

By: Murphy, Coleman

H.B. No. 2826

A BILL TO BE ENTITLED

AN ACT

relating to the issuance of a certificate for a municipal setting designation.

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

SECTION 1. Section 361.804(b), Health and Safety Code, is amended to read as follows:

(b) An application submitted under this section must:

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

(2) contain the following:

(A) the applicant's name and address;

(B) a legal description of the outer boundaries of the proposed municipal setting designation and a specific description of the designated groundwater that will be restricted under the ordinance or restrictive covenant described by Section 361.8065(a)(2) or (c)(2), as applicable;

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

(D) an affidavit that affirmatively states that:

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

(ii) true and accurate copies of all documents demonstrating that the municipal setting designation eligibility criteria provided by Section 361.803 have been

1 satisfied are included with the application;

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

5 (iv) notice was provided in accordance with  
6 Section 361.805;

7 (E) a statement regarding the type of known  
8 contamination in the groundwater beneath the property proposed for  
9 a municipal setting designation;

10 (F) proof of notice, as required by Section  
11 361.805(c); and

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

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

22 SECTION 2. Section 361.805(b), Health and Safety Code, is  
23 amended to read as follows:

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 a municipality described by  
4 Subsection (a)(1) or retail public utility described by Subsection  
5 (a)(3) may provide written comments on any information relevant to  
6 the executive director's consideration of the municipal setting  
7 designation;

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

12           (6) the type of contamination on the property for  
13 which the designation is sought; ~~and~~

14           (7) identification of the party responsible for the  
15 contamination of the property, if known; and

16           (8) if the property for which the municipal setting  
17 designation is sought is located in a municipality that has a  
18 population of two million or more and the applicant intends to  
19 comply with the requirements of Section 361.8065 for issuance of a  
20 municipal setting designation certificate under Section 361.807 by  
21 complying with the requirements of Section 361.8065(c), a statement  
22 that a municipality described by Subsection (a)(1)(B) or (C) of  
23 this section or a public utility described by Subsection (a)(3) of  
24 this section has 120 days from the date of receipt of the notice  
25 required by this section to pass a resolution opposing the  
26 application for a municipal designation setting.

27           SECTION 3. Section 361.8065, Health and Safety Code, is

1 amended by amending Subsection (a) and adding Subsections (c) and  
2 (d) to read as follows:

3 (a) Except as provided by Subsection (c), before ~~[Before]~~  
4 the executive director may issue a municipal setting designation  
5 certificate under Section 361.807, the applicant must provide  
6 documentation of the following:

7 (1) that the application is supported by a resolution  
8 adopted by:

9 (A) the city council of each municipality  
10 described by Section 361.805(a)(1)(B) or (C); and

11 (B) the governing body of each retail public  
12 utility described by Section 361.805(a)(3); and

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

15 (A) subject to an ordinance that prohibits the  
16 use of designated groundwater from beneath the property as potable  
17 water and that appropriately restricts other uses of and contact  
18 with that groundwater; or

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

25 (c) If the property for which the municipal setting  
26 designation is sought is located in a municipality that has a  
27 population of two million or more and the applicant has complied

1 with the requirements of Section 361.805(b)(8), the applicant is  
2 considered to have complied with the requirements of Subsection (a)  
3 of this section for eligibility for a municipal setting designation  
4 certificate under Section 361.807 if the applicant provides  
5 documentation of the following:

6 (1) that no resolution opposing the application has  
7 been adopted within 120 days of receipt of the notice provided under  
8 Section 361.805 by:

9 (A) the city council of any municipality  
10 described by Section 361.805(a)(1)(B) or (C); or

11 (B) the governing body of any retail public  
12 utility described by Section 361.805(a)(3); and

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

14 (A) is currently or has previously been under the  
15 oversight of the commission or the United States Environmental  
16 Protection Agency; and

17 (B) is subject to:

18 (i) an ordinance that prohibits the use of  
19 designated groundwater from beneath the property as potable water  
20 and that appropriately restricts other uses of and contact with  
21 that groundwater; or

22 (ii) a restrictive covenant enforceable by  
23 the municipality in which the property for which the designation is  
24 sought is located that prohibits the use of designated groundwater  
25 from beneath the property as potable water and appropriately  
26 restricts other uses of and contact with that groundwater.

27 (d) The documentation required under Subsection (c)(1) may

1 be in the form of an affidavit of the applicant or the applicant's  
2 representative.

3 SECTION 4. Section 361.807(c), Health and Safety Code, is  
4 amended to read as follows:

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

19 SECTION 5. This Act takes effect September 1, 2011.