

BILL ANALYSIS

H.B. 2063
By: Callegari
Natural Resources
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In May 2008, the 11th Court of Appeals issued its ruling in *Aspermont v. Rolling Plains Groundwater Conservation District*. This case began when the Rolling Plains Groundwater Conservation District filed suit against the City of Aspermont after the city failed to file monthly reports showing the quantity of groundwater transported out of district and refused to pay export fees for that transported water. Both the report and the fee were required by the groundwater district's rules. In its case, Rolling Plains requested that the City of Aspermont comply with the district's rules and pay the associated fees, penalties, and costs. Aspermont filed a plea in which it asserted sovereign immunity, urging that it was immune from the suit filed by district and that the City has not waived it immunity. In its ruling, the 11th Court of Appeals held that the City of Aspermont is immune from suit for monetary damages. Aspermont's claim of sovereign immunity ended there, however. The Court also ruled that the City of Aspermont is subject to and must comply with the district's rules and regulations.

The *Aspermont* ruling places groundwater districts in a quandary where, although districts may promulgate rules, and political subdivisions are required to comply with those rules, districts lack the enforcement authority with regard to political subdivisions' compliance with those rules. This creates a substantial loophole to the Legislature's intention for groundwater districts to serve as the "state's preferred method of groundwater management through rules developed, adopted, and promulgated" by groundwater districts.

H.B. 2063 clarifies that a groundwater district may take action against any person in to enforce its own rules. The definition of a "person" provided by the Code Construction Act (Chapter 311, Government Code) includes governments and governmental subdivisions or agencies. The changes made by the bill would ensure the Legislature's intent, that groundwater districts be able to take action against governments and governmental subdivisions that fail to comply with districts' rules.

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 36.102, Water Code as follows:

Subsection (a). Provides that a district may enforce this chapter and its rules against any person.

Subsection (b). Provides that the board by rule may set penalties against any person.

Subsection (c). Provides that a penalty under this section is in addition to any other penalty provided by law and may be enforced against any person by complaints filed in the appropriate court.

Subsection (d). Provides that if the district prevails, the district may seek and the court shall grant against any person recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court.

SECTION 2. Provides the effective date of this Act.

EFFECTIVE DATE

This Act takes effect immediately if it receives a vote of two-thirds of all members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.