

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 irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes.

(3) "Response action" means the cleanup or removal from the environment of a hazardous substance or contaminant,

1 excluding a waste, pollutant, or substance regulated by or that
2 results from an activity under the jurisdiction of the Railroad
3 Commission of Texas under Chapter 91 or 141, Natural Resources
4 Code, or Chapter 27, Water Code.

5 Sec. 361.8015. LEGISLATIVE FINDINGS. (a) The legislature
6 finds that access to and the use of groundwater may need to be
7 restricted to protect public health and welfare where the quality
8 of groundwater presents an actual or potential threat to human
9 health.

10 (b) The legislature finds that an action by a municipality
11 to restrict access to or the use of groundwater in support of or to
12 facilitate a municipal setting designation advances a substantial
13 and legitimate state interest where the quality of the groundwater
14 subject to the designation is an actual or potential threat to human
15 health.

16 Sec. 361.802. PURPOSE. The purpose of this subchapter is to
17 provide authorization to the executive director to certify
18 municipal setting designations for municipal properties in order to
19 limit the scope of or eliminate the need for investigation of or
20 response actions addressing contaminant impacts to groundwater
21 that has been restricted from use as potable water by ordinance or
22 restrictive covenant.

23 Sec. 361.803. ELIGIBILITY FOR A MUNICIPAL SETTING
24 DESIGNATION. A person, including a local government, may submit a
25 request to the executive director for a municipal setting
26 designation for property if:

27 (1) the property is within the corporate limits or

1 extraterritorial jurisdiction of a municipality authorized by
2 statute that has a population of at least 20,000; and

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

6 (A) the property for which designation is sought;
7 and

8 (B) property within one-half mile of the property
9 for which designation is sought.

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 to the
13 executive director as prescribed by this section.

14 (b) An application submitted under this section must:

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

16 (2) contain the following:

17 (A) the applicant's name and address;

18 (B) a legal description of the outer boundaries
19 of the proposed municipal setting designation and a specific
20 description of the designated groundwater that will be restricted
21 under the ordinance or restrictive covenant described by Section
22 361.8065(a)(2);

23 (C) a statement as to whether the municipalities
24 or the retail public utilities entitled to notice under Section
25 361.805 support 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) a statement regarding the type of known
12 contamination in the groundwater beneath the property proposed for
13 a municipal setting designation;

14 (F) proof of notice, as required by Section
15 361.805(c); and

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

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

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

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

3 (2) deny the application in accordance with Section
4 361.806; or

5 (3) request additional information for the municipal
6 setting designation application.

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

11 (e) Fees collected under this section shall be deposited to
12 the credit of the waste management account.

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

16 (1) each municipality:

17 (A) in which the property for which the
18 designation is sought is located;

19 (B) with a boundary located not more than
20 one-half mile from the property for which the designation is
21 sought; or

22 (C) that owns or operates a groundwater supply
23 well located not more than five miles from the property for which
24 the designation is sought;

25 (2) each owner of a private water well registered with
26 the commission that is located not more than five miles from a
27 boundary of the property for which the designation is sought; and

1 (3) each retail public utility, as defined by Section
2 13.002, Water Code, that owns or operates a groundwater supply well
3 located not more than five miles from the property for which the
4 designation is sought.

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

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

7 (2) the eligibility criteria for a municipal setting
8 designation;

9 (3) the location and description of the property for
10 which the designation is sought;

11 (4) a statement that a municipality described by
12 Subsection (a)(1) or retail public utility described by Subsection
13 (a)(3) may provide written comments on any information relevant to
14 the executive director's consideration of the municipal setting
15 designation;

16 (5) a statement that the executive director will
17 certify or deny the application or request additional information
18 from the applicant not later than 90 days after receiving the
19 application;

20 (6) the type of contamination on the property for
21 which the designation is sought; and

22 (7) identification of the party responsible for the
23 contamination of the property, if known.

24 (c) The applicant must submit copies of the notice letters
25 delivered in accordance with Subsection (a) and the signed delivery
26 receipts to the executive director with the application.

27 (d) For the purpose of this section, notice to a

1 municipality must be provided to the city secretary for the
2 municipality and notice to a retail public utility must be to the
3 registered agent, the owner, or the manager.

4 (e) A municipality, retail public utility, or private well
5 owner entitled to notice under this section may file comments with
6 the executive director not later than the 60th day after the date
7 the municipality, retail public utility, or private well owner
8 receives the notice under this section.

9 Sec. 361.806. DENIAL OF APPLICATION. (a) The executive
10 director shall deny an application submitted under Section 361.804
11 if:

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

15 (2) the application is incomplete or inaccurate; or

16 (3) after the 60-day comment period described by
17 Section 361.805(e), the executive director determines that the
18 municipal setting designation would negatively impact the current
19 and future regional water resource needs or obligations of a
20 municipality, a retail public utility, or a private well owner
21 described by Section 361.805(a).

22 (b) If the executive director determines that an
23 application is incomplete or inaccurate, the executive director,
24 not later than the 90th day after receipt of the application, shall
25 provide the applicant with a list of all information needed to make
26 the application complete or accurate.

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. 361.8065. PRECERTIFICATION REQUIREMENTS. (a) Before
7 the executive director may issue a municipal setting designation
8 certificate under Section 361.807, the applicant must provide
9 documentation of the following:

10 (1) that the application is supported by a resolution
11 adopted by:

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

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

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

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

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

1 (b) A designation described by Subsection (a)(2)(B) must be
2 supported by a resolution passed by the city council of the
3 municipality.

4 Sec. 361.807. CERTIFICATION. (a) If the executive
5 director determines that an applicant has complied with Section
6 361.8065 and submitted a complete application, the executive
7 director shall issue a copy of the municipal setting designation
8 certificate to:

9 (1) the applicant for the municipal setting
10 designation;

11 (2) each municipality, retail public utility, and
12 private well owner described by Section 361.805(a); and

13 (3) each person who submitted comments on the
14 application for the municipal setting designation and anyone else
15 who requested a copy during the review period.

16 (b) The municipal setting designation certificate shall:

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

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

26 (3) include a legal description of the outer
27 boundaries of the municipal setting designation.

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

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

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

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

26 (b) Notwithstanding Subsection (a), the executive director
27 shall require a responsible person to complete a response action to

1 address environmental impacts to groundwater in a certified
2 municipal setting designation if action is necessary to ensure:

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

8 (2) the protection of ecological resources.

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

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

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

9 (1) completes response actions at the source property
10 to remove, decontaminate, or control environmental impacts to
11 groundwater to meet applicable human health or ecological
12 standards; or

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

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

1 (B) expands the municipal setting designation in
2 accordance with the procedures under this subchapter relating to
3 the initial application for a 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 health 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 executive director in municipal
20 settings designated under this subchapter. Nothing in this
21 subchapter shall be construed to alter or affect the private rights
22 of action of any person under any statute or common law for personal
23 injury or property damage caused by the release of contaminants.
24 Nothing in this subchapter is meant to alter or supersede any
25 requirement of a federally authorized environmental program
26 administered by the State of Texas.

27 SECTION 2. Subsection (a), Section 211.003, Local

1 Government Code, is amended to read as follows:

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

3 (1) the height, number of stories, and size of
4 buildings and other structures;

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

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

7 (4) population density; [~~and~~]

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

11 (6) the pumping, extraction, and use of groundwater by
12 persons other than retail public utilities, as defined by Section
13 13.002, Water Code, for the purpose of preventing the use or contact
14 with groundwater that presents an actual or potential threat to
15 human health.

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

18 (a) The governing body of a municipality by ordinance may
19 extend to the extraterritorial jurisdiction of the municipality the
20 application of municipal ordinances adopted under Section 212.002
21 and other municipal ordinances relating to access to public roads
22 or the pumping, extraction, and use of groundwater by persons other
23 than retail public utilities, as defined by Section 13.002, Water
24 Code, for the purpose of preventing the use or contact with
25 groundwater that presents an actual or potential threat to human
26 health. However, unless otherwise authorized by state law, in its
27 extraterritorial jurisdiction a municipality shall not regulate:

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

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

5 (3) the size of a building that can be constructed on a
6 particular tract of land, including without limitation any
7 restriction on the ratio of building floor space to the land square
8 footage;

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

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

14 (A) the facility meets the minimum standards
15 established for water or wastewater facilities by state and federal
16 regulatory entities; and

17 (B) the developed tract of land is:

18 (i) located in a county with a population of
19 2.8 million or more; and

20 (ii) served by:

21 (a) on-site septic systems
22 constructed before September 1, 2001, that fail to provide adequate
23 services; or

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

27 SECTION 4. Chapter 401, Local Government Code, is amended

1 by adding Section 401.005 to read as follows:

2 Sec. 401.005. RESTRICTION ON PUMPING, EXTRACTION, OR USE OF
3 GROUNDWATER. (a) For the purpose of establishing and enforcing a
4 municipal setting designation, the governing body of a municipality
5 may regulate the pumping, extraction, or use of groundwater by
6 persons other than retail public utilities, as defined by Section
7 13.002, Water Code, to prevent the use of or contact with
8 groundwater that presents an actual or potential threat to human
9 health.

10 (b) For the purpose of establishing and enforcing a
11 municipal setting designation, the governing body of a municipality
12 by ordinance may extend to the extraterritorial jurisdiction of the
13 municipality the application of municipal ordinances adopted under
14 this section.

15 SECTION 5. This Act takes effect September 1, 2003.

David Newhall

President of the Senate

Jim Caddick

Speaker of the House

I certify that H.B. No. 3152 was passed by the House on May 8, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 3152 on May 26, 2003, by a non-record vote.

Robert Nancy
Chief Clerk of the House

I certify that H.B. No. 3152 was passed by the Senate, with amendments, on May 24, 2003, by a viva-voce vote.

Lacey Spaw
Secretary of the Senate

APPROVED: 20 JUN '03

Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
10:30 AM O'CLOCK

JUN 20 2003
Kevin Shea
Secretary of State