

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1748
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Natural Resources
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, there are several requirements for a city to issue a Municipal Setting Designation (MSD). Not only must the city where the property is located agree, but the neighboring cities and the people who operate water wells nearby must also agree. Each city within one-half mile of the property, and anyone who operates a water well within five miles of the property, must affirmatively consent to the MSD. The people who operate water wells can include individuals or, more commonly, municipal utility districts.

The way the law is currently drafted, every city within one-half mile or well operated within five miles must affirmatively pass a resolution supporting the MSD. If even one of these entities declines to adopt a resolution then the MSD cannot be granted. This means that these entities currently have a pocket veto. Unless they affirmatively support the MSD, it is the same as if they pass an ordinance opposing it. So, the entities that do not want to get involved in the issue and simply take no action at all have actually prohibited the MSD from going into effect.

C.S.S.B. 1748 requires an applicant for a certificate for a municipal setting designation to provide a copy of the ordinance or restrictive covenant and any other required documentation.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC) the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 361.804(b), Health and Safety Code, to require that an application submitted under this section contain, if available at the time of the application, a copy of the ordinance or restrictive covenant and any required resolutions or other documentation satisfying the requirements described in Section 361.8065 (Precertification Requirements) or a statement that the applicant will provide a copy of the ordinance or restrictive covenant and any required resolutions or other documentation satisfying the requirements described in Section 361.8065 before the executive director certifies that municipal setting designation in accordance with Section 361.807 (Certification).

SECTION 2. Amends Section 361.805(b), Health and Safety Code, to require the notice to include, at a minimum, a statement that a municipality described by Subsection (a)(1)(B) (relating to a boundary located not more than one-half mile from the property for which the designation is sought) or (C) (relating to requiring an applicant to submit copies of the notice letters) or a public utility described by Subsection (a)(3) (relating to each retail public utility that owns or operates a groundwater supply well located not more than five miles from the property for which the designation is sought) has 120 days from the date of receipt of the notice required by this section to pass a resolution opposing the application for a municipal designation setting.

SECTION 3. Amends Section 361.8065(a), Health and Safety Code, to require the applicant, before the executive director of the Texas Natural Resource Conservation Commission is authorized to issue a municipal setting designation certificate under Section 361.807

(Certification), to provide documentation, which is authorized to be in the form of an affidavit of the applicant or the applicant's representative, that no resolution opposing the application has been adopted within 120 days of receipt of the notice provided under Section 361.805 (Notice) by certain entities, rather than documentation that the application is supported by a resolution adopted by certain entities. Makes nonsubstantive changes.

SECTION 4. Amends Section 361.807(c), Health and Safety Code, to require the executive director, if the executive director determines that an applicant has submitted a complete application except that an ordinance or restrictive covenant and any required documentation, rather than resolutions, satisfying the requirements described by Section 361.8065 have not been submitted, to issue a letter to the applicant listed in Subsection (a) (relating to the executive director issuing a copy of the municipal setting designation certificate to an applicant), stating that a municipal setting designation will be certified on submission of a copy of the ordinance or restrictive covenant and any required documentation, rather than resolutions, satisfying the requirements described in Section 361.8065. Makes conforming changes.

SECTION 5. Effective date: September 1, 2009.