

BILL ANALYSIS

Senate Research Center

C.S.H.B. 3152
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Natural Resources
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Committee Report (Substituted)

DIGEST AND PURPOSE

Many commercial and industrial properties in municipal areas across Texas are underlain with unusable groundwater that has become contaminated by historical on-site or off-site sources. Current law requires the landowner or the facility owner/operator responsible for the condition to define the extent of the contamination and to develop an approach to correct the problem through response actions, which may be extremely expensive. However, it does not allow ordinances or other institutional control, such as restrictive covenants, to eliminate groundwater response action objectives in locations where the groundwater will no longer be used as a drinking water source; specifically, ordinances restricting the installation and use of wells are not currently allowed as a response action. C.S.H.B. 3152 sets forth the provisions relating to the potability of and requirements for removing contaminants from groundwater, which includes authorizing a city to restrict potable use of groundwater in designated areas where public drinking water is available.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 361, Health and Safety Code, adding Subchapter W, as follows:

SUBCHAPTER W. MUNICIPAL SETTING DESIGNATIONS

Sec. 361.801. DEFINITIONS. Defines “contaminant,” “potable water,” and “response action.”

Sec. 361.8015. LEGISLATIVE FINDINGS. Sets forth legislative findings relating to access to and the use of groundwater.

Sec. 361.802. PURPOSE. Sets forth the purpose of this subchapter.

Sec. 361.803. ELIGIBILITY FOR A MUNICIPAL SETTING DESIGNATION. Authorizes a person, including a local government, to submit a request to the executive director of the Texas Commission on Environmental Quality (TCEQ) (executive director) for a municipal setting designation for property if certain conditions exist.

Sec. 361.804. APPLICATION FOR A MUNICIPAL SETTING DESIGNATION. (a) Requires a person seeking to obtain a municipal setting designation under this subchapter to submit an application to the executive director as prescribed by this section.

(b) Requires an application submitted under this section be on a form provided by the executive director and to contain certain information.

(c) Requires the executive director, not later than 90 days after receiving an application submitted as provided by Subsection (b), to take certain actions.

(d) Requires the executive director, not later than the 45th day after receiving any

additional information requested under Subsection (c)(3), to certify or deny the application.

(e) Requires the fees collected under this section to be deposited to the credit of the waste management account.

Sec. 361.805. NOTICE. (a) Requires the person seeking a municipal setting designation, on or before the submission of an application to the executive director, to provide notice to certain municipalities.

(b) Requires the notice to include, at a minimum, certain information.

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

(d) Requires the notice to a municipality to be provided to the city secretary for the municipality, and notice to a retail public utility to be to the registered agent, the owner, or the manager, for the purpose of this section.

(e) Authorizes a municipality, retail public utility, or private well owner entitled to notice under this section to file comments with the executive director not later than the 60th day after the date the municipality, retail public utility, or private well owner receives the notice under this section.

Sec. 361.806. DENIAL OF APPLICATION. (a) Requires the executive director, under certain conditions, to deny an application submitted under Section 361.804.

(b) Requires the executive director, if the executive director determines that an application is incomplete or inaccurate, not later than the 90th day after receiving the application, to provide the applicant with a list of all information needed to make the application complete or accurate.

(c) Requires the executive director, if the executive director denies the application, to notify the applicant that the application has been denied and to explain the reasons for the denial of the application.

Sec. 361.8065. PRECERTIFICATION REQUIREMENTS. (a) Requires the applicant to provide certain information, before the executive director may issue a municipal setting designation certificate under Section 361.807.

(b) Requires a designation described by Subsection (a)(2)(B) to be supported by a resolution passed by the city council of the municipality.

Sec. 361.807. CERTIFICATION. (a) Requires the executive director, if the executive director determines that an applicant has complied with Section 361.8065 and submitted a complete application, to issue a copy of the municipal setting designation certificate to certain persons and entities.

(b) Requires the municipal setting designation certificate to indicate certain information.

(c) Requires the executive director, if the executive director determines that an applicant has submitted a complete application except that an ordinance or restrictive covenant and any required resolutions satisfying the requirements described in Section 361.8065 have not been submitted, to issue a letter to the applicant listed in Subsection (a) stating that a municipal setting designation will be certified on submission of a copy of the ordinance or restrictive covenant and any required resolutions satisfying the requirements described in Section

361.8065. Requires the executive director, on submission of the ordinance or restrictive covenant and any required resolution satisfying the requirements described in Section 361.8065, to issue a municipal setting designation certificate in accordance with Subsections (a) and (b).

Sec. 361.808. INVESTIGATION AND RESPONSE ACTION REQUIREMENTS. (a) Prohibits the executive director, if no potable water wells are located within one-half mile beyond the boundary of a municipal setting designation, from requiring a person addressing environmental impacts for a property located in the municipal setting designation to take certain actions.

(b) Authorizes the executive director, notwithstanding Subsection (a), to require a responsible person to complete a response action to address environmental impacts to groundwater in a certified municipal setting designation if action is necessary to ensure certain protections.

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

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

(e) Requires the executive director, if an investigation described in Subsection (c) confirms that groundwater emanating from the property has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation, to approve the completion of groundwater response action at the property if the person addressing environmental impacts meets certain requirements.

(f) Authorizes the executive director, notwithstanding any other provision of this section, to require a responsible person for property within a certified municipal setting designation to complete a response action to address environmental impacts to groundwater emanating from the property that has caused or is reasonably anticipated to cause applicable human consumption or ecological standards to be exceeded in an area located more than one-half mile beyond the boundary of the certified municipal setting designation, provided such action is necessary to ensure the protection of humans from exposure to environmental impacts to groundwater or the protection of ecological resources.

(g) Provides that this subchapter relates to the scope of the response action that can be required by the executive director in municipal settings designated under this subchapter. Requires nothing in this subchapter to be construed to alter or affect the private rights of action of any person under any statute or common law for personal injury or property damage caused by the release of contaminants.

SECTION 2. Amends Section 211.003(a), Local Government Code, to authorize the governing body of a municipality to regulate the pumping, extraction, and use of groundwater by persons

other than retail public utilities, as defined by Section 13.002 (Definitions), Water Code, for the purpose of preventing the use or contact with groundwater that presents an actual or potential threat to human health.

SECTION 3. Amends Section 212.003(a), Local Government Code, to make a conforming change.

SECTION 4. Amends Chapter 401, Local Government Code, by adding Section 401.005, as follows:

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

(b) Authorizes the governing body, for the purpose of establishing and enforcing a municipal setting designation, to extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under this section.

SECTION 5. Effective date: September 1, 2003.