

SUBJECT: Municipal setting designation related to groundwater quality in small cities

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 6 ayes — Bonnen, Hancock, Lucio, T. King, Kuempel, West

0 nays

1 absent — Driver

WITNESSES: For — Mary Miksa, Texas Association of Business; Jack Jones, David Whitten, City of Terrell; Charles Epperson, Brownfields Stewardship; Aaron Graft, cities of Cockrell Hill, Copper Canyon, Crandall, and several others; (*Registered, but did not testify*: Torry L. Edwards, city of Terrell)

Against — (*Registered, but did not testify*: Beth O'Brien, Public Citizen; Cyrus Reed, Lone Star Chapter of the Sierra Club)

BACKGROUND: The Texas Commission on Environmental Quality (TCEQ) requires entities responsible for the contamination of groundwater to clean the site and the surrounding area so that it meets potable drinking water levels. Alternatively, TCEQ can grant a permanent deed restriction pertaining to properties affected by the contamination. The deed restriction prohibits current and future landowners from using well water on those properties.

In 2003, HB 3152 by Bonnen gave certain municipalities another option for confronting groundwater contaminated in excess of potable drinking water standards. By amending the Solid Waste Disposal Act, the bill allows TCEQ to grant a municipal-setting designation to eligible properties. Such a designation makes owners exempt from removing certain contaminants from groundwater. An ordinance prohibiting the future use of the groundwater beneath that property is required.

For each property under consideration for a municipal-setting designation, the application must be supported by the municipality's city council. The party seeking the designation must provide notice to municipalities, nearby private groundwater well owners, and nearby retail public utility groundwater well owners. As stipulated in Health and Safety Code, sec.

361.803, a person or local government may submit a municipal-setting designation request if:

- the property is located within the corporate limits or extraterritorial jurisdiction of a municipality with a population of at least 20,000; and
- a public drinking water supply system exists that meets minimum standards of sanitation and health protection and can provide water to the property and to other property within one-half mile.

DIGEST:

HB 2018 would amend Health and Safety Code, sec. 361.803 to remove the restriction requiring properties eligible for a municipal-setting designation to be located within the city limits or extraterritorial jurisdiction of a municipality with a population of at least 20,000.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 2018 would give smaller cities the option of applying for municipal-setting designations when necessary to override strict TCEQ regulations on properties with contaminated groundwater. Cities with populations greater than 20,000 have the power under current law to restrict future use of a property's groundwater instead of being required to undertake costly remediation measures. By permitting the condemnation of such sites, local government can transform properties into useful areas for economic development. Cities with fewer than 20,000 inhabitants should be granted the same option to apply for a municipal-setting designation with TCEQ.

Smaller cities must comply with restrictive and expensive standards for properties with contaminated groundwater. Such sites often are abandoned and unused, due to the difficulty of tracking down the party responsible for the contamination. Meanwhile, the clean up of contaminated shallow groundwater is expensive and adds little value to the property, given that such water rarely is used for drinking. By granting small cities eligibility for municipal-setting designation certification, HB 2018 would increase local control over contaminated sites.

Cities with populations less than 20,000 should be afforded the same redevelopment opportunities as larger cities. Currently, larger cities benefit from municipal-setting designations on properties previously

unavailable for redevelopment funding. The designation removes the environmental stigma on properties with contaminated groundwater and allows for redevelopment in accordance with current law. Under HB 2018, developers and private investors could transform blighted properties into new economic development opportunities and create larger tax bases for smaller cities.

HB 2018 would not weaken existing provisions to ensure public health. Under the Solid Waste Disposal Act, TCEQ can require the removal, decontamination, or control of environmental impacts to groundwater in certified municipal-setting designations. This is permitted, for example, to prevent contaminated groundwater from leaking more than one-half mile beyond the certified property. Current law also guarantees local control over the municipal-setting designation process. For example, the city council must approve of the municipal-setting designation for a property to gain certification eligibility with TCEQ.

**OPPONENTS
SAY:**

Smaller cities often lack the staff and technical expertise to properly determine whether or not a site should be certified as a municipal-setting designation. This analysis is an important means of protecting water quality and ensuring local residents' health. HB 2018 would reduce state oversight of contaminated groundwater sites, thereby eliminating this important source of expertise and knowledge.

The state currently holds the appropriate entity responsible for cleaning up groundwater contamination in cities with fewer than 20,000 inhabitants. The removal of contaminants on such sites may be important to future generations of Texans seeking potable water after current sources run dry. The important environmental and public health benefits that stem from current limits should not be changed. HB 2018 could result in smaller cities being unduly influenced by private interests seeking pollution havens. The bill would allow more polluters to escape clean-up requirements on certain sites, as is currently occurring in larger cities.

While current law attempts to protect property owners within one-half mile of the municipal-setting designation, groundwater contamination is not limited to one area. The contaminated plume can spread through the water table and pollute an aquifer for miles. By allowing more cities to avoid cleaning up polluted groundwater, this bill only would exacerbate the problem.

A municipal-setting designation does not necessarily provide for local economic development and an enriched tax base. Allowing groundwater contamination may negatively impact economic development, because polluted property declines in value.