

BILL ANALYSIS

Senate Research Center

S.B. 2543
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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 (Rolling Plains) filed suit against the City of Aspermont (Aspermont) after the city failed to file monthly reports showing the quantity of groundwater transported out of Rolling Plains and refused to pay export fees for that transported water. Both the report and the fees were required by Rolling Plains' rules. In its case, Rolling Plains requested that Aspermont comply with Rolling Plains' rules and pay the associated fees, penalties, and costs. Aspermont filed a plea in which it asserted sovereign immunity, arguing that it was immune from the suit filed by Rolling Plains and that Aspermont has not waived its immunity. The court treated the payment of statutorily authorized export fees and statutory civil penalties as monetary damages and held that Aspermont is immune from payment. Aspermont's claim of sovereign immunity ended there, however. The court also ruled that Aspermont is subject to and must comply with the Rolling Plains' 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 regarding the districts' authority to enforce their rules against those political subdivisions in violation.

S.B. 2543 makes it clear that the legislature intended for the Harris-Galveston Subsidence District and Fort Bend Subsidence District to take action against any person in order to enforce district rules.

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 Sections 8801.204(a) and (c), Special District Local Laws Code, as follows:

(a) Authorizes the Harris-Galveston Subsidence District (district), if it appears that a person has violated or is violating or threatening to violate this chapter or a rule, permit, or other order of the district issued or adopted under this chapter, to institute an action in a district court in the district for:

(2) the assessment and recovery of a civil penalty of:

(A) 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

(B) 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.

(c) Requires the attorney general, at the request of the board of directors of the district (board), or the general manager if authorized by the board, 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.

SECTION 2. Amends Sections 43(a) and (b), Chapter 1045, Acts of the 71st Legislature, Regular Session, 1989, as follows:

(a) Authorizes the district, if a person has violated, is violating, or is threatening to violate a provision of this Act or a rule, regulation, permit, or other order of the district, to bring a civil action in a district court within the district for:

(1) an injunction to restrain the person from continuing the violation or the threat of violation;

(2) the assessment and recovery of, rather than for, a civil penalty of not less than \$50 nor more than \$5,000 for each violation and for each day of 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; or

(3) both, rather than for both, injunctive relief and civil penalty.

(b) Requires the attorney general at the request of the board, or the general manager if authorized by the board, to institute and conduct an action, rather than institute the action, against any person in the name of the district for injunctive relief or to recover a civil penalty, or both.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: upon passage or September 1, 2009.