

**House Bill 5560**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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.

SENATE VERSION (CS)

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

(b) Except as provided by Subsection (f), the [The] board by rule may set reasonable civil penalties, including a range of 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.

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

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

(A) groundwater resources;

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

(C) public health and safety; or

(D) other water resources or the environment;

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate the affected person;

(D) whether there was an economic benefit gained as a result of the violation and, if so, the amount of the economic benefit;

(E) the amount necessary to deter future violations; and

(F) if the alleged violator is a person required to adopt a

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drought contingency plan under Section 11.1272 and overproduction of groundwater is the basis of the alleged violation, whether the person acted in good faith and exercised reasonable diligence in implementing and enforcing the terms of the plan; and

(3) any other matters that justice may require.

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

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

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

(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.

No equivalent provision.

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

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

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

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

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

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

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

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

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(e) The court may require the person to pay the full amount of the civil penalty under Section 36.102 if the court finds that the person is not in compliance with a provision of the court order issued under Subsection (a) of this section.  
Sec. 36.1022. RECOVERY OF CIVIL PENALTY BY WATER AND SEWER UTILITY. (a) A court that has assessed a civil penalty against a water and sewer utility, as defined by Section 13.002, under Section 36.102 for violation of a district rule limiting groundwater production may authorize the utility to recover, in any manner that is equitable and just, all or part of the civil penalty from any customers or class of customers responsible for causing the utility to violate the rule.  
(b) The court may allow the recovery of the civil penalty only if the court finds that:  
(1) the utility acted in good faith and exercised reasonable diligence in implementing and enforcing the terms of the utility's drought contingency plan required by Section 11.1272; and  
(2) the customers from whom the civil penalty will be recovered continued to violate the provisions of the drought contingency plan despite the utility's enforcement measures.  
(c) The utility may retain a civil penalty recovered under this section unless the court directs the utility to use the money for a specific purpose in the interests of justice.  
(d) A civil penalty recovered under this section is not a rate as defined by Section 13.002 and may not be considered revenue of the utility in a rate proceeding under Chapter 13.

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

SECTION 3. Section 36.102, Water Code, as amended by this Act, and Sections 36.1021 and 36.1022, Water Code, as

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conservation district that is filed on or after the effective date of this Act. A suit filed before the effective date of this Act is subject to the law in effect on the date the suit is filed, and that law is continued in effect for that purpose.	<b>added by this Act,</b> apply only to a suit involving a groundwater conservation district that is filed on or after the effective date of this Act. A suit filed before the effective date of this Act is subject to the law in effect on the date the suit is filed, and that law is continued in effect for that purpose.	
SECTION 3. This Act takes effect September 1, 2025.	SECTION 4. Same as House version.	