

- SUBJECT:** Procedure for issuing municipal setting designation for contaminated water
- COMMITTEE:** Environmental Regulation — favorable, without amendment
- VOTE:** 7 ayes — W. Smith, Farrar, Aliseda, Burnam, Chisum, Legler, Lyne
0 nays
2 absent — Hancock, Reynolds
- WITNESSES:** For — Debra Baker, Union Pacific Railroad Company; Ceil Price, City of Houston; (*Registered, but did not testify:* Stephen Minick, Texas Association of Business)

Against — Ken Kramer, Lone Star Chapter, Sierra Club; (*Registered, but did not testify:* William Stout, Greater Edwards Aquifer Alliance)
- BACKGROUND:** Under Texas Commission on Environmental Quality (TCEQ) rules, people or businesses that contaminate groundwater must clean up the contaminated site and the surrounding area so that all affected groundwater is clean enough to drink. The alternative to cleanup is to obtain a permanent deed restriction on all properties affected by the contamination that enjoins current and future landowners from using well water or drilling a new well. Such a deed restriction must be obtained with the landowner's consent to ensure that notice is given and all affected property owners are protected from human or animal exposure to contaminated water.

In 2003, the Texas Legislature authorized TCEQ to grant a municipal setting designation (MSD) certificate that would waive certain requirements for removing contaminants. Every city within one-half mile, or a city or retail public utility owning or operating a well within five miles, must affirmatively pass a resolution supporting the MSD.
- DIGEST:** HB 2826 would amend notice provisions in the Solid Waste Disposal Act under the Health and Safety Code to require an applicant for a municipal setting designation (MSD) in Houston to include a statement that an affected municipality or public utility had 120 days from the date

of receipt of the notice to pass a resolution opposing the application for an MSD.

If the applicant had complied with the notice requirements, the applicant would be considered to have complied with the requirements for eligibility for an MSD certificate if the applicant provided documentation that:

- no resolution opposing the application was adopted by the city council of any affected municipality or the governing body of any affected retail public utility within 120 days of the notice;
- the property was currently or had previously been under EPA oversight; and
- the property was subject to an ordinance or restrictive covenant that prohibited the use of designated groundwater from beneath the property as potable water and that appropriately restricted other uses of and contact with the groundwater.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

The 78th Legislature in 2003 created municipal setting designations (MSDs) to allow an alternative means to address contaminated groundwater left behind by businesses such as dry cleaners, high-tech industries, service stations, and others. MSDs help reduce the expense of remediating groundwater back to drinking-water levels and allow urban areas to market properties for redevelopment that otherwise would remain neglected. Cleaning up contaminated groundwater can run many small businesses into bankruptcy. It can cost hundreds of thousands of dollars to clean up a minor spill, but remediating shallow groundwater to the level of drinking water adds little practical value to the affected property because rarely will the water be used for drinking anyway. As a result, a great deal of money and resources are spent assessing and remediating unusable groundwater. By designating a contaminated area as a MSD, businesses and communities save hundreds of thousands of dollars in unnecessary remediation costs.

Cities cannot have a robust MSD program if surrounding cities or retail public utilities can block, by inaction, the action of local city councils. HB 2826 would eliminate the requirement that municipalities or retail public utilities have to actively support an application for a municipal setting designation and would appropriately shift the burden of action to an

objecting party to actively veto TCEQ's approval of an MSD application. This bill would be bracketed to Houston and has the support of the city of Houston.

OPPONENTS
SAY:

Municipal setting designations are areas overlying contaminated groundwater that, following the designation of an MSD, are not required to be cleaned up to high water quality standards on the assumption that they will never be used for drinking water purposes. MSDs may allow areas that could someday be needed for drinking water or other high-quality use to continue to be contaminated and unusable. One check on the designation of an MSD is that any municipality or retail public water supplier potentially impacted by such a designation must adopt a resolution affirmatively supporting the designation. HB 2826 would eliminate that safeguard for the Houston area by requiring the applicant for an MSD in Houston only to submit documentation that no municipality or retail water supplier had adopted a resolution opposing the designation. This would make it easier to get an MSD, especially in instances in which the impacted municipality or retail water supplier had not been able to act quickly enough to pass a resolution opposing the designation.

While this legislation would be limited to Houston, it would set a bad precedent that could lead to other entities asking for this loophole to be extended to their areas. In the future, rapidly growing areas of Texas may need to depend upon virtually every source of water available to meet the state's needs. Multiplying the number of groundwater sources to be sacrificed to contamination is not good public policy.