

## **BILL ANALYSIS**

Senate Research Center  
80R7817 JLL-F

S.B. 1383  
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Natural Resources  
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### **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.

As proposed, 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 the heading to Section 36.119, Water Code, to read as follows:

Sec. 36.119. ILLEGAL DRILLING AND OPERATION OF WELL; EXPEDITED DISTRICT HEARING; CITIZEN SUIT.

SECTION 2. Amends Section 36.119, Water Code, by amending Subsections (a), (b), and (c), and adding Subsections (g) through (k), 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's (district) rules 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 person, except as provided by this section, who has a right to produce water 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 rules adopted under Section 36.116(a)(2), or who 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.

(h) Requires the district, if it determines after an investigation and hearing that a district rule has been violated, to enforce the rule against the well owner, and not later than two years after the date of the district's determination, ensure that the well owner is operating the well or wells that were the subject of the determination in accordance with district rules adopted under Section 36.116(a)(2) and in accordance with applicable well permits.

(i) Authorizes the aggrieved party, if an investigation conducted by the district provides sufficient evidence that the well or wells are or were operating illegally for two or more years, to sue the well owner for damages. Authorizes the court to consider in a suit for damages only the two-year period directly preceding the district's determination in calculating damages.

(j) Authorizes the aggrieved party, if the district fails or refuses to enforce compliance by the well owner with district rules or well permits, to sue the well owner under this section for both injunctive relief and damages.

(k) Authorizes an aggrieved party 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 waiting for a district investigation, notice, or hearing, notwithstanding Subsection (g).

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: upon passage or September 1, 2007.