

BILL ANALYSIS

Senate Research Center

S.B. 1383
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Natural Resources
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Section 36.119, Water Code, authorizes a private cause of action for a citizen when a neighboring landowner illegally drills a water well or operates a water well in a groundwater conservation district (district) in an unlawful manner.

S.B. 1383 requires an aggrieved party before filing a suit against the owner of the well or wells being used without a permit on adjacent land to file a written complaint with the district having jurisdiction over the well or wells drilled or operated without a required permit or in violation of a district rule. The bill also requires a district to investigate the claim and to determine whether a district rule was violated by a certain time. In addition the bill authorizes the aggrieved party, after determination that a district rule was violated, to sue the owner of the well or wells for damages and provides that the court is only authorized to consider the two-year period directly preceding the district's determination in calculating damages.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.119, Water Code, by amending Subsections (a), (b), and (c), and adding Subsections (g) and (h), as follows:

(a) Provides that drilling or operating a well or wells without a required permit or producing groundwater in violation of a groundwater conservation district (district) rule adopted under Section 36.116(a)(2), rather than operating a well at a higher rate of production than the rate approved for the well, is declared to be illegal, wasteful per se, and a nuisance.

(b) Authorizes a landowner or other person, except as provided by this section, who has a right to produce groundwater from land that is adjacent to the land on which a well or wells are drilled or operated without a required permit or permits or from which groundwater is produced in violation of a district rule adopted under Section 36.116(a)(2), or who owns or otherwise has a right to produce groundwater from land that lies within one-half mile of the well or wells, to sue the owner of the well or wells in a court of competent jurisdiction to restrain or enjoin the illegal drilling, operation, or both. Deletes existing text providing that a person who has an estate in land adjacent to the land on which the well is located or a part that lies within one-half mile of the well may sue in a court of competent jurisdiction to enjoin the illegal drilling or operation or both. Makes conforming changes.

(c) Authorizes the aggrieved party, except as provided by this section, to sue the owner of the well or wells for damages for injuries suffered by of the illegal operation or production and for the other relief to which the party may be entitled. Provides that in a suit for damages against the owner of the well or wells, the existence of a well or wells drilled without a required permit or the operation of a well or wells in violation of district rules adopted under Section 36.116(a)(2), rather than the existence or operation in violation of the rules of the district, is prima facie evidence of illegal drainage.

(g) Requires an aggrieved party, before filing a suit under Subsections (b) and (c), to file a written complaint with the district having jurisdiction over the well or wells drilled or operated without a required permit or in violation of a district rule. Requires the district to investigate the complaint and, after notice and hearing and not later than the 90th day after the date the written complaint was received by the district, to determine, based on the evidence presented at the hearing, whether a district rule has been violated. Authorizes the aggrieved party to only file a suit under this section on or after the 91st day after the date the written complaint was received by the district.

(h) Authorizes an aggrieved party under Subsection (b) to sue a well owner or well driller in a court of competent jurisdiction to restrain or enjoin the drilling, completion, or operation of a well or wells after filing a written complaint with the district under Subsection (g) and without the need to wait for a hearing on the matter.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2007.