

SUBJECT: Application for and revocation of CCNs for water or sewer services

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 6 ayes — Ritter, Callegari, Creighton, Frost, D. Miller, Smithee

0 nays

5 absent — Corte, T. King, Laubenberg, Lucio, Martinez Fischer

WITNESSES: *(On original version:)*

For — Matthew Kutac, BP 1766 Ltd., Caliterra Partners, LLC, Aqua Texas, Inc.)

Against — Butch Henderson, City of Leonard, Cities Coalition on CCNs; Clay Hodges, Cash Special Utility District; Terry Kelley, Texas Rural Water Association; Steve Kosub, San Antonio Water System; Kent Watson, Wickson Creek Utility District; *(Registered, but did not testify: Gabriel Garcia, City of San Antonio; Arturo Rodriguez, Cities Coalition on CCNs; Charlie Schnabel, Manville WSC)*

On — Doug Holcomb, Texas Commission on Environmental Quality; Bart Jennings, City of Austin

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

Under sec. 13.2451, if a municipality extends its extraterritorial jurisdiction (ETJ) to include an area certificated to a retail public utility, the utility may continue and extend service in its CCN area. A municipality wishing to extend a CCN beyond its ETJ must ensure that the municipality meets established requirements for the area covered by the portion of the CCN extending beyond its ETJ.

TCEQ, after providing notice to the municipality and an opportunity for a hearing, may decertify an area outside a municipality's ETJ if the municipality does not provide service to the area within five years of the date the CCN was granted for the area.

DIGEST:

CSHB 1669 would allow TCEQ to grant a certificate of public convenience and necessity (CCN) for water or services to a retail public utility for a service area within the boundaries of extraterritorial jurisdiction (ETJ) of a municipality within 180 days after the municipality receives the utility's application under the following conditions:

- the municipality had not entered into a binding commitment to serve the area subject to the application within 180 days after receiving the formal request for service on the same or substantially similar terms as provided by the utility's application, including a capital improvement plan; or
- the municipality had refused to provide service to the area.

The authorized water and sewer facilities would have to be designed and constructed in accordance with the municipality's standards.

TCEQ could not extend a municipality's CCN beyond its ETJ without the written consent of the landowner who owned the property in which the certificate was to be extended. The bill would repeal the provision that a municipality seeking to extend its CCN beyond its ETJ would have to meet certain requirements.

CSHB 1669 would require that a petitioner for expedited release from a CCN so that the area may receive service from another retail public utility, demonstrate, in addition to current requirements, that:

- the approximate cost for the alternative service provider to provide the service at the same level and manner requested from the certificate holder; and
- the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested.

The bill contains a number of other provisions relating to CCNs, including:

- that the alternate retail public utility from which the petitioner would be requesting service possessed the financial, managerial, and technical capability to provide continuous and adequate service in the service area;
- reducing from 90 to 60 days the timeframe in which TCEQ would make a determination on a petition for expedited release of a CCN;
- if the CCN holder had never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner was seeking to have released, TCEQ would not be required to determine that the proposed provider was capable of providing better service than the current CCN holder, but that the alternate provider was capable of providing the requested service.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 1669 would provide clearer guidelines for landowners who are within a public certificate of convenience and necessity (CCN) area for water and wastewater services and are not receiving adequate service to more easily opt out of the exclusive CCN and receive service from an alternate service provider. As a utility with a CCN for a certain area has the exclusive right to provide service in that area, transparency is needed to ensure that landowners are protected and municipalities who hold a CCN do not unfairly hold a landowner captive.

CSHB 1669 would build upon prior reforms in this area by amending the decertification process, established in 2005, that allows a landowner under a CCN to petition TCEQ to seek service with an alternate provider. Since this process went into effect, there have been only 10 expedited decertification applications to TCEQ, indicating that the process is too cumbersome. The bill would amend the decertification process to clarify that TCEQ could not bar a decertification request if the CCN-holder was a borrower under a federal loan program, a factor well beyond the individual landowner's control. Additionally, the bill would reduce the timeframe in which TCEQ would issue its determination on a petition from 90 days to 60 days, a more reasonable and responsive timeframe.

The language in the committee substitute would address many of the concerns expressed about provisions contained in the bill as filed. The committee substitute is the product of an extensive stakeholder process with input from a diverse group of water interests.

OPPONENTS
SAY:

While CSHB 1669 would set standards for when a landowner could opt out of a CCN, it also would provide an easier way for this to occur than currently is allowed, thereby potentially penalizing smaller municipalities. Smaller communities and rural areas often do not have the means that large cities have to annex other areas to increase their tax base. As such, they would likely not be able to make up the lost revenue from their diminished CCN.

NOTES:

The committee substitute would allow TCEQ to grant a CCN to an area within the ETJ of a municipality if the city had not entered into a binding commitment to serve the area within 180 days, or the city had officially refused to offer service. Additionally, an alternative service provider would be required to design and construct water and sewer facilities to city standards. Additionally, the committee substitute would require that the alternative service provider possessed the financial, managerial, and technical requirements to provide service to an area.