

By: Bonnen

H.B. No. 3152

A BILL TO BE ENTITLED

AN ACT

relating to the potability of and requirements for removing
contaminants from groundwater.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 361, Health and Safety Code, is amended
by adding Subchapter W to read as follows:

SUBCHAPTER W. MUNICIPAL SETTING DESIGNATIONS

Sec. 361.801. DEFINITIONS. In this subchapter:

(1) "Contaminant" includes:

(A) solid waste;

(B) hazardous waste;

(C) a hazardous waste constituent listed in 40
C.F.R. Part 261, Subpart D, or Table 1, 40 C.F.R. Section 261.24;

(D) a pollutant as defined in Section 26.001,
Water Code; and

(E) a hazardous substance:

(i) as defined in Section 361.003; or

(ii) subject to Subchapter G, Chapter 26,
Water Code.

(2) "Potable water" means water that is used for
irrigating crops intended for human consumption, drinking,
showering, bathing, or cooking purposes.

(3) "Response action" means the cleanup or removal
from the environment of a hazardous substance or contaminant,

1 excluding a waste, pollutant, or substance regulated by or that
2 results from an activity under the jurisdiction of the Railroad
3 Commission of Texas under Chapter 91 or 141, Natural Resources
4 Code, or Chapter 27, Water Code.

5 Sec. 361.8015. LEGISLATIVE FINDINGS. (a) The legislature
6 finds that access to and the use of groundwater may need to be
7 restricted to protect public health and welfare where the quality
8 of groundwater presents an actual or potential threat to human
9 health.

10 (b) The legislature finds that an action by a municipality
11 to restrict access to or the use of groundwater in support of or to
12 facilitate a municipal setting designation advances a substantial
13 and legitimate state interest where the quality of the groundwater
14 subject to the designation is an actual or potential threat to human
15 health.

16 Sec. 361.802. PURPOSE. The purpose of this subchapter is to
17 provide authorization to the executive director to certify
18 municipal setting designations for municipal properties in order to
19 limit the scope of or eliminate the need for investigation of or
20 response actions addressing contaminant impacts to groundwater
21 that has been restricted from use as potable water by ordinance or
22 restrictive covenant.

23 Sec. 361.803. ELIGIBILITY FOR A MUNICIPAL SETTING
24 DESIGNATION. A person, including a local government, may submit a
25 request to the executive director for a municipal setting
26 designation for property if:

27 (1) the property is within the corporate limits or

1 extraterritorial jurisdiction of a municipality authorized by
2 statute that has a population of at least 20,000; and

3 (2) a public drinking water supply system exists that
4 satisfies the requirements of Chapter 341 and that supplies
5 drinking water to:

6 (A) the property for which designation is sought;
7 and

8 (B) property within one-half mile of the property
9 for which designation is sought.

10 Sec. 361.804. APPLICATION FOR A MUNICIPAL SETTING
11 DESIGNATION. (a) A person seeking to obtain a municipal setting
12 designation under this subchapter must submit an application and an
13 application fee to the executive director as prescribed by this
14 section.

15 (b) An application submitted under this section must:

16 (1) be on a form provided by the executive director;
17 and

18 (2) contain the following:

19 (A) the applicant's name and address;
20 (B) a legal description of the outer boundaries
21 of the proposed municipal setting designation and a specific
22 description of the designated groundwater that will be restricted
23 under the ordinance or restrictive covenant described by Section
24 361.8065(a)(2);

25 (C) a statement as to whether municipalities
26 entitled to notice under Section 361.805 support the proposed
27 designation;

1 (D) an affidavit that affirmatively states that:

2 (i) the municipal setting designation
3 eligibility criteria contained in Section 361.803 are satisfied;

4 (ii) true and accurate copies of all
5 documents demonstrating that the municipal setting designation
6 eligibility criteria provided by Section 361.803 have been
7 satisfied are included with the application;

8 (iii) a true and accurate copy of a legal
9 description of the property for which the municipal setting
10 designation is sought is included with the application; and

11 (iv) notice was provided in accordance with
12 Section 361.805;

13 (E) proof of notice, as required by Section
14 361.805(c); and

15 (F) if available at the time of the application,
16 a copy of the ordinance or restrictive covenant and any required
17 resolutions satisfying the requirements described in Section
18 361.8065, or a statement that the applicant will provide a copy of
19 the ordinance or restrictive covenant and any required resolutions
20 satisfying the requirements described in Section 361.8065 before
21 the executive director certifies the municipal setting designation
22 in accordance with Section 361.807.

23 (c) Not later than 90 days after receiving an application
24 submitted as provided by Subsection (b), the executive director
25 shall:

26 (1) issue a municipal setting designation certificate
27 in accordance with Section 361.807;

1 (2) deny the application in accordance with Section
2 361.806; or

3 (3) request additional information for the municipal
4 setting designation application.

5 (d) Not later than the 45th day after the date the executive
6 director receives any additional information requested under
7 Subsection (c)(3), the executive director shall certify or deny the
8 application.

9 Sec. 361.805. NOTICE. (a) On or before the date of
10 submission of an application to the executive director, a person
11 seeking a municipal setting designation must provide notice to:

12 (1) each municipality:

13 (A) in which the property for which the
14 designation is sought is located;

15 (B) with a boundary located not more than
16 one-half mile from the property for which the designation is
17 sought; or

18 (C) that owns or operates a groundwater supply
19 well located not more than five miles from the property for which
20 the designation is sought; and

21 (2) each owner of a private water well that is located
22 not more than five miles from a boundary of the property for which
23 the designation is sought.

24 (b) The notice must include, at a minimum:

25 (1) the purpose of the municipal setting designation;

26 (2) the eligibility criteria for a municipal setting
27 designation;

1 (3) the location and description of the property for
2 which the designation is sought;

3 (4) a statement that the municipality may provide
4 written comments on any information relevant to the executive
5 director's consideration of the municipal setting designation;

6 (5) a statement that the executive director will
7 certify or deny the application or request additional information
8 from the applicant not later than 90 days after receiving the
9 application;

10 (6) the type of contamination on the property for
11 which the designation is sought; and

12 (7) identification of the party responsible for the
13 contamination of the property, if known.

14 (c) The applicant must submit copies of the notice letter
15 delivered to the municipality or municipalities described in
16 Subsection (a) and the signed delivery receipts to the executive
17 director with the application.

18 (d) For the purpose of this section, notice to a
19 municipality must be provided to the city secretary for the
20 municipality.

21 (e) A municipality or private well owner entitled to notice
22 under this section may file comments with the executive director
23 not later than the 60th day after the date the municipality or
24 private well owner receives the notice under this section.

25 Sec. 361.806. DENIAL OF APPLICATION. (a) The executive
26 director shall deny an application submitted under Section 361.804
27 if:

1 (1) any of the eligibility criteria described in
2 Section 361.803 have not been met for the property for which the
3 municipal setting designation is sought;

4 (2) the application is incomplete or inaccurate; or

5 (3) after the 60-day comment period described by
6 Section 361.805(e), the executive director determines that the
7 municipal setting designation would negatively impact the current
8 and future regional water resource needs or obligations of a
9 municipality or a private well owner described by Section
10 361.805(a).

11 (b) If the executive director determines that an
12 application is incomplete or inaccurate, the executive director,
13 not later than the 90th day after receipt of the application, shall
14 provide the applicant with a list of all information needed to make
15 the application complete or accurate.

16 (c) If the executive director denies the application, the
17 executive director shall:

18 (1) notify the applicant that the application has been
19 denied; and

20 (2) explain the reasons for the denial of the
21 application.

22 Sec. 361.8065. PRECERTIFICATION REQUIREMENTS. (a) Before
23 the executive director may issue a municipal setting designation
24 certificate under Section 361.807, the applicant must provide
25 documentation of the following:

26 (1) that the application is supported by a resolution
27 adopted by the city council of each municipality described by

1 Section 361.805(a)(1)(B) or (C); and

2 (2) that the property for which designation is sought
3 is:

4 (A) subject to an ordinance that prohibits the
5 use of designated groundwater from beneath the property as potable
6 water and that appropriately restricts other uses of and contact
7 with that groundwater; or

8 (B) subject to a restrictive covenant
9 enforceable by the municipality in which the property for which the
10 designation is sought is located that prohibits the use of
11 designated groundwater from beneath the property as potable water
12 and appropriately restricts other uses of and contact with that
13 groundwater.

14 (b) A designation described by Subsection (a)(2) must be
15 supported by a resolution passed by the city council of the
16 municipality.

17 Sec. 361.807. CERTIFICATION. (a) If the executive
18 director determines that an applicant has complied with Section
19 361.8065 and submitted a complete application, the executive
20 director shall issue a copy of the municipal setting designation
21 certificate to:

22 (1) the applicant for the municipal setting
23 designation; and

24 (2) each municipality and private well owner described
25 by Section 361.805(a).

26 (b) The municipal setting designation certificate shall:

27 (1) indicate that the municipal setting designation

1 eligibility criteria described in Section 361.803 are satisfied
2 and that the executive director has certified the municipal setting
3 designation;

4 (2) indicate that any person addressing environmental
5 impacts for a property located in the certified municipal setting
6 designation shall complete any necessary investigation and
7 response action requirements in accordance with Section 361.808;
8 and

9 (3) include a legal description of the outer
10 boundaries of the municipal setting designation.

11 (c) If the executive director determines that an applicant
12 has submitted a complete application except that an ordinance or
13 restrictive covenant and any required resolutions satisfying the
14 requirements described in Section 361.8065 have not been submitted,
15 the executive director shall issue a letter to the applicant listed
16 in Subsection (a) stating that a municipal setting designation will
17 be certified on submission of a copy of the ordinance or restrictive
18 covenant and any required resolutions satisfying the requirements
19 described in Section 361.8065. On submission of the ordinance or
20 restrictive covenant and any required resolutions satisfying the
21 requirements described in Section 361.8065, the executive director
22 shall issue a municipal setting designation certificate in
23 accordance with Subsections (a) and (b).

24 Sec. 361.808. INVESTIGATION AND RESPONSE ACTION
25 REQUIREMENTS. (a) If no potable water wells are located within
26 one-half mile beyond the boundary of a municipal setting
27 designation, the executive director may not require a person

1 addressing environmental impacts for a property located in the
2 municipal setting designation to:

3 (1) investigate the nature and extent of contamination
4 in groundwater except to satisfy the requirements of Subsection
5 (b); or

6 (2) conduct response actions to remove,
7 decontaminate, or control environmental impacts to groundwater
8 based solely on potential potable water use.

9 (b) Notwithstanding Subsection (a), the executive director
10 shall require a responsible person to complete a response action to
11 address environmental impacts to groundwater in a certified
12 municipal setting designation if action is necessary to ensure:

13 (1) the protection of humans from exposures to
14 environmental impacts to groundwater that are not related to a
15 potable water use, including exposures from nonconsumptive uses and
16 exposures resulting from inadvertent contact with contaminated
17 groundwater; or

18 (2) the protection of ecological resources.

19 (c) If potable water wells are located within one-half mile
20 beyond the boundary of a municipal setting designation, the
21 executive director shall require a person addressing environmental
22 impacts for a property located in the municipal setting designation
23 to complete an investigation to determine whether groundwater
24 contamination emanating from the property has caused or is
25 reasonably anticipated to cause applicable human health or
26 ecological standards to be exceeded in the area located within
27 one-half mile beyond the boundary of the certified municipal

1 setting designation.

2 (d) If an investigation described in Subsection (c)
3 confirms that groundwater emanating from the property has not
4 caused and is not reasonably anticipated to cause applicable human
5 health or ecological standards to be exceeded in the area located
6 within one-half mile beyond the boundary of the certified municipal
7 setting designation, the executive director shall approve the
8 completion of groundwater response actions at the property except
9 to the extent that response actions are necessary to satisfy
10 Subsection (b).

11 (e) If an investigation described in Subsection (c)
12 confirms that groundwater emanating from the property has caused or
13 is reasonably anticipated to cause applicable human health or
14 ecological standards to be exceeded in the area located within
15 one-half mile beyond the boundary of the certified municipal
16 setting designation, the executive director shall approve the
17 completion of groundwater response action at the source property if
18 the person addressing environmental impacts:

19 (1) completes response actions at the source property
20 to remove, decontaminate, or control environmental impacts to
21 groundwater to meet applicable human health or ecological
22 standards; or

23 (2) completes response actions at the source property
24 to remove, decontaminate, or control environmental impacts to
25 groundwater that are not related to a potable water use, including
26 actions to protect humans from exposures from nonconsumptive uses
27 and exposures resulting from inadvertent contact with contaminated

1 groundwater and actions to protect ecological resources, and:

2 (A) provides to owners of impacted potable water
3 wells described in Subsection (c) a reliable alternate water supply
4 that will provide a volume of water sufficient for the intended use
5 for a period not shorter than the period that the impacted wells
6 exceed the human health or ecological standards and, after
7 obtaining permission from such owners, files a restrictive covenant
8 that prohibits the use of groundwater from those wells as potable
9 water and restricts other uses of groundwater in a manner
10 consistent with groundwater quality; or

11 (B) expands the municipal setting designation in
12 accordance with the procedures under this subchapter relating to
13 the initial application for a municipal setting designation to
14 include the properties with impacted potable water wells described
15 in Subsection (c).

16 (f) Notwithstanding any other provision of this section,
17 the executive director may require a responsible person for
18 property within a certified municipal setting designation to
19 complete a response action to address environmental impacts to
20 groundwater emanating from the property that has caused or is
21 reasonably anticipated to cause applicable human health or
22 ecological standards to be exceeded in an area located more than
23 one-half mile beyond the boundary of the certified municipal
24 setting designation, provided such action is necessary to ensure:

25 (1) the protection of humans from exposures to
26 environmental impacts to groundwater; or

27 (2) the protection of ecological resources.

1 (g) This subchapter relates to the scope of the response
2 action that can be required by the executive director in municipal
3 settings designated under this subchapter. Nothing in this
4 subchapter shall be construed to alter or affect the private rights
5 of action of any person under any statute or common law for personal
6 injury or property damage caused by the release of contaminants.

7 SECTION 2. Subsection (a), Section 211.003, Local
8 Government Code, is amended to read as follows:

9 (a) The governing body of a municipality may regulate:

10 (1) the height, number of stories, and size of
11 buildings and other structures;

12 (2) the percentage of a lot that may be occupied;

13 (3) the size of yards, courts, and other open spaces;

14 (4) population density; ~~and~~

15 (5) the location and use of buildings, other
16 structures, and land for business, industrial, residential, or
17 other purposes; and

18 (6) the pumping, extraction, and use of groundwater
19 for potable purposes.

20 SECTION 3. Subsection (a), Section 212.003, Local
21 Government Code, is amended to read as follows:

22 (a) The governing body of a municipality by ordinance may
23 extend to the extraterritorial jurisdiction of the municipality the
24 application of municipal ordinances adopted under Section 212.002
25 and other municipal ordinances relating to access to public roads
26 or the pumping, extraction, and use of groundwater for potable
27 purposes. However, unless otherwise authorized by state law, in

1 its extraterritorial jurisdiction a municipality shall not
2 regulate:

3 (1) the use of any building or property for business,
4 industrial, residential, or other purposes;

5 (2) the bulk, height, or number of buildings
6 constructed on a particular tract of land;

7 (3) the size of a building that can be constructed on a
8 particular tract of land, including without limitation any
9 restriction on the ratio of building floor space to the land square
10 footage;

11 (4) the number of residential units that can be built
12 per acre of land; or

13 (5) the size, type, or method of construction of a
14 water or wastewater facility that can be constructed to serve a
15 developed tract of land if:

16 (A) the facility meets the minimum standards
17 established for water or wastewater facilities by state and federal
18 regulatory entities; and

19 (B) the developed tract of land is:

20 (i) located in a county with a population of
21 2.8 million or more; and

22 (ii) served by:

23 (a) on-site septic systems
24 constructed before September 1, 2001, that fail to provide adequate
25 services; or

26 (b) on-site water wells constructed
27 before September 1, 2001, that fail to provide an adequate supply of

1 safe drinking water.

2 SECTION 4. Chapter 401, Local Government Code, is amended
3 by adding Section 401.005 to read as follows:

4 Sec. 401.005. RESTRICTION ON PUMPING, EXTRACTION, OR USE OF
5 GROUNDWATER. The governing body of a municipality that has
6 obtained a municipal setting designation may regulate the pumping,
7 extraction, or use of groundwater to prevent the use of or contact
8 with groundwater that presents an actual or potential threat to
9 human health.

10 SECTION 5. This Act takes effect September 1, 2003.