

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
drinking, showering, bathing, or cooking purposes.

(3) "Response action" means the cleanup or removal
from the environment of a hazardous substance or contaminant,
excluding a waste, pollutant, or substance regulated by or that

1 results from an activity under the jurisdiction of the Railroad
2 Commission of Texas under Chapter 91 or 141, Natural Resources
3 Code, or Chapter 27, Water Code.

4 Sec. 361.802. PURPOSE. The purpose of this subchapter is to
5 provide authorization to the executive director to certify
6 municipal setting designations for municipal properties in order to
7 limit the scope of or eliminate the need for response actions
8 addressing contaminant impacts to groundwater that has been
9 restricted from use as potable water by ordinance or restrictive
10 covenant.

11 Sec. 361.803. ELIGIBILITY FOR A MUNICIPAL SETTING
12 DESIGNATION. A person, including a local government, may submit a
13 request to the executive director for a municipal setting
14 designation for property if:

15 (1) the property is within the corporate limits or
16 extraterritorial jurisdiction of a municipality authorized by
17 statute that has a population of at least 20,000;

18 (2) a public drinking water supply system exists that
19 satisfies the requirements of Chapter 341 and that supplies or is
20 capable of supplying drinking water to:

21 (A) the property for which designation is sought;
22 and

23 (B) property within one-half mile of the property
24 for which designation is sought; and

25 (3) the property for which designation is sought is or
26 will be subject to:

27 (A) an ordinance authorized under the Local

1 Government Code that prohibits the use of groundwater from beneath
2 the property as potable water and that appropriately restricts
3 other uses of groundwater from beneath the property in a manner
4 consistent with maintaining groundwater quality; or

5 (B) a restrictive covenant that prohibits the use
6 of groundwater from beneath the property as potable water and
7 appropriately restricts other uses of groundwater from beneath the
8 property in a manner consistent with maintaining groundwater
9 quality.

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;

22 (C) a statement as to whether the municipality
23 that contains the property for which the designation is sought, or
24 any municipality within one-half mile of the property for which the
25 designation is sought, supports the proposed designation;

26 (D) an affidavit that affirmatively states that:

27 (i) the municipal setting designation

1 eligibility criteria contained in Section 361.803 are satisfied;

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

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

9 (iv) notice was provided in accordance with
10 Section 361.805;

11 (E) proof of notice, as required by Section
12 361.805(c); and

13 (F) a copy of the ordinance or restrictive
14 covenant satisfying the requirements described in Section
15 361.803(3), or a statement that the applicant will provide a copy of
16 the ordinance or restrictive covenant satisfying the requirements
17 described in Section 361.803(3) before the executive director
18 certifies the municipal setting designation in accordance with
19 Section 361.807.

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

23 (1) issue a municipal setting designation certificate
24 in accordance with Section 361.807;

25 (2) deny the application in accordance with Section
26 361.806; or

27 (3) request additional information for the municipal

1 setting designation application based on the eligibility criteria
2 provided by Section 361.803.

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

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

10 (1) the municipality in which the property for which
11 the designation is sought is located; and

12 (2) any municipality whose boundaries are within
13 one-half mile of the property for which the designation is sought.

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

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

16 (2) the eligibility criteria for a municipal setting
17 designation;

18 (3) a copy of this subchapter;

19 (4) the location and description of the property for
20 which the designation is sought;

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

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

1 (c) The applicant must submit copies of the notice letter
2 delivered to the municipality or municipalities described in
3 Subsection (a) and the signed delivery receipts to the executive
4 director with the application.

5 Sec. 361.806. DENIAL OF APPLICATION. (a) The executive
6 director may deny an application submitted under Section 361.804
7 if:

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

11 (2) the municipal setting designation would
12 negatively impact the current and future regional water resource
13 needs or obligations of the municipality where the property for
14 which the designation is sought is located or any municipality
15 whose boundaries are located within one-half mile of the property
16 for which the designation is sought; or

17 (3) the application is incomplete or inaccurate.

18 (b) If the executive director determines that an
19 application is incomplete or inaccurate, the executive director,
20 not later than the 90th day after receipt of the application, shall
21 provide the applicant with a list of all information needed to make
22 the application complete or accurate. An applicant may resubmit an
23 application once without submitting an additional application fee
24 if the applicant resubmits the application not later than the 45th
25 day after the date the executive director issues notice that the
26 application is incomplete or inaccurate.

27 (c) If the executive director denies the application, the

1 executive director shall:

2 (1) notify the applicant that the application has been
3 denied; and

4 (2) explain the reasons for the denial of the
5 application.

6 Sec. 361.807. CERTIFICATION. (a) If the executive
7 director determines that an applicant has submitted a complete
8 application, including a copy of the ordinance or restrictive
9 covenant satisfying the requirements described in
10 Section 361.803(3), the executive director shall issue a municipal
11 setting designation certificate to:

12 (1) the applicant for the municipal setting
13 designation;

14 (2) the municipality in which the municipal setting
15 designation is located; and

16 (3) the municipality whose boundaries are within
17 one-half mile of the municipal setting designation.

18 (b) The municipal setting designation certificate shall:

19 (1) indicate that the municipal setting designation
20 eligibility criteria described in Section 361.803 are satisfied
21 and that the executive director has certified the municipal setting
22 designation;

23 (2) indicate that any person addressing environmental
24 impacts for a property located in the certified municipal setting
25 designation shall complete any necessary investigation and
26 response action requirements in accordance with Section 361.808;
27 and

1 (3) include a legal description of the outer
2 boundaries of the municipal setting designation.

3 (c) If the executive director determines that an applicant
4 has submitted a complete application except that an ordinance or
5 restrictive covenant satisfying the requirements described in
6 Section 361.803(3) has not been submitted, the executive director
7 shall issue a letter to the parties listed in Subsection (a) stating
8 that a municipal setting designation will be certified on
9 submission of a copy of the ordinance or restrictive covenant
10 satisfying the requirements described in Section 361.803(3). On
11 submission of the ordinance or restrictive covenant satisfying the
12 requirements described in Section 361.803(3), the executive
13 director shall issue a municipal setting designation certificate in
14 accordance with Subsections (a) and (b).

15 Sec. 361.808. INVESTIGATION AND RESPONSE ACTION
16 REQUIREMENTS. (a) If no potable water wells are located or
17 planned to be located within one-half mile beyond the boundary of a
18 municipal setting designation, the executive director may not
19 require a person addressing environmental impacts for a property
20 located in the municipal setting designation to:

21 (1) investigate the nature and extent of contamination
22 in groundwater except to satisfy the requirements of Subsection
23 (b); or

24 (2) conduct response actions to remove,
25 decontaminate, or control environmental impacts to groundwater
26 based solely on potential potable water use.

27 (b) Notwithstanding Subsection (a), the executive director

1 may require a person to complete a response action to address
2 environmental impacts to groundwater in a certified municipal
3 setting designation if action is necessary to ensure:

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

9 (2) the protection of ecological resources.

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

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

1 to satisfy Subsection (b).

2 (e) If an investigation described in Subsection (c)
3 confirms that groundwater emanating from the property has caused or
4 is reasonably anticipated to cause applicable human consumption or
5 ecological standards to be exceeded in the certified municipal
6 setting designation or in the area located within one-half mile
7 beyond the boundary of the certified municipal setting designation,
8 the executive director shall approve the completion of groundwater
9 response action at the property if the person addressing
10 environmental impacts:

11 (1) completes response actions at the property to
12 remove, decontaminate, or control environmental impacts to
13 groundwater to meet applicable human consumption or ecological
14 standards; or

15 (2) completes response actions at the property to
16 remove, decontaminate, or control environmental impacts to
17 groundwater that are not related to a potable water use, including
18 actions to protect humans from exposures from nonconsumptive uses
19 and exposures resulting from inadvertent contact with contaminated
20 groundwater and actions to protect ecological resources, and:

21 (A) provides to owners of impacted potable water
22 wells described in Subsection (c) a reliable alternate water supply
23 that will provide a volume of water sufficient for the intended use
24 for a period not shorter than the period that the impacted wells
25 exceed the human consumption or ecological standards and, after
26 obtaining permission from such owners, files a restrictive covenant
27 that prohibits the use of groundwater as potable water and

1 restricts other uses of groundwater in a manner consistent with
2 groundwater quality; or

3 (B) expands the municipal setting designation to
4 include the properties with impacted potable water wells described
5 in Subsection (c).

6 (f) Notwithstanding any other provision of this section,
7 the executive director may require a person responsible for
8 property within a certified municipal setting designation to
9 complete a response action to address environmental impacts to
10 groundwater emanating from the property that has caused or is
11 reasonably anticipated to cause applicable human consumption or
12 ecological standards to be exceeded in an area located more than
13 one-half mile beyond the boundary of the certified municipal
14 setting designation, provided such action is necessary to ensure:

15 (1) the protection of humans from exposures to
16 environmental impacts to groundwater; or

17 (2) the protection of ecological resources.

18 (g) This subchapter relates to the scope of the response
19 action that can be required by the commission in municipal settings
20 designated under this subchapter. Nothing in this subchapter shall
21 be construed to alter or affect the private rights of action of any
22 person under any statute or common law for personal injury or
23 property damage caused by the release of contaminants.

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

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

27 (1) the height, number of stories, and size of

1 buildings and other structures;

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

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

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

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

8 (6) the pumping, extraction, and use of groundwater
9 for drinking purposes.

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

12 (a) The governing body of a municipality by ordinance may
13 extend to the extraterritorial jurisdiction of the municipality the
14 application of municipal ordinances adopted under Section 212.002
15 and other municipal ordinances relating to access to public roads
16 or the pumping, extraction, and use of groundwater for drinking
17 purposes. However, unless otherwise authorized by state law, in
18 its extraterritorial jurisdiction a municipality shall not
19 regulate:

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

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

24 (3) the size of a building that can be constructed on a
25 particular tract of land, including without limitation any
26 restriction on the ratio of building floor space to the land square
27 footage;

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

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

6 (A) the facility meets the minimum standards
7 established for water or wastewater facilities by state and federal
8 regulatory entities; and

9 (B) the developed tract of land is:

10 (i) located in a county with a population of
11 2.8 million or more; and

12 (ii) served by:

13 (a) on-site septic systems
14 constructed before September 1, 2001, that fail to provide adequate
15 services; or

16 (b) on-site water wells constructed
17 before September 1, 2001, that fail to provide an adequate supply of
18 safe drinking water.

19 SECTION 4. This Act takes effect September 1, 2003.