

BILL ANALYSIS

Senate Research Center

H.B. 2826
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Natural Resources
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, in order for a property to obtain a municipal setting designation (MSD), an affected entity must affirmatively pass a resolution supporting the MSD. This arrangement can effectively grant each entity a pocket veto.

H.B. 2826 seeks to address this issue by setting out additional notice, documentation, and procedural requirements relating to an applicant for a certificate for a municipal setting.

H.B. 2826 amends current law relating to the issuance of a certificate for a municipal setting designation.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC) the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

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 Section 361.804(b), Health and Safety Code, as follows:

(b) Requires that an application submitted under this section:

(1) be on a form provided by the executive director of the Texas Natural Resource Conservation Commission (executive director);

(2) contain the following:

(A) the applicant's name and address;

(B) a legal description of the outer boundaries of the proposed municipal setting designation and a specific description of the designated groundwater that will be restricted under the ordinance or restrictive covenant described by Section 361.8065(a)(2) or (c)(2), as applicable;

(C) a statement as to whether the municipalities or the retail public utilities entitled to notice under Section 361.805 (Notice) support the proposed designation;

(D) an affidavit that affirmatively states that:

(i) the municipal setting designation eligibility criteria contained in Section 361.803 (Eligibility for a Municipal Setting Designation) are satisfied;

(ii) true and accurate copies of all documents demonstrating that the municipal setting designation eligibility criteria provided by Section 361.803 have been satisfied are included with the application;

(iii) a true and accurate copy of a legal description of the property for which the municipal setting designation is sought is included with the application; and

(iv) notice was provided in accordance with Section 361.805;

(E) a statement regarding the type of known contamination in the groundwater beneath the property proposed for a municipal setting designation;

(F) proof of notice, as required by Section 361.805(c) (relating to requiring the applicant to submit copies of the notice letters); and

(G) if available at the time of the application, a copy of the ordinance or restrictive covenant and any required resolutions or other documentation satisfying the requirements described in Section 361.8065 (Precertification Requirements), or a statement that the applicant will provide a copy of the ordinance or restrictive covenant and any required resolutions or other documentation satisfying the requirements described in Section 361.8065 before the executive director certifies the municipal setting designation in accordance with Section 361.807 (Certification); and

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

SECTION 2. Amends Section 361.805(b), Health and Safety Code, as follows:

(b) Requires that the notice include, at a minimum:

(1) the purpose of the municipal setting designation;

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

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

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

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

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

(7) identification of the party responsible for the contamination of the property, if known; and

(8) if the property for which the municipal setting designation is sought is located in a municipality that has a population of two million or more and the applicant intends to comply with the requirements of Section 361.8065 for issuance of a municipal setting designation certificate under Section 361.807 by complying with the requirements of Section 361.8065(c), a statement that a municipality

described by Subsection (a)(1)(B) (relating to requiring a person seeking a municipal setting designation to provide notice to each municipality with a boundary located not more than one-half mile from the property for which the designation is sought) or (C) (relating to requiring a person seeking a municipal setting designation to provide notice to each municipality that owns or operates a groundwater supply well located not more than five miles from the property for which the designation is sought) of this section or a public utility described by Subsection (a)(3) (relating to requiring a person seeking a municipal setting designation to provide notice to each retail public utility that owns or operates a groundwater supply well located not more than five miles from the property for which the designation is sought) of this section has 120 days from the date of receipt of the notice required by this section to pass a resolution opposing the application for a municipal setting designation.

SECTION 3. Amends Section 361.8065, Health and Safety Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Requires the applicant, except as provided by Subsection (c), before the executive director is authorized to issue a municipal setting designation certificate under Section 361.807, the applicant must provide documentation of the following:

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

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

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

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

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

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

(c) Provides that if the property for which the municipal setting designation is sought is located in a municipality that has a population of two million or more and the applicant has complied with the requirements of Section 361.805(b)(8), the applicant is considered to have complied with the requirements of Subsection (a) of this section for eligibility for a municipal setting designation certificate under Section 361.807 if the applicant provides documentation of the following:

(1) that no resolution opposing the application has been adopted within 120 days of receipt of the notice provided under Section 361.805 by:

(A) the city council of any municipality described by Section 361.805(a)(1)(B) or (C); or

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

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

(A) is currently or has previously been under the oversight of TNRCC or the United States Environmental Protection Agency; and

(B) is subject to an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater, or a restrictive covenant enforceable by the municipality in which the property for which the designation is sought is located that prohibits the use of designated groundwater from beneath the property as potable water and appropriately restricts other uses of and contact with that groundwater.

(d) Authorizes the documentation required under Subsection (c)(1) to be in the form of an affidavit of the applicant or the applicant's representative.

SECTION 4. Amends Section 361.807(c), Health and Safety Code, as follows:

(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 documentation, rather than 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 documentation, rather than 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 documentation, rather than any required resolutions, satisfying the requirements described in Section 361.8065, to issue a municipal setting designation certificate in accordance with Subsections (a) (relating to requiring the executive director to issue a copy of the municipal setting designation certificate to certain parties) and (b) (relating to the contents of the certificate).

SECTION 5. Effective date: September 1, 2011.