

BILL ANALYSIS

C.S.H.B. 4212
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Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In May 2008, the 11th Court of Appeals issued a 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 fees were required by the groundwater district's rules. In the court 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, claiming that because the City has not waived its immunity, it is immune from the suit filed by the district. The court treated the payment of statutorily authorized export fees and statutory civil penalties as monetary damages and held that the City of Aspermont is immune from payment. The court also ruled that the City of Aspermont is subject to and must comply with the district's rules and regulations, despite its immunity from enforcement if it does not.

The Harris-Galveston Subsidence District regulates groundwater withdrawals within Harris and Galveston counties for the purpose of preventing land subsidence. The Fort Bend Subsidence District was created by the legislature in 1989 to accomplish the same purposes in Fort Bend County. All persons pumping groundwater within these districts, including political subdivisions such as cities and municipal utility districts, are subject to the districts' rules. The *Aspermont* ruling raises questions with regard to the districts' authority to enforce rules against political subdivisions found in violation.

C.S.H.B. 4212 makes clear the legislature's intent for the Harris-Galveston Subsidence District and Fort Bend Subsidence District to take action against any person, including a political subdivision, to enforce district 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

C.S.H.B. 4212 amends the Special District Local Laws Code, and Section 43, Chapter 1045, Acts of the 71st Legislature, Regular Session, 1989, to clarify the penalties that may be instituted and the conditions under which penalties may be instituted by the Harris-Galveston Subsidence District and the Fort Bend Subsidence District, respectively, in an action against a person in a district court in the district. The bill authorizes the Harris-Galveston Subsidence District and the Fort Bend Subsidence District, respectively, to institute an action for the assessment and recovery of a civil penalty of not less than \$50 and not more than \$5,000 for each violation and for each day of a continuing violation, if the person is not a political subdivision or an agency of a political subdivision; or if the person is a political subdivision or an agency of a political subdivision, an amount equal to the greater of 120 percent of the sum of the fees assessed against

the person and the amount the person would have paid to an alternative water supplier or \$5,000 for each violation and for each day of a continuing violation. The bill clarifies that, at the request of the board of directors of the Harris-Galveston Subsidence District or of the Fort Bend Subsidence District, respectively, or the general manager if authorized by that manager's board, the attorney general is required to institute and conduct an action against any person in the name of the district for injunctive relief or to recover a civil penalty, or both.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 4212 differs from the original by providing for a civil penalty, for a person that is not a political subdivision or an agency of a political subdivision, of not less than \$50 and not more than \$5,000 for each violation and for each day of a continuing violation; or, for a person that is a political subdivision or an agency of a political subdivision, an amount equal to the greater of 120 percent of the sum of the fees assessed against the person and the amount the person would have paid to an alternative water supplier, or \$5,000 for each violation and for each day of a continuing violation. The original provides for a civil penalty of the greater of not less than 120 percent of the amount that person would have paid in fees and purchases of alternate water supplies; or not less than \$50 and not more than \$5,000 for each violation and for each day of a continuing violation.

C.S.H.B. 4212 adds a standard saving provision not included in the original.