

1-1 By: Murphy, Coleman (Senate Sponsor - Huffman) H.B. No. 2826
1-2 (In the Senate - Received from the House May 5, 2011;
1-3 May 9, 2011, read first time and referred to Committee on Natural
1-4 Resources; May 13, 2011, reported favorably by the following vote:
1-5 Yeas 9, Nays 0; May 13, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the issuance of a certificate for a municipal setting
1-9 designation.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 361.804(b), Health and Safety Code, is
1-12 amended to read as follows:

1-13 (b) An application submitted under this section must:

1-14 (1) be on a form provided by the executive director;

1-15 (2) contain the following:

1-16 (A) the applicant's name and address;

1-17 (B) a legal description of the outer boundaries
1-18 of the proposed municipal setting designation and a specific
1-19 description of the designated groundwater that will be restricted
1-20 under the ordinance or restrictive covenant described by Section
1-21 361.8065(a)(2) or (c)(2), as applicable;

1-22 (C) a statement as to whether the municipalities
1-23 or the retail public utilities entitled to notice under Section
1-24 361.805 support the proposed designation;

1-25 (D) an affidavit that affirmatively states that:

1-26 (i) the municipal setting designation
1-27 eligibility criteria contained in Section 361.803 are satisfied;

1-28 (ii) true and accurate copies of all
1-29 documents demonstrating that the municipal setting designation
1-30 eligibility criteria provided by Section 361.803 have been
1-31 satisfied are included with the application;

1-32 (iii) a true and accurate copy of a legal
1-33 description of the property for which the municipal setting
1-34 designation is sought is included with the application; and

1-35 (iv) notice was provided in accordance with
1-36 Section 361.805;

1-37 (E) a statement regarding the type of known
1-38 contamination in the groundwater beneath the property proposed for
1-39 a municipal setting designation;

1-40 (F) proof of notice, as required by Section
1-41 361.805(c); and

1-42 (G) if available at the time of the application,
1-43 a copy of the ordinance or restrictive covenant and any required
1-44 resolutions or other documentation satisfying the requirements
1-45 described in Section 361.8065, or a statement that the applicant
1-46 will provide a copy of the ordinance or restrictive covenant and any
1-47 required resolutions or other documentation satisfying the
1-48 requirements described in Section 361.8065 before the executive
1-49 director certifies the municipal setting designation in accordance
1-50 with Section 361.807; and

1-51 (3) be accompanied by an application fee of \$1,000.

1-52 SECTION 2. Section 361.805(b), Health and Safety Code, is
1-53 amended to read as follows:

1-54 (b) The notice must include, at a minimum:

1-55 (1) the purpose of the municipal setting designation;

1-56 (2) the eligibility criteria for a municipal setting
1-57 designation;

1-58 (3) the location and description of the property for
1-59 which the designation is sought;

1-60 (4) a statement that a municipality described by
1-61 Subsection (a)(1) or retail public utility described by Subsection
1-62 (a)(3) may provide written comments on any information relevant to
1-63 the executive director's consideration of the municipal setting
1-64 designation;

2-1 (5) a statement that the executive director will
2-2 certify or deny the application or request additional information
2-3 from the applicant not later than 90 days after receiving the
2-4 application;

2-5 (6) the type of contamination on the property for
2-6 which the designation is sought; ~~and~~

2-7 (7) identification of the party responsible for the
2-8 contamination of the property, if known; and

2-9 (8) if the property for which the municipal setting
2-10 designation is sought is located in a municipality that has a
2-11 population of two million or more and the applicant intends to
2-12 comply with the requirements of Section 361.8065 for issuance of a
2-13 municipal setting designation certificate under Section 361.807 by
2-14 complying with the requirements of Section 361.8065(c), a statement
2-15 that a municipality described by Subsection (a)(1)(B) or (C) of
2-16 this section or a public utility described by Subsection (a)(3) of
2-17 this section has 120 days from the date of receipt of the notice
2-18 required by this section to pass a resolution opposing the
2-19 application for a municipal setting designation.

2-20 SECTION 3. Section 361.8065, Health and Safety Code, is
2-21 amended by amending Subsection (a) and adding Subsections (c) and
2-22 (d) to read as follows:

2-23 (a) Except as provided by Subsection (c), before ~~Before~~
2-24 the executive director may issue a municipal setting designation
2-25 certificate under Section 361.807, the applicant must provide
2-26 documentation of the following:

2-27 (1) that the application is supported by a resolution
2-28 adopted by:

2-29 (A) the city council of each municipality
2-30 described by Section 361.805(a)(1)(B) or (C); and

2-31 (B) the governing body of each retail public
2-32 utility described by Section 361.805(a)(3); and

2-33 (2) that the property for which designation is sought
2-34 is:

2-35 (A) subject to an ordinance that prohibits the
2-36 use of designated groundwater from beneath the property as potable
2-37 water and that appropriately restricts other uses of and contact
2-38 with that groundwater; or

2-39 (B) subject to a restrictive covenant
2-40 enforceable by the municipality in which the property for which the
2-41 designation is sought is located that prohibits the use of
2-42 designated groundwater from beneath the property as potable water
2-43 and appropriately restricts other uses of and contact with that
2-44 groundwater.

2-45 (c) If the property for which the municipal setting
2-46 designation is sought is located in a municipality that has a
2-47 population of two million or more and the applicant has complied
2-48 with the requirements of Section 361.805(b)(8), the applicant is
2-49 considered to have complied with the requirements of Subsection (a)
2-50 of this section for eligibility for a municipal setting designation
2-51 certificate under Section 361.807 if the applicant provides
2-52 documentation of the following:

2-53 (1) that no resolution opposing the application has
2-54 been adopted within 120 days of receipt of the notice provided under
2-55 Section 361.805 by:

2-56 (A) the city council of any municipality
2-57 described by Section 361.805(a)(1)(B) or (C); or

2-58 (B) the governing body of any retail public
2-59 utility described by Section 361.805(a)(3); and

2-60 (2) that the property for which designation is sought:

2-61 (A) is currently or has previously been under the
2-62 oversight of the commission or the United States Environmental
2-63 Protection Agency; and

2-64 (B) is subject to:

2-65 (i) an ordinance that prohibits the use of
2-66 designated groundwater from beneath the property as potable water
2-67 and that appropriately restricts other uses of and contact with
2-68 that groundwater; or

2-69 (ii) a restrictive covenant enforceable by

3-1 the municipality in which the property for which the designation is
3-2 sought is located that prohibits the use of designated groundwater
3-3 from beneath the property as potable water and appropriately
3-4 restricts other uses of and contact with that groundwater.

3-5 (d) The documentation required under Subsection (c)(1) may
3-6 be in the form of an affidavit of the applicant or the applicant's
3-7 representative.

3-8 SECTION 4. Section 361.807(c), Health and Safety Code, is
3-9 amended to read as follows:

3-10 (c) If the executive director determines that an applicant
3-11 has submitted a complete application except that an ordinance or
3-12 restrictive covenant and any required documentation [~~resolutions~~]
3-13 satisfying the requirements described in Section 361.8065 have not
3-14 been submitted, the executive director shall issue a letter to the
3-15 applicant listed in Subsection (a) stating that a municipal setting
3-16 designation will be certified on submission of a copy of the
3-17 ordinance or restrictive covenant and any required documentation
3-18 [~~resolutions~~] satisfying the requirements described in Section
3-19 361.8065. On submission of the ordinance or restrictive covenant
3-20 and any required documentation [~~resolutions~~] satisfying the
3-21 requirements described in Section 361.8065, the executive director
3-22 shall issue a municipal setting designation certificate in
3-23 accordance with Subsections (a) and (b).

3-24 SECTION 5. This Act takes effect September 1, 2011.

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