

AN ACT

relating to the continuation and functions of the State Soil and Water Conservation Board.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 201, Agriculture Code, is amended by adding Section 201.0111 to read as follows:

Sec. 201.0111. APPOINTMENTS. Appointments to the state board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

SECTION 2. Sections 201.0142(a) and (c), Agriculture Code, are amended to read as follows:

(a) A person who is elected or appointed and qualifies for office as a member of the state board may not vote, deliberate, or be counted as a member in attendance at a meeting of the state board until the person completes a training program that complies with this section.

(c) A person elected or appointed to the state board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program, regardless of whether attendance at the program occurs before or after the person qualifies for office.

SECTION 3. Section 201.0151(a), Agriculture Code, is amended to read as follows:

(a) It is a ground for removal from the state board that a member:

(1) does not:

(A) if the member is elected, have at the time of election the qualifications required by Section 201.013(c); or

(B) if the member is appointed, have at the time of taking office the qualifications required by Section 201.011(2)

~~[Subsection (c) of Section 201.013 of this code];~~

(2) does not maintain during service on the state board the qualifications required by Section 201.011(2) or 201.013(c)

~~[Subsection (c) of Section 201.013 of this code];~~

(3) is ineligible for membership under Section 201.0141 ~~[of this code];~~

(4) cannot, because of illness or disability, discharge the member's duties for a substantial portion of the member's term; or

(5) is absent from more than half of the regularly scheduled state board meetings that the member is eligible to attend during a calendar year, without an excuse approved by a majority vote of the state board.

SECTION 4. Section 201.0231, Agriculture Code, is amended to read as follows:

Sec. 201.0231. COMPLAINTS. (a) The state board shall

maintain a central database of complaints filed with state board offices and a system to promptly and efficiently act on a complaint filed with a state board office. The state board shall maintain information about parties to the complaint, ~~[file on each written complaint filed with the state board.]~~

~~[(b) The file must include:]~~

~~[(1) the name of the person who filed the complaint:]~~

~~[(2) the date the complaint is received by the state board:]~~

~~[(3)] the subject matter of the complaint, [+~~

~~[(4) the name of each person contacted in relation to the complaint:]~~

~~[(5)] a summary of the results of the review or investigation of the complaint, and its disposition[; and~~

~~[(6) an explanation of the reason the file was closed, if the state board closed the file without taking action other than to investigate the complaint].~~

(b) The state board shall make information available describing its procedures for complaint investigation and resolution.

~~(c) [The state board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the state board's policies and procedures relating to complaint investigation and resolution.]~~

~~[(d)] The state board[, at least quarterly until final~~

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~~disposition of the complaint,]~~ shall periodically notify the parties to ~~[person filing]~~ the complaint ~~[and each person who is a subject of the complaint]~~ of the status of the complaint until final disposition ~~[investigation unless the notice would jeopardize an undercover investigation].~~

SECTION 5. Section 201.025, Agriculture Code, is amended to read as follows:

Sec. 201.025. SUNSET PROVISION. The State Soil and Water Conservation Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2023 ~~[2011]~~.

SECTION 6. Subchapter B, Chapter 201, Agriculture Code, is amended by adding Sections 201.029 and 201.030 to read as follows:

Sec. 201.029. GRANT PROGRAM ADMINISTRATION. (a) In this section, "grant program" means a competitive grant program administered by the state board under this title and funded primarily by state funds. The term includes a program for water quality management, water supply enhancement, or flood control.

(b) The state board shall:

(1) develop goals for each grant program, including desired program results and descriptions of program beneficiaries;

(2) establish statewide evaluation criteria to document grantee compliance with grant conditions;

(3) monitor compliance with the evaluation criteria

described by Subdivision (2) by gathering, maintaining, and analyzing comprehensive data on grant program activities;

(4) analyze the extent to which grant programs achieve the goals developed under Subdivision (1), using either empirical or nonempirical evidence; and

(5) publish the analysis required by Subdivision (4) on the state board's Internet website or in any annual publication the state board is required by statute to publish.

Sec. 201.030. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The state board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of state board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the state board's jurisdiction.

(b) The state board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The state board shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

SECTION 7. Section 201.202(b), Agriculture Code, is amended to read as follows:

(b) The board shall designate priorities among the various land improvement measures, including:

(1) brush control and other water supply enhancement activities;

(2) forest improvement measures;

(3) returning erosive cropland to pasture and other practices that maximize water conservation;

(4) increasing water use efficiency;

(5) increasing water quality;

(6) reducing erosion; and

(7) maximizing public benefits.

SECTION 8. The heading to Chapter 203, Agriculture Code, is amended to read as follows:

CHAPTER 203. WATER SUPPLY ENHANCEMENT [~~BRUSH CONTROL~~]

SECTION 9. Section 203.001, Agriculture Code, is amended by adding Subdivisions (5), (6), (7), and (8) to read as follows:

(5) "Area" means a sub-basin or other portion of land within a project.

(6) "Project" means a watershed or portion of a watershed in which water supply enhancement activities are performed.

(7) "Proposal" means a request submitted by a soil and water conservation district or other political subdivision for state funds to be used in a watershed or portion of a watershed for water supply enhancement activities.

(8) "Water supply enhancement" includes brush control.

SECTION 10. Section 203.002, Agriculture Code, is amended to read as follows:

Sec. 203.002. PURPOSE [~~CREATION~~] OF PROGRAM. The water supply enhancement program [~~Texas Brush Control Program is created and~~] shall be implemented, administered, operated, and financed as provided by this chapter. The purpose of the water supply enhancement program is to increase available surface water and groundwater through:

(1) selective control, removal, or reduction of noxious brush species that are detrimental to water conservation; and

(2) revegetation of land on which noxious brush has been controlled, removed, or reduced.

SECTION 11. Section 203.011, Agriculture Code, is amended to read as follows:

Sec. 203.011. AUTHORITY OF BOARD. The board has jurisdiction over and, with the assistance of local districts, shall administer the water supply enhancement [~~brush control~~] program under this

chapter. This chapter does not limit the board's authority to control, remove, or reduce brush under any program the board administers under Chapter 201.

SECTION 12. Section 203.016, Agriculture Code, is amended to read as follows:

Sec. 203.016. CONSULTATION. The State Soil and Water Conservation Board shall consult with:

- (1) the Texas Water Development Board in regard to the effects of the water supply enhancement [~~brush control~~] program on water quantity;
- (2) the department in regard to the effects of the water supply enhancement [~~brush control~~] program on agriculture; and
- (3) the Parks and Wildlife Department in regard to the effects of the water supply enhancement [~~brush control~~] program on fish and wildlife.

SECTION 13. Section 203.051, Agriculture Code, is amended to read as follows:

Sec. 203.051. STATE PLAN. (a) The board shall prepare and adopt a state water supply enhancement [~~brush control~~] plan that includes [~~shall~~+

[~~(1) include~~] a comprehensive strategy for managing brush in all areas of the state where brush is contributing to a substantial water conservation problem[~~;~~ and

[~~(2) rank areas of the state in need of a brush control program, as provided by Section 203.053~~].

(b) The plan adopted under this section must list the goals the board establishes under Section 201.029 for the water supply enhancement program. These goals must include:

(1) a goal describing the intended use of a water supply enhanced or conserved by the program, such as agricultural purposes or drinking water purposes; and

(2) a goal describing the populations that the water supply enhancement program will target.

SECTION 14. Section 203.053, Agriculture Code, is amended to read as follows:

Sec. 203.053. CRITERIA FOR ACCEPTING AND PRIORITIZING WATER SUPPLY ENHANCEMENT PROJECTS [~~EVALUATING BRUSH CONTROL AREAS~~]. (a)

The board shall adopt rules establishing:

(1) criteria for accepting project proposals; and

(2) a system to prioritize projects for each funding cycle, giving priority to projects that balance the most critical water conservation need and the highest projected water yield.

(b) The criteria required by Subsection (a)(1) must include a requirement that each proposal state the projected water yield of the proposed project, as modeled by a person with expertise in hydrology, water resources, or another technical area pertinent to the evaluation of water supply.

(c) The board shall consult with stakeholders, including hydrologists and representatives from soil and water conservation districts, to develop by rule standard methods of reporting the

projected water yield under Subsection (b).

(d) In prioritizing projects under Subsection (a)(2) [~~ranking areas under the plan~~], the board shall consider:

(1) the need for conservation of water resources within the territory of the project, based on the state water plan adopted under Section 16.051, Water Code [~~the location of various brush infestations~~];

(2) projected water yield of areas of the project, based on soil, slope, land use, types and distribution of trees, brush, and other vegetative matter, and proximity of trees, brush, and other vegetative matter to rivers, streams, and channels [~~the type and severity of brush infestations~~];

(3) any method the project [~~the various management methods that~~] may use [~~be used~~] to control brush;

(4) cost-sharing contract rates within the territory of the project [~~the amount of water produced by a project and the severity of water shortage in the project area~~]; [and]

(5) the location and size of the project;

(6) the budget of the project and any associated requests for grant funds submitted under this title;

(7) the implementation schedule of the project; and

(8) the administrative capacities of the board and the entity that will manage the project.

(e) In prioritizing projects under Subsection (a)(2), the board may consider:

(1) scientific research on the effects of brush removal on water supply; and

(2) any other criteria that the board considers relevant to assure that the water supply enhancement [~~brush control~~] program can be most effectively, efficiently, and economically implemented.

~~[(b) In ranking areas, the board shall give priority to areas with the most critical water conservation needs and in which brush control and revegetation projects will be most likely to produce substantial water conservation.]~~

SECTION 15. Section 203.056(a), Agriculture Code, is amended to read as follows:

(a) Before January 31 of each year, the board shall submit to the governor, the speaker of the house, and the lieutenant governor a report of the activities of the water supply enhancement [~~brush control~~] program during the immediately preceding calendar year, including a comprehensive analysis of the program's effectiveness and a report on program participant compliance with plans created under Section 203.162.

SECTION 16. Subchapter C, Chapter 203, Agriculture Code, is amended by adding Section 203.057 to read as follows:

Sec. 203.057. FEASIBILITY STUDIES. (a) The board shall establish a process for providing to persons submitting project proposals assistance in locating a person with expertise in hydrology, water resources, or another technical area pertinent to the evaluation of water supply to conduct a feasibility study for a

project using a water yield model as described by Section 203.053(b).

(b) The board may:

(1) dedicate a portion of the money appropriated to the board that it considers appropriate to fund part or all of a feasibility study under this section; and

(2) establish procedures to distribute the money under Subdivision (1).

(c) To receive funding for a feasibility study under Subsection (b), a person must submit to the board an application for funding that includes a statement of the project's anticipated impact on water resources.

SECTION 17. Section 203.101, Agriculture Code, is amended to read as follows:

Sec. 203.101. GENERAL AUTHORITY. Each district may administer the aspects of the water supply enhancement [~~brush control~~] program within the jurisdiction of that district.

SECTION 18. Section 203.102, Agriculture Code, is amended to read as follows:

Sec. 203.102. PROVIDE INFORMATION RELATING TO PROGRAM. The board shall prepare and distribute information to each district relating generally to the water supply enhancement [~~brush control~~] program and concerning the procedures for preparing, filing, and obtaining approval of an application for cost sharing under Subchapter E [~~of this chapter~~].

SECTION 19. The heading to Section 203.104, Agriculture Code, is amended to read as follows:

Sec. 203.104. SUPERVISION OF COST-SHARING CONTRACTS [~~PROJECTS~~].

SECTION 20. Sections 203.104(a) and (c), Agriculture Code, are amended to read as follows:

(a) Each district on behalf of the board may inspect and supervise cost-sharing contracts [~~projects~~] within its jurisdiction in which state money is provided under Subchapter E [~~of this chapter~~].

(c) The board may direct a district to manage any problem that arises under a cost-sharing contract for water supply enhancement [~~brush control~~] in that district and to report to the board.

SECTION 21. The heading to Subchapter E, Chapter 203, Agriculture Code, is amended to read as follows:

SUBCHAPTER E. COST SHARING FOR WATER SUPPLY ENHANCEMENT [~~BRUSH CONTROL~~]

SECTION 22. Section 203.151, Agriculture Code, is amended to read as follows:

Sec. 203.151. CREATION OF COST-SHARING PROGRAM. As part of the water supply enhancement [~~brush control~~] program, a cost-sharing program is created to be administered under this chapter and rules adopted by the board.

SECTION 23. Section 203.154, Agriculture Code, is amended to

read as follows:

Sec. 203.154. LIMIT ON COST-SHARING PARTICIPATION. (a) Not more than 70 percent of the total cost of a single cost-sharing contract [~~brush control project~~] may be made available as the state's share in cost sharing.

(b) A person is not eligible to participate in [~~the state brush control program~~] or to receive money from the state water supply enhancement [~~brush control~~] program if the person is simultaneously receiving any cost-share money for brush control on the same acreage from a federal government program.

(c) The board may grant an exception to Subsection (b) if the board finds that joint participation of the state water supply enhancement [~~brush control~~] program and any federal brush control program will:

(1) enhance the efficiency and effectiveness of the water supply enhancement program [~~a project~~];

(2) lessen the state's financial commitment to the person receiving money from the water supply enhancement program through a cost-sharing contract [~~project~~]; and

(3) not exceed 80 percent of the total cost of the cost-sharing contract [~~project~~].

(d) A political subdivision of this state is eligible for cost sharing under the water supply enhancement [~~brush control~~] program, provided that the state's share may not exceed 50 percent of the total cost of a single cost-sharing contract [~~project~~].

(e) Notwithstanding any other provision of this section, 100 percent of the total cost of a single cost-sharing contract [~~project~~] on public lands may be made available as the state's share in cost sharing.

SECTION 24. Section 203.156, Agriculture Code, is amended to read as follows:

Sec. 203.156. APPLICATION FOR COST SHARING. A person, including a political subdivision of this state, that desires to participate with the state in the water supply enhancement program [~~a brush control project~~] and to obtain cost-sharing participation by the state shall file an application for a cost-sharing contract with the district board in the district in which the land on which the contract [~~project~~] is to be performed [~~accomplished~~] is located. The application must be in the form provided by board rules.

SECTION 25. Section 203.157, Agriculture Code, is amended to read as follows:

Sec. 203.157. CONSIDERATIONS IN PASSING ON APPLICATION. In passing on an application for cost sharing, the board shall consider:

(1) the location of the land that is subject to the cost-sharing contract [~~project~~];

(2) the method of control the applicant will use [~~that is to be used by the project applicant~~];

(3) the plans for revegetation;

- (4) the total cost of the contract [~~project~~];
- (5) the amount of land to be included in the contract [~~project~~];
- (6) whether the applicant [~~for the project~~] is financially able to provide the applicant's [~~his~~] share of the money for the project;
- (7) the cost-share percentage, if an applicant agrees to a higher degree of financial commitment;
- (8) any comments and recommendations submitted by a local district, the department, the Texas Water Development Board, or the Parks and Wildlife Department; and
- (9) any other pertinent information considered necessary by the board.

SECTION 26. Section 203.158, Agriculture Code, is amended to read as follows:

Sec. 203.158. APPROVAL OF APPLICATION. The board may approve an application for cost sharing if, after considering the factors listed in Section 203.157 and any other relevant factors, the board finds:

- (1) the owner of the land fully agrees to cooperate in the cost-sharing contract [~~project~~]; and
- (2) the method of eradication is a method approved by the board under Section 203.055[~~;~~ and
- ~~[(3) the project is a higher priority than other projects submitted in accordance with the board's plan].~~

SECTION 27. Sections 203.160(a), (d), and (e), Agriculture Code, are amended to read as follows:

(a) On approval of an application for cost sharing by the board, the board or the governing board of the designated district shall negotiate cost-sharing contracts with the successful applicants in the project territory [~~area~~].

(d) The board shall examine the contract and if the board finds that the contract meets all the conditions of the board's resolution, instructions, and rules, it shall approve the contract and provide to the individual on faithful performance of the terms of the contract [~~completion of the project~~] the money that constitutes the state's share of the project.

(e) The board may develop guidelines to allow partial payment of the state's share of a cost-sharing contract [~~brush control project~~] as certain portions or percentages of contracted work are completed, but state money may not be provided in advance for work remaining to be done.

SECTION 28. Subchapter E, Chapter 203, Agriculture Code, is amended by adding Section 203.162 to read as follows:

Sec. 203.162. WATER SUPPLY ENHANCEMENT PLANS. (a) The board shall consult with each successful applicant for a cost-sharing contract to create a 10-year plan for the land that is subject to the contract to enhance the water supply in the area.

(b) A plan created under this section must include:

(1) provisions for brush control or other water supply

enhancement activities;

(2) a provision for follow-up brush control;

(3) a provision requiring the landowner to limit the average brush coverage on the land that is subject to the contract to not more than five percent throughout the course of the 10-year plan; and

(4) periodic dates throughout the course of the 10-year plan on which the board will inspect the status of brush control on the land that is subject to the contract.

(c) A plan created under this section may not condition implementation of the provision for follow-up brush control on receipt of additional funding for the follow-up brush control from a state source other than the original cost-sharing contract.

SECTION 29. Section 776.006, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The State Soil and Water Conservation Board may accept and administer conditional or other loans, grants, gifts, or other funds from the state or federal government or other sources to carry out its functions under this chapter.

SECTION 30. The following sections of the Agriculture Code are repealed:

- (1) Section 201.0152;
- (2) Section 203.152;
- (3) Section 203.153; and
- (4) Section 203.159.

SECTION 31. Notwithstanding Section 201.025, Agriculture Code, as amended by this Act, the Sunset Advisory Commission shall conduct a special-purpose review of the State Soil and Water Conservation Board as part of the Sunset Advisory Commission's review of agencies for the 84th Legislature. The Sunset Advisory Commission's report to the 84th Legislature regarding the special-purpose review of the State Soil and Water Conservation Board must be limited to evaluating the State Soil and Water Conservation Board's implementation of the Sunset Advisory Commission's recommendations to the 82nd Legislature regarding flood control, the water quality management plan, and the water supply enhancement program. The report may include any recommendations the Sunset Advisory Commission considers appropriate based on the special-purpose review.

SECTION 32. This Act takes effect September 1, 2011.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1808 was passed by the House on April 11, 2011, by the following vote: Yeas 146, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 1808 was passed by the Senate on May 3, 2011, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor