was passed by the House on May 12, 2005, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 2876 on May 27, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2876 on May 29, 2005, by a non-record vote.



Chief Clerk of the House

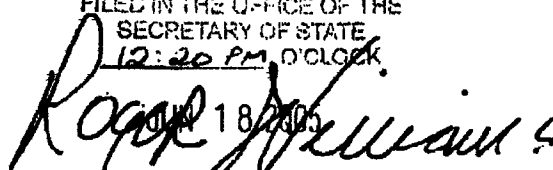
I certify that H.B. No. 2876 was passed by the Senate, with amendments, on May 25, 2005, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2876 on May 29, 2005, by the following vote: Yeas 31, Nays 0.

  
Secretary of the Senate

APPROVED: 18 JUNE 05

Date

  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
12:20 PM, D'CLOCK  
  
Secretary of State

## EXHIBIT C



**SUBJECT:** Application for and revocation of CCNs for water and sewer service

**COMMITTEE:** Natural Resources — committee substitute recommended.

**VOTE:** 7 ayes — Puente, Callegari, Campbell, Hardcastle, Hilderbran, Hope, Laney  
0 nays  
2 absent — Bonnen, Geren

**WITNESSES:** *(On original version:)*

For — Joe Allen, Landowners of Texas; James Box, Texas Association of Builders; Richard Forsythe, Mary Sahs, The Forsythe Company; Michael G. Page, BST Timberlands of Texas, L.P.; Alan Sadler, Montgomery County; Jim Schwertner, Schwertner Farm, Inc.; Angela Stepherson, Law Offices of Clay E. Crawford, P.C.; Jim Holcomb; William Hudson (*On committee substitute:* Ken Petersen, Texas Rural Water Association)

Against — John Burke, Aqua Water Supply Corporation; Jerry Chapman, Greater Texoma Utility Authority; Stephen Cooney, Nitsch and Son Utilities and Southern Water Corporation; J.W. Dyer, East Rio Hondo Water Supply Company; Clay Hodges, Cash Special Utility District; Kelley Neumann, San Antonio Water System; Ken Petersen, Texas Rural Water Association; G.K. Sprinkle, Daily Court Review; Kent Watson, Wickson Creek Special Utility District; Mark Zeppa, Law Offices of Mark H. Zeppa, PC

On — Commissioner Susan Combs, Texas Department of Agriculture; Bart Jennings, Austin Water Utility; Paul R. Nelson, City of Houston; Gregory Rothe, San Antonio River Authority

**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 service any area to which

service is being provided by another utility without first having obtained a CCN.

**DIGEST:**

CSHB 2876 would make numerous changes to laws governing CCNs for water service.

The bill would include any landowner within an area for which a CCN had been filed as an "affected person." The bill would prohibit a wholesale water or sewer service provider from requiring a purchaser to obtain a CCN if the purchaser was not otherwise required to obtain the certificate.

**CCN application.** The bill would require a CCN application or amendment to contain:

- a description of the proposed service area by a certified metes and bounds survey, the Texas State Plane Coordinate System, verifiable landmarks, or lot and block numbers;
- a description of requests for service in the proposed service area.
- a capital improvement plan;
- a description of funding sources for all facilities;
- a description of current and projected land uses;
- a financial statement;
- a list of owners of land in the area that is at least 50 acres, according to the central appraisal district tax roll; and
- any other information required by TCEQ.

When evaluating a CCN application, TCEQ would have to consider whether any landowners had requested service, whether the applicant could provide adequate service, and the effect of the proposal on land in the area.

**CCN decertification.** An owner of a tract of land of at least 100 acres that was not in a platted subdivision receiving water or sewer service could petition TCEQ to release the area from a CCN so that the area could receive service from another utility. The petitioner would have to demonstrate that:

- a written request for service had been made;
- the certificate holder had been allowed 90 days to respond;

- the certificate holder had refused to provide service, was incapable of providing service, or conditioned service upon payment greater than should be required; and
- an alternate utility was capable of providing service.

TCEQ would grant such a petition within 90 days unless it found that the petitioner had not met the requirements.

A landowner in a municipality of at least 650,000 or its ETJ that was receiving water service could not make such a petition, but could contest involuntary certification to TCEQ.

TCEQ could require compensation from a utility providing service in a decertified area for property rendered useless as a result of decertification. Monetary compensation would have to be determined no later than 90 days after a utility notified TCEQ of its intent to provide service in the decertified area. The bill would specify a procedure for obtaining an independent appraisal of property upon whose value the utilities could not agree.

TCEQ could require a utility seeking to provide service in a decertified area to provide service the entire area and could transfer the CCN of the area to the utility. This transition could require the transfer of debt and property the newly certified utility. TCEQ could require that costs for the transfer be limited to customers affected by the transfer.

TCEQ would have to adopt rules to implement these provisions.

**Notice requirements.** In addition to current law requiring that TCEQ ensure notification of affected parties when a CCN application was filed, notice of an application would have to be given to each land owner of at least 50 acres included in the proposed area. Notice would have to be given by mail to owners based upon tax appraisal rolls.

A landowner who owned a tract of at least 25 acres could elect to exclude his or her property from the service area under the proposed CCN. The landowner would have to provide written notice to that effect to TCEQ within 30 days of receiving notice of the CCN application. A landowner could not make such an election if he or she was located in the extraterritorial jurisdiction (ETJ) of a municipality of at least 650,000 (Houston, Dallas, San Antonio, and Austin) and the municipality was the

applicant, but could contest the inclusion of his or her property at a TCEQ hearing.

**CCNs in municipalities of at least 650,000.** For municipalities of at least 650,000, TCEQ could not grant a CCN to a retail public utility for service in the city's boundaries or ETJ without the consent of the municipality. The municipality could not withhold consent unreasonably, but could require water and sewer facilities to be constructed in accordance with municipal standards.

If consent was not provided within 180 days of a municipality's receipt of an application, TCEQ would grant the CCN if it found that the municipality lacked the ability to provide the service or had not committed funds available to provide the service. A municipality could appeal this decision in district court. A commitment by a municipality would have to provide that construction would begin within one year after the retail public utility's application was filed and be substantially completed within two years.

A municipality of at least 650,000 could exercise eminent domain to acquire a water or sewer system that was not up to its standards that was located in its boundaries. The municipality would have to pay just compensation for such an acquisition.

If a municipality extended its jurisdiction to include an area certificated to a retail public utility, the utility could continue or extend service to this area. A municipality's CCN area only could be extended beyond its ETJ with written consent from affected landowners. Any CCN beyond a municipality's ETJ would be void without consent of landowners in the extended area.

**Property records.** A utility would have to record a map of its CCN in the property records of each applicable county. A certificate holder would have to comply with this requirement by January 1, 2007.

**Effective date.** The bill would take effect September 1, 2005, and would apply to applications and proceedings initiated after January 1, 2006.

SUPPORTERS  
SAY:

CSHB 2876 would address abuses of CCN authority by several water utilities across the state. A CCN dictates that a single utility is the sole water and sewer service in an area, prohibiting other utilities from

servicing any property in the area. A CCN is an encumbrance on landowners — it dictates how, when, and by whom service will be provided to a property. Landowners have little recourse if a CCN holder is unable or unwilling to extend service to their land, as the process for removal from a CCN through the TCEQ appeals process can be extremely time-consuming and expensive.

CSHB 2876 would address numerous problems with CCNs in the state. The bill would ensure that true and adequate notice by mail was provided to owners of land of at least 50 acres when a CCN application was filed. Currently, notice only must be made in a general circulation newspaper. Upon receiving notice, a landowner could choose to have his or her property excluded from the CCN service area. The bill also would allow owners of land of at least 100 acres that was not receiving water service to be released from CCN authority, so that the person could receive service from another utility. Landowners now have few rights in the CCN process, and this bill would protect private property rights by unwanted imposition of a CCN on a landowner.

Given the unwieldy TCEQ appeals process, a landowner could get stuck under a CCN holder and have virtually no recourse or ability to obtain retail utility service on his or her property. CSHB 2876 would direct TCEQ to consider in the approval process whether a CCN applicant had the ability to provide service throughout the proposed service area. Currently, a landowner looking to develop his or her land might find that although the land was in a CCN, that utility was unable or unwilling to extend service to his or her property. In some cases, the CCN has conditioned service on exorbitant fees, well above what it reasonably should cost to serve the area. TCEQ also would have to consider whether landowners had requested service before approving an application or amendment.

CSHB 2876 would normalize policy governing CCNs in and around major cities in Texas. The bill would allow large municipalities to condemn substandard utilities within its boundaries and require that new CCNs granted to municipal utility districts meet municipal fire, safety, and service quality standards. These provisions would address problems where residents of MUDs with substandard service are unable to receive improvements from a municipally owned utility that is unable to encroach upon a CCN within its municipal boundary.

The bill also would address a major problem that exists currently by requiring all CCN holders to file a uniformly recognizable map of its service area in county records. In many cases, landowners have great difficulty even confirming if they are in a CCN.

The bill would incorporate safeguards to protect responsible CCN holders. A utility moving into a decertified area would have to compensate the previous utility for any stranded costs associated with facilities that already had been built out in the area. Debt, property, and service obligations also could be transferred to the new provider. The bill would strike an appropriate balance between the rights of landowners and the responsible CCNs providing vital water and sewer service in rural areas of the state.

**OPPONENTS  
SAY:**

The requirements under CSHB 2876 would restrict the ability of large, municipally owned utilities to plan for growth and provide quality service outside its boundaries. A city needs the ability to extend its CCN beyond its ETJ in order to manage growth and ensure that areas that were likely to be annexed had adequate infrastructure and service in place. Requiring written landowner consent before extending service beyond the ETJ could slow CCN expansion into areas provided substandard service by MUDs. In addition, requiring a city to provide service in a CCN area within two years would place the burden for providing service on the municipality, rather than on the community that would be served. This could lead to current ratepayers subsidizing extension of service to exurbs.

**OTHER  
OPPONENTS  
SAY:**

CSHB 2876 more explicitly should specify that all costs paid for by an existing CCN holder would have to be covered when a new utility moved into the area.

**NOTES:**

The committee substitute made numerous changes to the bill as filed. The bill as filed would have required written consent from landowners before a CCN application could be approved. Notice of an application would have been required to have been sent to all landowners within the proposed service area, not just to those with at least 50 acres. The committee substitute more explicitly would describe the criteria by which the TCEQ would evaluate an application for decertification of a CCN by a landowner.