

Senate Bill 573: Certificates of Public Convenience and Necessity

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Analysis

A Certificate of Public Convenience and Necessity (CCN) is a certificate granted by the Texas Commission on Environmental Quality (TCEQ) allowing the “installation, operation, or extension” of “retail water or sewer utility service directly or indirectly to the public” because “the present or future public convenience and necessity requires or will require” that service in a particular geographic area.

In most cases, a CCN grants a virtual monopoly to its holder when it comes to the provision of retail water or sewer utility service directly or indirectly to the public. Along these lines, Sec. 291.101 of the TCEQ’s administrative rules places the following restrictions on provision of these services:

- Except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located. §291.101(a)
- A person that is not a retail public utility or a utility or water supply corporation that is operating under provisions pursuant to the Texas Water Code, §13.242(c) may not construct facilities to provide water or sewer service to more than one service connection not on the property owned by the person and that are within the certificated service area of a retail public utility without first obtaining written consent from the retail public utility. §291.101 (b)
- A district may not provide services within an area for which a retail public utility holds a certificate of convenience and necessity or within the boundaries of another district without the district’s consent, unless the district has a valid certificate of convenience and necessity to provide services to that area. §291.101 (c)

Prior to 2005, CCN’s could be obtained with very little public notice and without the consent of the affected property owners. The result is that many properties are often locked into a situation where access to water utilities is at significantly higher prices than if the owners had the freedom to contract with other potential providers.

The inability to freely contract for the provision of water service highlights the problem with CCNs. In many cases, property owners had little input into their properties being included in a certificated service area of a retail public utility. In other words, the property owners’ ability—and right—to determine how best to obtain water utility service for their property was taken away from them.

The resulting lack of choice has led in many cases to significantly higher costs for obtaining water utilities. This in turn reduces the value of the property. In effect, there is often a transfer of wealth from property owners to holders of CCNs when the CCN is granted. Yet this transfer takes place without compensation.

While there are currently provisions in the Texas Water Code that allow for property owners to decertify a CCN that covers their property, it is difficult, time-consuming, and expensive to pursue decertification.

SB 573 would significantly improve to the decertification process. It provides that:

the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity and is entitled to that release if the landowner’s property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,000.

With this provision in law, a property owner of an eligible property would be entitled to expedited decertification upon petition. Yet this doesn’t mean that the holder of a CCN would go uncompensated for any investment it had made to provide service to the property. Current law has provisions that provide for appropriate compensation in the case of decertification. SB 573 doesn’t change this.

SB 573 significantly restores the property rights of landowners whose property became subject to a CCN without consent. At the same time, it maintains the ability for CCN holders to be properly compensated during decertification for improvements made to provide water utilities. Additionally, it will reduce the cost of supporting the population growth currently taking place in Texas’ urban areas and surrounding counties. ★