

## BILL ANALYSIS

Senate Research Center

H.B. 2655  
By: Puente (Averitt)  
Natural Resources  
5/16/2007  
Engrossed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

House Bill 2876, enacted by the 79th Legislature, included many provisions that dramatically changed the manner in which certificates of convenience and necessity (CCNs) for the retail provision of water and sewer service are granted or amended by the Texas Commission on Environmental Quality (TCEQ). Section 13.2451, Water Code, was adopted to make clear that retail public utilities may extend utilities into a municipality's extraterritorial jurisdiction. Further, it provided that a municipality may not seek or be granted a CCN outside of its extraterritorial jurisdiction without the written consent of the landowner who owns the property in which the certificate is to be extended.

TCEQ, during the rulemaking process, sought to apply this provision retroactively to all municipal CCNs, thus, invalidating all CCNs outside a municipality's extraterritorial jurisdiction. As a result of the legislation, many cities across the state would be left with stranded costs that could not be recovered. Further, the legislation is contrary to regional planning and regionalization of natural resources, a goal the legislature has sought to correct in the last several legislative sessions. For instance, if a municipality is only limited to provide service to the boundaries of its extraterritorial jurisdiction, then it will not construct larger regional plants or ensure that lines are properly sized to provide service over a wider area.

As proposed, H.B. 2655 removes the requirement that cities may only be granted CCNs to their extraterritorial jurisdiction. This bill provides that "landowner", "owner of a tract of land," and "owners of each tract of land" include multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 13.002(1-a), (5), and (8), Water Code, to redefine "landowner," "owner of a tract of land," "owners of each tract of land," "commission," and "executive director."

SECTION 2. Amends Section 13.2451, Water Code, as follows:

Sec. 13.2451. EXTENSION BEYOND EXTRATERRITORIAL JURISDICTION. (a) Deletes existing text providing an exemption as provided by Subsection (b).

(b) Requires a municipality that seeks to extend a certificate of public convenience and necessity beyond the municipality's extraterritorial jurisdiction to ensure that the municipality complies with Section 13.241 in relation to the area covered by the portion of the certificate that extends beyond the municipality's extraterritorial jurisdiction.

(c) Authorizes the Texas Commission on Environmental Quality (TCEQ), after notice to the municipality and an opportunity for a hearing, to decertify an area outside a municipality's extraterritorial jurisdiction if the municipality does not

provide service to the area on or before the fifth anniversary of the date the certificate of public convenience and necessity was granted for the area. Provides that this subsection does not apply to a certificate of public convenience and necessity for a certain area.

(d) Provides that to the extent of a conflict between this section and Section 13.245, Section 13.245 prevails. Deletes existing text prohibiting TCEQ from extending a municipality's certificate of public convenience and necessity beyond its extraterritorial jurisdiction without the written consent of the landowner who owns the property in which the certificate is to be extended. Deletes existing text providing that the portion of any certificate of public convenience and necessity that extends beyond the extraterritorial jurisdiction of the municipality without the consent of the landowner is void.

SECTION 3. Amends Section 13.246(a-1), Water Code, to require TCEQ to require notice to be mailed to each owner of a tract of land that is at least 25 acres, rather than 50 acres, and is wholly or partially included in the area proposed to be certified, except as otherwise provided by this subsection, in addition to the notice required by Subsection (a).

SECTION 4. Provides that the changes in law made by this Act apply only to an application for a certificate of public convenience and necessity or for an amendment to a certificate of public convenience and necessity submitted to the Texas Commission on Environmental Quality on or after the effective date of this Act; a proceeding to amend or revoke a certificate of public convenience and necessity initiated on or after the effective date of this Act; a certificate of public convenience and necessity issued to a municipality, regardless of the date the certificate was issued; an application by a municipality or by a utility owned by a municipality for a certificate of public convenience and necessity or for an amendment to a certificate, regardless of the date the application was filed; and a proceeding to amend or revoke a certificate of public convenience and necessity held by a municipality or by a utility owned by a municipality, regardless of the date the proceeding was initiated.

SECTION 5. Effective date: upon passage or September 1, 2007.