

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.