

SENATE AMENDMENTS
2nd Printing

By: Harris, et al.

H.B. No. 5560

A BILL TO BE ENTITLED

AN ACT

relating to penalties in certain suits involving a groundwater conservation district; increasing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.102, Water Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b) Except as provided by Subsection (f), the ~~[The]~~ board by rule may set reasonable civil penalties that the district may recover from ~~[against]~~ any person for breach of any rule of the district in an amount not to exceed \$25,000 ~~[\$10,000]~~ per day per violation, and each day of a continuing violation constitutes a separate violation.

(f) In an enforcement action brought by a district against a person, the court may assess a penalty greater than the maximum penalty authorized under Subsection (b) if the court determines that the person gained an economic benefit as a result of the violation that was greater than the maximum penalty under Subsection (b). A penalty assessed under this subsection must be in an amount determined by the court to be necessary and appropriate to outweigh the economic benefit gained by the person as a result of the violation and discourage future violations.

SECTION 2. Section 36.102, Water Code, as amended by this Act, applies only to a suit involving a groundwater conservation

H.B. No. 5560

1 district that is filed on or after the effective date of this Act. A
2 suit filed before the effective date of this Act is subject to the
3 law in effect on the date the suit is filed, and that law is
4 continued in effect for that purpose.

5 SECTION 3. This Act takes effect September 1, 2025.

ADOPTED

MAY 19 2023

Latey Shaw
Secretary of the Senate

By: *Charles Perry*

H.B. No. 5560

Substitute the following for H.B. No. 5560:

By: *Charles Perry*

C.S.H.B. No. 5560

A BILL TO BE ENTITLED

1 AN ACT

2 relating to penalties in certain suits involving a groundwater
3 conservation district; increasing a penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 36.102, Water Code, is amended by
6 amending Subsection (b) and adding Subsections (b-1) and (f) to
7 read as follows:

8 (b) Except as provided by Subsection (f), the [The] board by
9 rule may set reasonable civil penalties, including a range of
10 reasonable civil penalties, that the district may recover from
11 [against] any person for breach of any rule of the district in an
12 amount not to exceed \$25,000 [\$10,000] per day per violation, and
13 each day of a continuing violation constitutes a separate
14 violation.

15 (b-1) In determining the amount of a civil penalty under
16 this section, the court shall consider:

17 (1) the nature, circumstances, extent, duration, and
18 gravity of the violation, with special emphasis on the effect of the
19 violation on:

20 (A) groundwater resources;

21 (B) another person's right to produce
22 groundwater;

23 (C) public health and safety; or

24 (D) other water resources or the environment;

1 (2) with respect to the alleged violator:
2 (A) the history and extent of previous
3 violations;
4 (B) the degree of culpability, including whether
5 the violation was attributable to mechanical or electrical failures
6 and whether the violation could have been reasonably anticipated
7 and avoided;
8 (C) the demonstrated good faith, including
9 actions taken by the alleged violator to rectify the cause of the
10 violation and to compensate the affected person;
11 (D) whether there was an economic benefit gained
12 as a result of the violation and, if so, the amount of the economic
13 benefit;
14 (E) the amount necessary to deter future
15 violations; and
16 (F) if the alleged violator is a person required
17 to adopt a drought contingency plan under Section 11.1272 and
18 overproduction of groundwater is the basis of the alleged
19 violation, whether the person acted in good faith and exercised
20 reasonable diligence in implementing and enforcing the terms of the
21 plan; and
22 (3) any other matters that justice may require.
23 (f) In an enforcement action brought by a district against a
24 person, the court may assess a penalty greater than the maximum
25 penalty authorized under Subsection (b) if the court determines
26 that the person gained an economic benefit as a result of the
27 violation that was greater than the maximum penalty under

1 Subsection (b). A penalty assessed under this subsection must be in
2 an amount determined by the court to be necessary and appropriate to
3 outweigh the economic benefit gained by the person as a result of
4 the violation and discourage future violations.

5 SECTION 2. Subchapter D, Chapter 36, Water Code, is amended
6 by adding Sections 36.1021 and 36.1022 to read as follows:

7 Sec. 36.1021. DEFERRAL OF PENALTY. (a) A court by order may
8 allow a person to defer the payment of not more than 50 percent of
9 the total amount of the civil penalties awarded by the court to a
10 district for a violation under Section 36.102 on the condition that
11 the person complies with all provisions for corrective action to
12 address the violation.

13 (b) A court order under Subsection (a) must require the
14 person to spend an amount of money equal to the amount of the civil
15 penalty deferred by the court to mitigate the consequences of a
16 violation of a rule of the district or prevent future violations of
17 a rule of the district.

18 (c) In determining whether deferral of a civil penalty under
19 this section is appropriate and the amount, if any, to be deferred,
20 the court must consider:

21 (1) the factors used in determining the amount of the
22 civil penalty under Section 36.102(b-1);

23 (2) whether the amount of the civil penalty that is not
24 deferred, when combined with the amount of any attorney's fees
25 awarded by the court to the district, will at a minimum cover the
26 costs and expenditures of the district in enforcing its rules
27 against the person so that the district will be made financially

1 whole;

2 (3) the financial position of the person and the
3 person's ability to reasonably pay the costs associated with the
4 corrective action under the terms of the court order;

5 (4) any risks to groundwater resources, another
6 person's right to produce groundwater, public health and safety, or
7 other water resources or the environment that would result from a
8 delay in implementing the corrective action because of the person's
9 limited financial resources;

10 (5) any alternatives reasonably available to the
11 person for the purpose of paying the penalty and any costs
12 associated with taking the corrective action; and

13 (6) whether requiring the person to pay the civil
14 penalty will affect other essential public health and safety
15 services for which the person is responsible.

16 (d) If the person seeking deferral of a civil penalty under
17 this section is a wholesale or retail public water system, the
18 corrective action for purposes of Subsection (a) may include
19 capital improvements that benefit the water system in which the
20 violation occurred, including securing additional sources of water
21 supply, addressing system water loss, or otherwise addressing water
22 conservation issues.

23 (e) The court may require the person to pay the full amount
24 of the civil penalty under Section 36.102 if the court finds that
25 the person is not in compliance with a provision of the court order
26 issued under Subsection (a) of this section.

27 Sec. 36.1022. RECOVERY OF CIVIL PENALTY BY WATER AND SEWER

1 UTILITY. (a) A court that has assessed a civil penalty against a
2 water and sewer utility, as defined by Section 13.002, under
3 Section 36.102 for violation of a district rule limiting
4 groundwater production may authorize the utility to recover, in any
5 manner that is equitable and just, all or part of the civil penalty
6 from any customers or class of customers responsible for causing
7 the utility to violate the rule.

8 (b) The court may allow the recovery of the civil penalty
9 only if the court finds that:

10 (1) the utility acted in good faith and exercised
11 reasonable diligence in implementing and enforcing the terms of the
12 utility's drought contingency plan required by Section 11.1272; and

13 (2) the customers from whom the civil penalty will be
14 recovered continued to violate the provisions of the drought
15 contingency plan despite the utility's enforcement measures.

16 (c) The utility may retain a civil penalty recovered under
17 this section unless the court directs the utility to use the money
18 for a specific purpose in the interests of justice.

19 (d) A civil penalty recovered under this section is not a
20 rate as defined by Section 13.002 and may not be considered revenue
21 of the utility in a rate proceeding under Chapter 13.

22 SECTION 3. Section 36.102, Water Code, as amended by this
23 Act, and Sections 36.1021 and 36.1022, Water Code, as added by this
24 Act, apply only to a suit involving a groundwater conservation
25 district that is filed on or after the effective date of this Act. A
26 suit filed before the effective date of this Act is subject to the
27 law in effect on the date the suit is filed, and that law is

1 continued in effect for that purpose.

2 SECTION 4. This Act takes effect September 1, 2025.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 89TH LEGISLATIVE REGULAR SESSION

May 20, 2025

TO: Honorable Dustin Burrows, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB5560 by Harris (Relating to penalties in certain suits involving a groundwater conservation district; increasing a penalty.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

It is assumed that any costs associated with the bill could be absorbed using existing resources.

Local Government Impact

There could be an impact on a groundwater conservation district if it assesses increased civil penalties as would be authorized by the bill.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts

LBB Staff: JMc, SD, FV, BC, CWi, TUF

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 89TH LEGISLATIVE REGULAR SESSION

May 14, 2025

TO: Honorable Charles Perry, Chair, Senate Committee on Water, Agriculture and Rural Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB5560 by Harris (relating to penalties in certain suits involving a groundwater conservation district; increasing a penalty.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

It is assumed that any costs associated with the bill could be absorbed using existing resources.

Local Government Impact

There could be an impact on a groundwater conservation district if it assesses increased civil penalties as would be authorized by the bill.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts

LBB Staff: JMc, FV, BC, CWi, TUf

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 89TH LEGISLATIVE REGULAR SESSION

May 14, 2025

TO: Honorable Charles Perry, Chair, Senate Committee on Water, Agriculture and Rural Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB5560 by Harris (Relating to penalties in certain suits involving a groundwater conservation district; increasing a penalty.), **As Engrossed**

No fiscal implication to the State is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts

LBB Staff: JMc, FV, TUf, BC, CWi

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 89TH LEGISLATIVE REGULAR SESSION

April 14, 2025

TO: Honorable Cody Harris, Chair, House Committee on Natural Resources

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB5560 by Harris (Relating to penalties in certain suits involving a groundwater conservation district; increasing a penalty.), **As Introduced**

No fiscal implication to the State is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts

LBB Staff: JMc, TUf, BC, CWi, FV