

BILL ANALYSIS

Senate Research Center
81R32031 PMO-D

C.S.H.B. 2063
By: Callegari, Creighton (Duncan)
Natural Resources
5/12/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under Chapter 36 (Groundwater Conservation Districts), Water Code, no "person" is allowed to drill or operate a water well within the boundaries of a groundwater conservation district without a permit from the district, unless a permitting exemption applies. Groundwater conservation districts also have authority under Chapter 36 to enforce the statute or their rules implementing the statute in court.

This bill inserts the term "against any person" into the enforcement provisions of Chapter 36 to bring consistency in terminology between the prohibited acts language in Chapter 36 and the enforcement provisions of that chapter. This bill relies upon the commonly used definition of the term "person" in the Code Construction Act to clarify that all persons, including individuals, legal entities, and political subdivisions, are subject to these provisions of Chapter 36, so that all are treated fairly and impartially.

C.S.H.B. 2063 amends current law relating to the enforcement of rules by a groundwater conservation district.

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 36.102, Water Code, as follows:

Sec. 36.102. ENFORCEMENT OF RULES. (a) Authorizes a district or authority created under Section 52 (Counties, Cities or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds), Article III (Legislative Department), or Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both (district) to enforce this chapter and its rules against any person by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.

(b) Authorizes the board of directors of a district by rule to set reasonable civil penalties against any person for breach of any rule of the district not to exceed \$10,000 per day per violation, and provides that each day of a continuing violation constitutes a separate violation.

(c) Provides that a penalty under this section is in addition to any other penalty provided by the law of this state and may be enforced against any person by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office or meeting place is located.

(d) Authorizes the district to seek and requires the court to grant against any person, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court, if the district prevails in any suit to enforce its rules.

(e) Provides that in an enforcement action by a district against any person that is a governmental entity for a violation of district rules, the limits on the amount of fees, costs, and penalties that a district is authorized to impose under Section 36.122 (Transfer of Groundwater out of District), 36.205 (Authority to Set Fees), or this section, or under a special law governing a district operating under this chapter, constitute a limit of liability of the governmental entity for the violation. Prohibits this subsection from being construed to prohibit the recovery by a district of fees and costs under Subsection (d) in an action against any person that is a governmental entity.

SECTION 2. Provides that Section 311.031(a) (relating to saving provisions), Government Code, applies to the amendments by this Act to Section 36.102, Water Code.

SECTION 3. Effective date: upon passage or September 1, 2009.