

- SUBJECT:** Expanding authority of certain municipalities to provide sewer services
- COMMITTEE:** Urban Affairs — favorable, without amendment
- VOTE:** 6 ayes — Alvarado, R. Anderson, Bernal, Elkins, Schaefer, M. White
0 nays
1 absent — Hunter
- SENATE VOTE:** On final passage, April 30 — 30-1 (Creighton), on local and uncontested calendar
- WITNESSES:** *(On House companion bill, CSHB 1279)*
For — Greg Morgan and John Nix, City of Tyler; *(Registered, but did not testify: Edward Broussard, City of Tyler)*

Against — Greg Sorenson, Liberty Utilities

On — *(Registered, but did not testify: Tammy Benter, Public Utility Commission of Texas)*
- BACKGROUND:** Water Code, sec. 13.001 establishes that retail public utilities are monopolies in the areas they serve and their regulation by public agencies serves as a substitute for competition.

Sec. 13.247 specifies that, except under certain circumstances, a municipally owned or operated utility may not provide retail water and sewer utility service within an area certificated to another retail public utility without first obtaining from the Public Utility Commission (PUC) a certificate of public convenience and necessity that includes the areas to be served.

On September 1, 2014, responsibility for certain water utility programs, including the certificate of convenience and necessity program, was transferred from the Texas Commission on Environmental Quality to the

PUC as required by the enactment in 2013 of Sunset legislation reauthorizing the PUC (HB 1600 by Cook).

DIGEST:

SB 789 would allow a municipality that met the description in the bill (Tyler) to provide sewer service to an area within its boundaries without first having to obtain a certificate of convenience and necessity from the commission, regardless of whether that area was certificated to another retail public utility.

The bill would require the municipality to notify the affected retail public utility and the commission of the municipality's intention to provide sewer services to the area at least 30 days before beginning to provide them.

Once notified, the utility could petition the commission to decertify the utility's certificate for the area to be served by the municipality, or it could discontinue service to the affected area as long as there was no disruption of services to any customer.

The bill would prohibit its provisions from being construed to limit the right of a retail public utility to provide service in an area certificated to the utility. It also would not expand a municipality's power of eminent domain under Property Code, ch. 21.

The bill would require the Texas Commission on Environmental Quality to adopt rules and establish procedures related to the notice required under Water Code, sec. 13.2475 as soon as practicable after the effective date of the bill.

The bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

SB 789 would provide Tyler residents a much needed choice in sewer service providers, which could improve service and lower rates in the area. The city should be able to provide sewer services to its own residents that live within its boundaries without having to obtain an additional certificate of public convenience and necessity.

The retail sewer utility company currently operating in the area is not able to keep up with growth in the city and has failed to provide adequate services for new development. Existing retail utility customers also have filed complaints with the city about service levels and costs. The bill would not automatically deprive the retail utility of customers but instead would provide customers a choice and would promote residential and commercial development. In addition, there is no historical evidence to suggest that the bill's changes would drive up future rates for area residents.

Existing law allows large-tract landowners to petition to be released from certificates of convenience and necessity if the certificate holder is not providing services, and several landowners have utilized this option in Tyler. This bill would give the smaller landowners a similar choice.

SB 789 would not revoke the existing retail utility's certification but rather would seek authorization to offer an alternative to the city's residents. The bill would be limited to the city of Tyler and would be a fair way to address a problem that the municipality faces.

**OPPONENTS
SAY:**

SB 789 unfairly would exempt the city of Tyler from the rules that apply to utilities across the state regarding certificates of convenience and necessity. Competition does not serve the public interest when it comes to providing utility services, which is clear in the legislative intent of current law.

Under this bill, the city would be able to gain a competitive advantage because it could subsidize its sewer services with other city revenues or credit, which a retail utility cannot do. By taking customers from the retail utility, the city unfairly would deprive the investor-owned utility — which is regulated by and in compliance with state laws — of some of its profits. Moreover, the bill would not compensate the retail utility for this loss. Additionally, both the city and the retail utility would make infrastructure investments, rather than only one entity, which could result in higher costs being passed on in the future to residents who pay for the services.

The bill is intended to affect only Tyler but could set a precedent for later expanding the certificate exemption to other municipalities in the state.

NOTES:

The House companion bill, CSHB 1279 by Schaefer, was reported favorably by the House Urban Affairs Committee on April 7 and considered by the Calendars Committee on May 5.

The House sponsor plans to offer a floor amendment to specify that functions referenced in bill would be the responsibility of the Public Utility Commission, not the Texas Commission on Environmental Quality.