

BILL ANALYSIS

C.S.S.B. 1383
By: Seliger
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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.

CSSB 1383 provides that drilling or operating a well without a required permit or producing groundwater in violation of a groundwater conservation 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.

The bill authorizes a person who has a right to produce groundwater from land that is adjacent to the land on which a well is drilled or operated without a required permit 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 to restrain or enjoin the illegal drilling, operation, or both. The bill also authorizes the aggrieved party to sue the owner of the well for damages for injuries suffered by of the illegal operation or production .

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

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

(a) Provides that drilling or operating a well or wells without a required permit or producing groundwater in violation of a 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.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B. 1383 deletes Subsections (g) and (h).