

SUBJECT: Expedited release from local water or sewer utility

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 6 ayes — Ritter, Creighton, Hopson, Larson, Lucio, Martinez Fischer
2 nays — Beck, Price
2 present, not voting — Keffer, D. Miller
1 absent — T. King

SENATE VOTE: On final passage, April 26 — 26-5 (Deuell, Duncan, Estes, Hinojosa, Lucio)

WITNESSES: For — Joe B. Allen, Allen Boone Humphries Robinson LLP; Steve Alvis, New Quest Properties; Bart Jennings, City of Austin; Troy Morris, Mid-South Synergy & MSEC Enterprises; Mike Stoecker; (*Registered, but did not testify*: Brandon Aghamalian, City of Grand Prairie; Barry Bone, TXI Operations LP; Randy Cain, City of Round Rock; Howard Cohen, Schwartz Page & Harding LLP; Aaron Day, Texas Land Title Association (TLTA); Curtis Hawk, City of Burleson; Peyton McKnight, Teas Council of Engineering Companies; Scott Norman, Texas Association of Builders; T. J. Patterson, City of Fort Worth; Clay Pope, City of Houston; Scott Rogers, Quo Vadimus Development Planning; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Michael Wilt, Real Estate Council of Austin; Timothy Green, Coats/Rose Law Firm; Juanita Orsak, D. R. Horton)

Against — Steve Blackhurst, Aqua Texas; Charles Profilet, Southwest Water Company; Lara Zent, Texas Rural Water Association; (*Registered, but did not testify*: Janet Adams, Fort Davis Water Supply Corporation; Andy Barrett, Terry Franks, Aqua Texas; John Carlton, Jonah Water Special Utility District; Clay Hodges, Cash Special Utility District; Elvia Lopez, South Texas Water Utility Managers Association; Jennifer McKnight, Chisholm Trail Special Utility District; Joe Morris, Aqua Water Supply Corporation; James Morrison, Walker County SUD; Jeanne Schnuriger, Springs Hill Water Supply Corporation; Kent Watson, Texas

Rural Water – Wickson Creek SUD; Herb Williams, Texas Rural Water Association, SS Water Supply Corporation)

On — Michael Canales, USDA, Rural Development

BACKGROUND: Water Code sec. 13.254 allows the Texas Commission on Environmental Quality (TCEQ), by petition or by its own volition, to amend or revoke a certificate of public convenience and necessity (CCN). This certificate grants a utility the right to provide water and sewer services. TCEQ may amend or revoke a certificate if it has the certificate holder's written consent, the certificate holder is not providing adequate service, the cost of providing services is prohibitively expensive for the certificate holder, another provider has agreed with the certificate holder to provide services, or another provider has begun providing services in the certificate holder's area and the holder has not filed a cease and desist petition.

A land owner with at least 50 acres that is not in a platted subdivision actually receiving water or sewer service may petition TCEQ to be released from a utility's CCN in order to receive services from another utility. The petition must show, among other things, that the certificate holder is not providing services and that the alternate utility can provide the service.

DIGEST: Under CSSB 573, the owner of land of at least 25 acres that was not receiving water or sewer service could petition for expedited release from a CCN and would be entitled to that release if the property was in a county with at least 1 million people or an adjacent county, or a county with between 200,000 and 220,000 people (Smith County). The bill would authorize TCEQ to have the landowner compensate a decertified utility that was the subject of the petition.

The bill would take effect on September 1, 2011.

SUPPORTERS SAY: CSSB 573 would reestablish property rights for landowners who are not receiving water and sewer services from a utility, entitling them to a release from a CCN. Currently, if landowners who have at least 50 acres are not receiving water or sewer services on their property, the process to obtain release from a utility's CCN can be cumbersome, time-consuming, and expensive. This invasion of personal property rights is particularly troublesome in traditionally rural counties near growing urban population centers because landowners frequently live apart from their land. Often, to

speed up the process, when landowners directly petition a certificate holder to be released from their CCN, the holder charges them exorbitantly high fees even though they are not providing services.

CSSB 573 still would ensure that the certificate holder was compensated properly by the landowner so that the certificate holder did not lose the financial benefit to which it was entitled.

OPPONENTS
SAY:

Allowing a landowner to have an automatic release from a CCN without any regard to contextual circumstances could be devastating to both certificate holders and landowners. Certificate holders plan and develop the capability to provide water and sewer services based on the land within their CCN. As landowners begin leaving the area without regard to these plans, the certificate holder's ability to plan and pay for this development is diminished. This inevitably would result in a less efficient and more costly water and sewer management system for all the landowners in the area.