

## **BILL ANALYSIS**

S.B. 2543  
By: Hegar  
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 (the "district") filed suit against the City of Aspermont (the "City") after the City failed to file monthly reports showing the quantity of groundwater transported out of the district and refused to pay export fees for that transported water. Both the report and the fees were required by the district's rules. In its case, the district requested that the City comply with the district's rules and pay the associated fees, penalties, and costs. The City filed a plea in which it asserted sovereign immunity, urging that it was immune from the suit filed by the district and that the City 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 the City is immune from payment. The City's claim of sovereign immunity ended there, however. The Court also ruled that the City 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 its 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, including a political subdivision, in order 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**

S.B. 2543 clarifies that the classes of persons that the Harris Galveston Subsidence District ("HGSD") and the Fort Bend Subsidence District ("FBSD") may institute an action against for a violation of district rule, permit, or other order includes political subdivisions. The bill authorizes each subsidence district to assess and recover a civil penalty between \$50 and \$5,000 against a person other than a political subdivision for each violation, or day of a continuing violation of the district's rules. If a political subdivision commits a violation, HGSD and FBSD may assess and recover a civil penalty amount equal to the greater of 120 percent of the sum of the fees assessed against the subdivision and the amount the subdivision 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 the attorney general shall, upon the request of the HGSD and the FBSD board or general manager, 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**

This Act takes effect immediately if it receives a vote of two-thirds of all the 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.