

SUBJECT: Amendments to water-quality protection zone designations

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 6 ayes — Crabb, Bosse, F. Brown, Hardcastle, Mowery, B. Turner
0 nays
3 absent — Walker, Howard, Krusee

SENATE VOTE: On final passage, April 8 — voice vote

WITNESSES: (*On House companion bill, HB 1693:*)
For — Craig Douglas, Drenner & Stuart and Stratus Properties; Ronald J. Freeman, Phoenix Holdings
Against — None

BACKGROUND: In 1995, the 74th Legislature enacted SB 1017, allowing landowners in the extraterritorial jurisdiction (ETJ) of certain defined cities with more than 5,000 residents to create water-quality protection zones. If a city's action results in part of a zone being outside the city's extraterritorial jurisdiction, the entire zone is removed and may not be brought under the city's extraterritorial jurisdiction until 20 years after the zone originally was designated.

In July 1998, a state district judge struck down SB 1017 as unconstitutional, finding that it was written to exclusively affect the city of Austin. In October 1998, the Texas Supreme Court agreed to hear an appeal of the district court's decision, and the case currently is pending before the court.

Water Code, sec. 26.179 regulates the designation of these zones. The Texas Natural Resource Conservation Commission (TNRCC) is responsible for approving the water-quality plans of the protection zones.

DIGEST: SB 1165 would allow amendments to the designation of a water-quality protection zone. A designation of a zone could specify the party or parties authorized to amend the zone designation, such as by adding or excluding

land, and to amend the zone's water-quality plan. To implement the amendment, the authorized party would have to file the amendment in the deed records of the county where the land was located.

The bill would require TNRCC to approve any changes to a water-quality plan for a protection zone. TNRCC would have to review and approve any amendment within 120 days of the date the amendment was filed. New developments under a plan or an amendment could not proceed until TNRCC approved the changes to the plan.

The bill would allow TNRCC to terminate a zone if all landowners in the zone or each party authorized to amend a zone designation filed an application to terminate the zone on reasonable terms and conditions as specified by the commission.

SB 1165 would increase to 10,000 the population threshold above which a municipality would have to follow the rules for designating a water-quality protection zone in the municipal ETJ.

The bill would restate the purpose of a water-quality protection zone as follows: "to provide for the consistent protection of water quality in the zone without imposing undue regulatory uncertainty on owners of land in the zone."

This bill would take effect August 30, 1999, and would apply to water-quality plans or plan amendments submitted to TNRCC after that date.

**SUPPORTERS
SAY:**

SB 1165 would clarify existing law related to the designation of water-quality protection zones. The original legislation did not specify that the designation of a zone could be amended or terminated or that TNRCC would have to approve any changes to a zone's water-quality plan. The bill's provisions are necessary to ensure that amendments to a plan would go through the same regulatory process as the initial creation of a plan.

The change in the population threshold is intended to conform with the population limit in Water Code, sec. 26.177, related to the establishment of municipal water-pollution control and abatement programs.

The change in the stated purpose for protection zones is intended only to conform with other language in the law related to the purpose of protection zones. The bill would apply only to a water quality plan or amendment to a plan submitted to TNRCC on or after August 30, 1999.

OPPONENTS
SAY:

SB 1165 would not improve the lack of effectiveness of the original law in preventing the degradation of water quality in protection zones. The bill fails to address a number of problems with protection zones under current law, including insufficient quality standards, insufficient TNRCC oversight, inspection, and enforcement power in the zones, and the lack of public participation and comment in the development of water quality policies for the zones.

The process to amend water quality protection zones in the bill could result in unpredictable changes to the inclusion or exclusion of land in a zone. This would increase the uncertainty for cities, state agencies, adjoining landowners, downstream water users, and other parties concerned about the water quality standards for the land in and around a protection zone.

Changing the primary purpose of the 1995 law (SB 1017) from facilitating “the development of the land within the zone” to ensuring “the consistent protection of water quality in the zone without imposing undue regulatory uncertainty” may be an attempt to make the law constitutional. The state district court found that SB 1017 was an unconstitutional attempt to exempt certain areas within only Austin’s extraterritorial jurisdiction from city development restrictions, including those intended to preserve the water quality of Barton Creek.