

By: Murphy

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.