

SUBJECT: Determining compensation for releasing certain areas from utility services

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — Larson, Metcalf, Dominguez, Farrar, Harris, Lang, Nevárez,  
Ramos

0 nays

3 absent — T. King, Oliverson, Price

SENATE VOTE: On final passage, May 1 — 31-0

WITNESSES: *On House companion bill, HB 4254:*

For — Terry Kelley, Johnson County Special Utility District; Trey Lary, Allen Boone Humphries Robinson LLP; Lara Zent, Texas Rural Water Association; (*Registered, but did not testify:* Kerry Cammack, SouthWest Water Company; John Carlton, Texas State Association of Fire and Emergency Districts; Jeff Heckler, Green Valley Special Utility District, Sharyland Water Supply Corporation; Morgan Johnson, San Jose Water; Joe Morris, Aqua Water Supply Corporation; Scott Norman, Texas Association of Builders)

Against — None

On — Tammy Benter, Public Utility Commission of Texas

BACKGROUND: Under Water Code sec. 13.242, unless otherwise specified, a water and sewer utility or a water supply or sewer service corporation may not render retail services to the public without obtaining a certificate of public convenience and necessity from the Public Utility Commission (PUC).

Sec. 13.254(a-5) allows the owner of certain land that is not receiving water or sewer services to petition PUC for expedited release of the area from a certificate so that the area may receive service from another utility. Under sec. 13.254(a-6), PUC shall grant a petition no later than 60 days

after it was filed and may not deny a petition based on the fact that a certificate holder is a borrower under a federal loan program. PUC may require award of compensation by the petitioner to a decertified retail public utility.

Sec. 13.254(d) prohibits a retail public utility from rendering water or sewer service to the public in an area that has been decertified without providing compensation to the decertified retail public utility for property the PUC determines is rendered useless or valueless by decertification.

Concerns have been raised that the use of the petition procedure for the expedited release of certain areas from a certificate of public convenience and necessity may result in little to no compensation for decertified utilities because of the high bar to prove property "useless or valueless."

**DIGEST:**

CSSB 2272 would require the monetary compensation, if any, required of a landowner who petitioned for expedited release of an area from a water or sewer utility's certificate of public convenience and necessity to be determined by a qualified independent appraiser agreed upon by the certificate holder and the petitioner. The determination of compensation by the appraiser would be binding on the Public Utility Commission (PUC). The costs of the appraiser would be borne by the petitioner.

If the petitioner and certificate holder could not agree on an independent appraiser within 10 calendar days after the date PUC approved the petition, they would have to each engage an appraiser at their own expense. Each appraisal would have to be submitted to PUC within 70 calendar days after the petition was approved.

After receiving the appraisals, PUC would have to appoint a third appraiser who would make a determination of the compensation within 100 days after the petition was approved. The determination could not be less than the lower or more than the higher appraisal. The petitioner and certificate holder would each pay half of the cost of the third appraisal.

The bill would require PUC to ensure that:

- the compensation was determined by the 60th day after the date PUC received the final appraisal; and
- the petitioner paid the compensation to the certificate holder by the 90th calendar day after the date the compensation was determined.

Rather than prohibiting a utility from rendering water or sewer service in an area that had been decertified without providing compensation for any property determined to be useless or valueless, a retail public utility could not provide service in such areas unless just and adequate compensation required by the bill had been paid to the decertified retail public utility.

The bill also would prohibit a certificate holder from initiating an application to borrow money under a federal loan program after a petition was filed until PUC issued a decision on the petition.

The bill would take effect September 1, 2019, and would apply only to a proceeding affecting a certificate of public convenience and necessity that commenced on or after that date.