

1-1 By: Bonnen (Senate Sponsor - Jackson) H.B. No. 3152
1-2 (In the Senate - Received from the House May 9, 2003;
1-3 May 13, 2003, read first time and referred to Committee on Natural
1-4 Resources; May 21, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 10, Nays 0;
1-6 May 21, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3152 By: Jackson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the potability of and requirements for removing
1-11 contaminants from groundwater.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 361, Health and Safety Code, is amended
1-14 by adding Subchapter W to read as follows:

1-15 SUBCHAPTER W. MUNICIPAL SETTING DESIGNATIONS

1-16 Sec. 361.801. DEFINITIONS. In this subchapter:

1-17 (1) "Contaminant" includes:

1-18 (A) solid waste;

1-19 (B) hazardous waste;

1-20 (C) a hazardous waste constituent listed in 40
1-21 C.F.R. Part 261, Subpart D, or Table 1, 40 C.F.R. Section 261.24;

1-22 (D) a pollutant as defined in Section 26.001,
1-23 Water Code; and

1-24 (E) a hazardous substance:

1-25 (i) as defined in Section 361.003; or

1-26 (ii) subject to Subchapter G, Chapter 26,
1-27 Water Code.

1-28 (2) "Potable water" means water that is used for
1-29 irrigating crops intended for human consumption, drinking,
1-30 showering, bathing, or cooking purposes.

1-31 (3) "Response action" means the cleanup or removal
1-32 from the environment of a hazardous substance or contaminant,
1-33 excluding a waste, pollutant, or substance regulated by or that
1-34 results from an activity under the jurisdiction of the Railroad
1-35 Commission of Texas under Chapter 91 or 141, Natural Resources
1-36 Code, or Chapter 27, Water Code.

1-37 Sec. 361.8015. LEGISLATIVE FINDINGS. (a) The legislature
1-38 finds that access to and the use of groundwater may need to be
1-39 restricted to protect public health and welfare where the quality
1-40 of groundwater presents an actual or potential threat to human
1-41 health.

1-42 (b) The legislature finds that an action by a municipality
1-43 to restrict access to or the use of groundwater in support of or to
1-44 facilitate a municipal setting designation advances a substantial
1-45 and legitimate state interest where the quality of the groundwater
1-46 subject to the designation is an actual or potential threat to human
1-47 health.

1-48 Sec. 361.802. PURPOSE. The purpose of this subchapter is to
1-49 provide authorization to the executive director to certify
1-50 municipal setting designations for municipal properties in order to
1-51 limit the scope of or eliminate the need for investigation of or
1-52 response actions addressing contaminant impacts to groundwater
1-53 that has been restricted from use as potable water by ordinance or
1-54 restrictive covenant.

1-55 Sec. 361.803. ELIGIBILITY FOR A MUNICIPAL SETTING
1-56 DESIGNATION. A person, including a local government, may submit a
1-57 request to the executive director for a municipal setting
1-58 designation for property if:

1-59 (1) the property is within the corporate limits or
1-60 extraterritorial jurisdiction of a municipality authorized by
1-61 statute that has a population of at least 20,000; and

1-62 (2) a public drinking water supply system exists that
1-63 satisfies the requirements of Chapter 341 and that supplies or is

2-1 capable of supplying drinking water to:

2-2 (A) the property for which designation is sought;
2-3 and

2-4 (B) property within one-half mile of the property
2-5 for which designation is sought.

2-6 Sec. 361.804. APPLICATION FOR A MUNICIPAL SETTING
2-7 DESIGNATION. (a) A person seeking to obtain a municipal setting
2-8 designation under this subchapter must submit an application to the
2-9 executive director as prescribed by this section.

2-10 (b) An application submitted under this section must:

2-11 (1) be on a form provided by the executive director;

2-12 (2) contain the following:

2-13 (A) the applicant's name and address;

2-14 (B) a legal description of the outer boundaries
2-15 of the proposed municipal setting designation and a specific
2-16 description of the designated groundwater that will be restricted
2-17 under the ordinance or restrictive covenant described by Section
2-18 361.8065(a)(2);

2-19 (C) a statement as to whether the municipalities
2-20 or the retail public utilities entitled to notice under Section
2-21 361.805 support the proposed designation;

2-22 (D) an affidavit that affirmatively states that:

2-23 (i) the municipal setting designation
2-24 eligibility criteria contained in Section 361.803 are satisfied;

2-25 (ii) true and accurate copies of all
2-26 documents demonstrating that the municipal setting designation
2-27 eligibility criteria provided by Section 361.803 have been
2-28 satisfied are included with the application;

2-29 (iii) a true and accurate copy of a legal
2-30 description of the property for which the municipal setting
2-31 designation is sought is included with the application; and

2-32 (iv) notice was provided in accordance with
2-33 Section 361.805;

2-34 (E) a statement regarding the type of known
2-35 contamination in the groundwater beneath the property proposed for
2-36 a municipal setting designation;

2-37 (F) proof of notice, as required by Section
2-38 361.805(c); and

2-39 (G) if available at the time of the application,
2-40 a copy of the ordinance or restrictive covenant and any required
2-41 resolutions satisfying the requirements described in Section
2-42 361.8065, or a statement that the applicant will provide a copy of
2-43 the ordinance or restrictive covenant and any required resolutions
2-44 satisfying the requirements described in Section 361.8065 before
2-45 the executive director certifies the municipal setting designation
2-46 in accordance with Section 361.807; and

2-47 (3) be accompanied by an application fee of \$1,000.

2-48 (c) Not later than 90 days after receiving an application
2-49 submitted as provided by Subsection (b), the executive director
2-50 shall:

2-51 (1) issue a municipal setting designation certificate
2-52 in accordance with Section 361.807;

2-53 (2) deny the application in accordance with Section
2-54 361.806; or

2-55 (3) request additional information for the municipal
2-56 setting designation application.

2-57 (d) Not later than the 45th day after the date the executive
2-58 director receives any additional information requested under
2-59 Subsection (c)(3), the executive director shall certify or deny the
2-60 application.

2-61 (e) Fees collected under this section shall be deposited to
2-62 the credit of the waste management account.

2-63 Sec. 361.805. NOTICE. (a) On or before the date of
2-64 submission of an application to the executive director, a person
2-65 seeking a municipal setting designation must provide notice to:

2-66 (1) each municipality:

2-67 (A) in which the property for which the
2-68 designation is sought is located;

2-69 (B) with a boundary located not more than

3-1 one-half mile from the property for which the designation is
 3-2 sought; or

3-3 (C) that owns or operates a groundwater supply
 3-4 well located not more than five miles from the property for which
 3-5 the designation is sought;

3-6 (2) each owner of a private water well registered with
 3-7 the commission that is located not more than five miles from a
 3-8 boundary of the property for which the designation is sought; and

3-9 (3) each retail public utility, as defined by Section
 3-10 13.002, Water Code, that owns or operates a groundwater supply well
 3-11 located not more than five miles from the property for which the
 3-12 designation is sought.

3-13 (b) The notice must include, at a minimum:

3-14 (1) the purpose of the municipal setting designation;

3-15 (2) the eligibility criteria for a municipal setting
 3-16 designation;

3-17 (3) the location and description of the property for
 3-18 which the designation is sought;

3-19 (4) a statement that a municipality described by
 3-20 Subsection (a)(1) or retail public utility described by Subsection
 3-21 (a)(3) may provide written comments on any information relevant to
 3-22 the executive director's consideration of the municipal setting
 3-23 designation;

3-24 (5) a statement that the executive director will
 3-25 certify or deny the application or request additional information
 3-26 from the applicant not later than 90 days after receiving the
 3-27 application;

3-28 (6) the type of contamination on the property for
 3-29 which the designation is sought; and

3-30 (7) identification of the party responsible for the
 3-31 contamination of the property, if known.

3-32 (c) The applicant must submit copies of the notice letters
 3-33 delivered in accordance with Subsection (a) and the signed delivery
 3-34 receipts to the executive director with the application.

3-35 (d) For the purpose of this section, notice to a
 3-36 municipality must be provided to the city secretary for the
 3-37 municipality and notice to a retail public utility must be to the
 3-38 registered agent, the owner, or the manager.

3-39 (e) A municipality, retail public utility, or private well
 3-40 owner entitled to notice under this section may file comments with
 3-41 the executive director not later than the 60th day after the date
 3-42 the municipality, retail public utility, or private well owner
 3-43 receives the notice under this section.

3-44 Sec. 361.806. DENIAL OF APPLICATION. (a) The executive
 3-45 director shall deny an application submitted under Section 361.804
 3-46 if:

3-47 (1) any of the eligibility criteria described in
 3-48 Section 361.803 have not been met for the property for which the
 3-49 municipal setting designation is sought;

3-50 (2) the application is incomplete or inaccurate; or

3-51 (3) after the 60-day comment period described by
 3-52 Section 361.805(e), the executive director determines that the
 3-53 municipal setting designation would negatively impact the current
 3-54 and future regional water resource needs or obligations of a
 3-55 municipality, a retail public utility, or a private well owner
 3-56 described by Section 361.805(a).

3-57 (b) If the executive director determines that an
 3-58 application is incomplete or inaccurate, the executive director,
 3-59 not later than the 90th day after receipt of the application, shall
 3-60 provide the applicant with a list of all information needed to make
 3-61 the application complete or accurate.

3-62 (c) If the executive director denies the application, the
 3-63 executive director shall:

3-64 (1) notify the applicant that the application has been
 3-65 denied; and

3-66 (2) explain the reasons for the denial of the
 3-67 application.

3-68 Sec. 361.8065. PRECERTIFICATION REQUIREMENTS. (a) Before
 3-69 the executive director may issue a municipal setting designation

4-1 certificate under Section 361.807, the applicant must provide
4-2 documentation of the following:

4-3 (1) that the application is supported by a resolution
4-4 adopted by:

4-5 (A) the city council of each municipality
4-6 described by Section 361.805(a)(1)(B) or (C); and

4-7 (B) the governing body of each retail public
4-8 utility described by Section 361.805(a)(3); and

4-9 (2) that the property for which designation is sought
4-10 is:

4-11 (A) subject to an ordinance that prohibits the
4-12 use of designated groundwater from beneath the property as potable
4-13 water and that appropriately restricts other uses of and contact
4-14 with that groundwater; or

4-15 (B) subject to a restrictive covenant
4-16 enforceable by the municipality in which the property for which the
4-17 designation is sought is located that prohibits the use of
4-18 designated groundwater from beneath the property as potable water
4-19 and appropriately restricts other uses of and contact with that
4-20 groundwater.

4-21 (b) A designation described by Subsection (a)(2)(B) must be
4-22 supported by a resolution passed by the city council of the
4-23 municipality.

4-24 Sec. 361.807. CERTIFICATION. (a) If the executive
4-25 director determines that an applicant has complied with Section
4-26 361.8065 and submitted a complete application, the executive
4-27 director shall issue a copy of the municipal setting designation
4-28 certificate to:

4-29 (1) the applicant for the municipal setting
4-30 designation;

4-31 (2) each municipality, retail public utility, and
4-32 private well owner described by Section 361.805(a); and

4-33 (3) each person who submitted comments on the
4-34 application for the municipal setting designation and anyone else
4-35 who requested a copy during the review period.

4-36 (b) The municipal setting designation certificate shall:

4-37 (1) indicate that the municipal setting designation
4-38 eligibility criteria described in Section 361.803 are satisfied
4-39 and that the executive director has certified the municipal setting
4-40 designation;

4-41 (2) indicate that any person addressing environmental
4-42 impacts for a property located in the certified municipal setting
4-43 designation shall complete any necessary investigation and
4-44 response action requirements in accordance with Section 361.808;
4-45 and

4-46 (3) include a legal description of the outer
4-47 boundaries of the municipal setting designation.

4-48 (c) If the executive director determines that an applicant
4-49 has submitted a complete application except that an ordinance or
4-50 restrictive covenant and any required resolutions satisfying the
4-51 requirements described in Section 361.8065 have not been submitted,
4-52 the executive director shall issue a letter to the applicant listed
4-53 in Subsection (a) stating that a municipal setting designation will
4-54 be certified on submission of a copy of the ordinance or restrictive
4-55 covenant and any required resolutions satisfying the requirements
4-56 described in Section 361.8065. On submission of the ordinance or
4-57 restrictive covenant and any required resolutions satisfying the
4-58 requirements described in Section 361.8065, the executive director
4-59 shall issue a municipal setting designation certificate in
4-60 accordance with Subsections (a) and (b).

4-61 Sec. 361.808. INVESTIGATION AND RESPONSE ACTION
4-62 REQUIREMENTS. (a) If no potable water wells are located within
4-63 one-half mile beyond the boundary of a municipal setting
4-64 designation, the executive director shall not require a person
4-65 addressing environmental impacts for a property located in the
4-66 municipal setting designation to:

4-67 (1) investigate the nature and extent of contamination
4-68 in groundwater except to satisfy the requirements of Subsection
4-69 (b); or

5-1 (2) conduct response actions to remove,
5-2 decontaminate, or control environmental impacts to groundwater
5-3 based solely on potential potable water use.

5-4 (b) Notwithstanding Subsection (a), the executive director
5-5 shall require a responsible person to complete a response action to
5-6 address environmental impacts to groundwater in a certified
5-7 municipal setting designation if action is necessary to ensure:

5-8 (1) the protection of humans from exposures to
5-9 environmental impacts to groundwater that are not related to a
5-10 potable water use, including exposures from nonconsumptive uses and
5-11 exposures resulting from inadvertent contact with contaminated
5-12 groundwater; or

5-13 (2) the protection of ecological resources.

5-14 (c) If potable water wells are located within one-half mile
5-15 beyond the boundary of a municipal setting designation, the
5-16 executive director shall require a person addressing environmental
5-17 impacts for a property located in the municipal setting designation
5-18 to complete an investigation to determine whether groundwater
5-19 contamination emanating from the property has caused or is
5-20 reasonably anticipated to cause applicable human health or
5-21 ecological standards to be exceeded in the area located within
5-22 one-half mile beyond the boundary of the certified municipal
5-23 setting designation.

5-24 (d) If an investigation described in Subsection (c)
5-25 confirms that groundwater emanating from the property has not
5-26 caused and is not reasonably anticipated to cause applicable human
5-27 health or ecological standards to be exceeded in the area located
5-28 within one-half mile beyond the boundary of the certified municipal
5-29 setting designation, the executive director shall approve the
5-30 completion of groundwater response actions at the property except
5-31 to the extent that response actions are necessary to satisfy
5-32 Subsection (b).

5-33 (e) If an investigation described in Subsection (c)
5-34 confirms that groundwater emanating from the property has caused or
5-35 is reasonably anticipated to cause applicable human health or
5-36 ecological standards to be exceeded in the area located within
5-37 one-half mile beyond the boundary of the certified municipal
5-38 setting designation, the executive director shall approve the
5-39 completion of groundwater response action at the source property if
5-40 the person addressing environmental impacts:

5-41 (1) completes response actions at the source property
5-42 to remove, decontaminate, or control environmental impacts to
5-43 groundwater to meet applicable human health or ecological
5-44 standards; or

5-45 (2) completes response actions at the source property
5-46 to remove, decontaminate, or control environmental impacts to
5-47 groundwater that are not related to a potable water use, including
5-48 actions to protect humans from exposures from nonconsumptive uses
5-49 and exposures resulting from inadvertent contact with contaminated
5-50 groundwater and actions to protect ecological resources, and:

5-51 (A) provides to owners of impacted potable water
5-52 wells described in Subsection (c) a reliable alternate water supply
5-53 that will provide a volume of water sufficient for the intended use
5-54 for a period not shorter than the period that the impacted wells
5-55 exceed the human health or ecological standards and, after
5-56 obtaining permission from such owners, files a restrictive covenant
5-57 that prohibits the use of groundwater from those wells as potable
5-58 water and restricts other uses of groundwater in a manner
5-59 consistent with groundwater quality; or

5-60 (B) expands the municipal setting designation in
5-61 accordance with the procedures under this subchapter relating to
5-62 the initial application for a municipal setting designation to
5-63 include the properties with impacted potable water wells described
5-64 in Subsection (c).

5-65 (f) Notwithstanding any other provision of this section,
5-66 the executive director may require a person responsible for
5-67 property within a certified municipal setting designation to
5-68 complete a response action to address environmental impacts to
5-69 groundwater emanating from the property that has caused or is

6-1 reasonably anticipated to cause applicable human health or
6-2 ecological standards to be exceeded in an area located more than
6-3 one-half mile beyond the boundary of the certified municipal
6-4 setting designation, provided such action is necessary to ensure:

6-5 (1) the protection of humans from exposures to
6-6 environmental impacts to groundwater; or

6-7 (2) the protection of ecological resources.

6-8 (g) This subchapter relates to the scope of the response
6-9 action that can be required by the executive director in municipal
6-10 settings designated under this subchapter. Nothing in this
6-11 subchapter shall be construed to alter or affect the private rights
6-12 of action of any person under any statute or common law for personal
6-13 injury or property damage caused by the release of contaminants.

6-14 SECTION 2. Subsection (a), Section 211.003, Local
6-15 Government Code, is amended to read as follows:

6-16 (a) The governing body of a municipality may regulate:

6-17 (1) the height, number of stories, and size of
6-18 buildings and other structures;

6-19 (2) the percentage of a lot that may be occupied;

6-20 (3) the size of yards, courts, and other open spaces;

6-21 (4) population density; ~~and~~

6-22 (5) the location and use of buildings, other
6-23 structures, and land for business, industrial, residential, or
6-24 other purposes; and

6-25 (6) the pumping, extraction, and use of groundwater by
6-26 persons other than retail public utilities, as defined by Section
6-27 13.002, Water Code, for the purpose of preventing the use or contact
6-28 with groundwater that presents an actual or potential threat to
6-29 human health.

6-30 SECTION 3. Subsection (a), Section 212.003, Local
6-31 Government Code, is amended to read as follows:

6-32 (a) The governing body of a municipality by ordinance may
6-33 extend to the extraterritorial jurisdiction of the municipality the
6-34 application of municipal ordinances adopted under Section 212.002
6-35 and other municipal ordinances relating to access to public roads
6-36 or the pumping, extraction, and use of groundwater by persons other
6-37 than retail public utilities, as defined by Section 13.002, Water
6-38 Code, for the purpose of preventing the use or contact with
6-39 groundwater that presents an actual or potential threat to human
6-40 health. However, unless otherwise authorized by state law, in its
6-41 extraterritorial jurisdiction a municipality shall not regulate:

6-42 (1) the use of any building or property for business,
6-43 industrial, residential, or other purposes;

6-44 (2) the bulk, height, or number of buildings
6-45 constructed on a particular tract of land;

6-46 (3) the size of a building that can be constructed on a
6-47 particular tract of land, including without limitation any
6-48 restriction on the ratio of building floor space to the land square
6-49 footage;

6-50 (4) the number of residential units that can be built
6-51 per acre of land; or

6-52 (5) the size, type, or method of construction of a
6-53 water or wastewater facility that can be constructed to serve a
6-54 developed tract of land if:

6-55 (A) the facility meets the minimum standards
6-56 established for water or wastewater facilities by state and federal
6-57 regulatory entities; and

6-58 (B) the developed tract of land is:

6-59 (i) located in a county with a population of
6-60 2.8 million or more; and

6-61 (ii) served by:

6-62 (a) on-site septic systems
6-63 constructed before September 1, 2001, that fail to provide adequate
6-64 services; or

6-65 (b) on-site water wells constructed
6-66 before September 1, 2001, that fail to provide an adequate supply of
6-67 safe drinking water.

6-68 SECTION 4. Chapter 401, Local Government Code, is amended
6-69 by adding Section 401.005 to read as follows:

