

## **BILL ANALYSIS**

H.B. 3152  
By: Bonnen  
Environmental Regulation  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Many commercial and industrial properties in municipal areas across Texas are underlain with unusable groundwater that has become contaminated by historical on-site or off-site sources. Often these plumes of contamination migrate under surrounding properties and commingle with other plumes making distinctions of responsibility for assessment and remediation difficult. The presence of such contamination often prevents the appropriate use and redevelopment of property due to the cost of investigating and remediating groundwater to drinking water standards when the groundwater is not a drinking water resource. Current law requires the landowner or the facility owner/operator responsible for the condition to define the extent of contamination and to develop an approach to correct the problem through response actions, which may be extremely expensive. Current law does not allow ordinances or other institutional controls, such as restrictive covenants, to eliminate groundwater response action objectives in locations where the groundwater will not be used as a future drinking water source. Specifically, ordinances restricting the installation and use of wells are not currently allowed as an effective response action. As a result, a great deal of money and resources are spent assessing and remediating unusable groundwater in municipal areas. Alternatively, developers must abandon municipal redevelopment projects because of the prohibitive costs associated with the required response action, thereby preventing stimulation to the local property tax base. A more balanced approach to these situations is required. The approach should be protective of real public health issues and recognize that the actual risk associated with municipal groundwater contamination in many cases is property stagnation.

This bill would address that problem by authorizing the Texas Commission on Environmental Quality (“TCEQ”) and local governments to create municipal setting designations (“MSDs”) for properties that rely on protected community water systems to supply drinking water. Pursuant to this authority, a city could restrict potable use of groundwater in designated areas where public water is available. Once groundwater use is restricted to non-potable uses and public water is made available, the TCEQ would certify the area as an MSD. Parties responsible for contaminated properties within the MSD would no longer have to consider the risks associated with human consumption of the contaminated groundwater in developing a response action to address the contamination. Consequently, the extent of required remediation necessary to address groundwater that is not a drinking water resource would be greatly reduced or completely eliminated at those sites. If enacted, these changes to the law would substantially reduce the cost of investigations and remediations at contaminated sites in municipal areas, thereby restoring and revitalizing the local property tax base by encouraging municipal redevelopment. This bill also empowers local governments to protect citizens from the dangers associated with consumption of contaminated groundwater.

### **RULEMAKING AUTHORITY**

It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

## **ANALYSIS**

**Section 1.** Adds Subchapter W, Chapter 361, Health and Safety Code. Subchapter W contains Sections 361.801 through 361.808.

The new Section 361.801 adds definitions for the terms “Contaminant,” “Potable water,” and “Response action.”

The new Section 361.802 provides that the purpose of the new Subchapter W is to provide authorization to the executive director of the TCEQ (the “Executive Director”) to certify MSDs for municipal properties to limit or eliminate the scope of response actions addressing contaminant impacts to groundwater that has been restricted from potable water use by ordinance or restrictive covenant.

The new Section 361.803 establishes eligibility criteria for an MSD, including requirements regarding the population of the municipality containing the MSD and the availability of public drinking water. The MSD must be subject to an ordinance or restrictive covenant that prohibits use of groundwater beneath the MSD as potable water and appropriately restricts other uses of groundwater.

The new Section 361.804 adds requirements regarding the application for a MSD, affidavits, and information regarding the applicant, site information, and the applicable ordinance or restrictive covenant. Further, Section 361.804 provides that the Executive Director must (1) issue a MSD certificate, (2) deny the application, or (3) request additional information from the applicant, within a certain time after the application is received.

The new Section 361.805 requires the applicant to provide notice regarding the MSD application to (1) the municipality in which the MSD is located, and (2) any municipality whose boundaries are within one-half mile of the MSD. Section 361.805 also specifies the requirements regarding the content of the notice, and that copies of the notice must be provided to the Executive Director.

The new Section 361.806 provides that the Executive Director may deny an application for MSD if (1) any of the eligibility criteria in Section 361.803 are not met, (2) the MSD would negatively impact the current and future regional water resource needs or obligations of certain municipalities, or (3) the application is incomplete or inaccurate. Section 361.806 also provides certain deadlines for the Executive Director to request additional information from an applicant. Section 361.806 also contains notice, explanation and refund requirements in the event the Executive Director denies the application.

The new Section 361.807 provides that once an application is complete, the Executive Director shall issue a MSD certificate to the applicant and to certain municipalities. Section 361.807 provides certain requirements regarding the content of a MSD certificate. Section 361.807 also provides a procedure for obtaining a MSD certificate when the original application does not include an ordinance or restrictive covenant satisfying Section 361.803.

The new Section 362.808 provides generally that where no potable water use wells are located or planned to be located within one-half mile beyond the boundary of the MSD (the “outer zone”), the Executive Director shall not require a person addressing environmental impacts for a property located in the MSD to conduct an environmental investigation or response action. An exception exists when such action is necessary (1) to ensure the protection of humans from exposures to environmental impacts to groundwater not related to a potable water use, or (2) to protect ecological resources.

Section 361.808 provides that where potable water use wells are located within the outer zone, the Executive Director shall require a person addressing environmental impacts for a property located in the MSD to complete an investigation to determine if groundwater contamination emanating from the property has caused or is reasonably anticipated to cause applicable human or ecological standards to be exceeded in the outer zone. If that investigation indicates that groundwater emanating from the property has not caused or is not reasonably anticipated to cause applicable human or ecological standards to be exceeded in the outer zone, the Executive Director shall approve the completion of

groundwater response actions at the property. There is an exception whereby the Executive Director may require a response action to the extent necessary (1) to ensure the protection of humans from exposures to environmental impacts to groundwater not related to a potable water use, or (2) to protect ecological resources.

Section 361.808 provides that if an investigation indicates that groundwater emanating from the property has caused or is reasonably anticipated to cause applicable human or ecological standards to be exceeded in the certified MSD or in the outer zone, the Executive Director shall approve the completion of groundwater response action at the property once the person has completed one of three options. First, the person may complete response actions at the property to remediate environmental impacts to groundwater to applicable human or ecological standards. Second, the person may (1) complete response actions at the property to address environmental impacts to groundwater not related to a potable water use, (2) provide a reliable water source to owners of impacted potable water use, and (3) obtain from the owners of impacted potable water use wells restrictive covenants that prohibit the potable water use of groundwater, and that restrict other uses of groundwater in a manner consistent with the groundwater quality. Third, the person may expand the MSD to include the properties with impacted potable use water wells.

Section 361.808 also provides that the Executive Director may require a person responsible for property within a certified MSD to complete a response action to address environmental impacts to groundwater emanating from the property that has caused or is reasonably anticipated to cause applicable human or ecological standards to be exceeded in an area located beyond the outer zone, provided such action is necessary to ensure the protection of humans from exposures to environmental impacts to groundwater or the protection of ecological resources. Finally, Section 361.808 contains a savings clause that provides that nothing in the statute alters or affects the private rights of action of any person under any statute or common law for personal injury or property damage caused by the release of contaminants.

**Section 2.** Amends Subsection (a), Section 211.003, Local Government Code, to authorize the governing body of a municipality to regulate the pumping, extraction, and use of groundwater for drinking purposes.

**Section 3.** Amends Subsection (a), Section 212.003, Local Government Code, to authorize the governing body of a municipality by ordinance to extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances relating to the pumping, extraction, and use of groundwater for drinking purposes.

**Section 4.** Provides that this Act takes effect on September 1, 2003.

#### **EFFECTIVE DATE**

September 1, 2003.