

1 AN ACT

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

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

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

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

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

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

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

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

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

1 member:

2 (1) does not:

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

5 (B) if the member is appointed, have at the time
6 of taking office the qualifications required by Section 201.011(2)
7 [Subsection (c) of Section 201.013 of this code];

8 (2) does not maintain during service on the state
9 board the qualifications required by Section 201.011(2) or
10 201.013(c) [Subsection (c) of Section 201.013 of this code];

11 (3) is ineligible for membership under Section
12 201.0141 [of this code];

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

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

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

22 Sec. 201.0231. COMPLAINTS. (a) The state board shall
23 maintain a central database of complaints filed with state board
24 offices and a system to promptly and efficiently act on a complaint
25 filed with a state board office. The state board shall maintain
26 information about parties to the complaint, [file on each written
27 complaint filed with the state board.

1 ~~[(b) The file must include,~~

2 ~~[(1) the name of the person who filed the complaint,~~

3 ~~[(2) the date the complaint is received by the state~~
4 ~~board,~~

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

6 ~~[(4) the name of each person contacted in relation to~~
7 ~~the complaint,~~

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

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

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

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

20 ~~[(d)] The state board[, at least quarterly until final~~
21 ~~disposition of the complaint,] shall periodically notify the~~
22 ~~parties to [person filing] the complaint [and each person who is a~~
23 ~~subject of the complaint] of the status of the complaint until final~~
24 ~~disposition [investigation unless the notice would jeopardize an~~
25 ~~undercover investigation].~~

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

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

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

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

13 (b) The state board shall:

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

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

18 (3) monitor compliance with the evaluation criteria
19 described by Subdivision (2) by gathering, maintaining, and
20 analyzing comprehensive data on grant program activities;

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

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

27 Sec. 201.030. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE

1 RESOLUTION. (a) The state board shall develop and implement a
2 policy to encourage the use of:

3 (1) negotiated rulemaking procedures under Chapter
4 2008, Government Code, for the adoption of state board rules; and

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

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

14 (c) The state board shall:

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

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

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

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

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

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

- 1 (2) forest improvement measures;
- 2 (3) returning erosive cropland to pasture and other
- 3 practices that maximize water conservation;
- 4 (4) increasing water use efficiency;
- 5 (5) increasing water quality;
- 6 (6) reducing erosion; and
- 7 (7) maximizing public benefits.

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

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

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

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

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

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

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

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

26 Sec. 203.002. PURPOSE [~~CREATION~~] OF PROGRAM. The water
27 supply enhancement program [~~Texas Brush Control Program is created~~

1 ~~and~~] shall be implemented, administered, operated, and financed as
2 provided by this chapter. The purpose of the water supply
3 enhancement program is to increase available surface water and
4 groundwater through:

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

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

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

12 Sec. 203.011. AUTHORITY OF BOARD. The board has
13 jurisdiction over and, with the assistance of local districts,
14 shall administer the water supply enhancement [~~brush control~~]
15 program under this chapter. This chapter does not limit the board's
16 authority to control, remove, or reduce brush under any program the
17 board administers under Chapter 201.

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

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

22 (1) the Texas Water Development Board in regard to the
23 effects of the water supply enhancement [~~brush control~~]
24 program on water quantity;

25 (2) the department in regard to the effects of the
26 water supply enhancement [~~brush control~~]
27 program on agriculture;
and

1 (3) the Parks and Wildlife Department in regard to the
2 effects of the water supply enhancement [~~brush control~~] program on
3 fish and wildlife.

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

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

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

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

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

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

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

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

24 Sec. 203.053. CRITERIA FOR ACCEPTING AND PRIORITIZING WATER
25 SUPPLY ENHANCEMENT PROJECTS [~~EVALUATING BRUSH CONTROL AREAS~~]. (a)
26 The board shall adopt rules establishing:

27 (1) criteria for accepting project proposals; and

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

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

9 (c) The board shall consult with stakeholders, including
10 hydrologists and representatives from soil and water conservation
11 districts, to develop by rule standard methods of reporting the
12 projected water yield under Subsection (b).

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

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

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

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

26 (4) cost-sharing contract rates within the territory
27 of the project [~~the amount of water produced by a project and the~~

1 ~~severity of water shortage in the project area]; [and]~~

2 (5) the location and size of the project;

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

5 (7) the implementation schedule of the project; and

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

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

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

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

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

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

22 (a) Before January 31 of each year, the board shall submit
23 to the governor, the speaker of the house, and the lieutenant
24 governor a report of the activities of the water supply enhancement
25 [brush control] program during the immediately preceding calendar
26 year, including a comprehensive analysis of the program's
27 effectiveness and a report on program participant compliance with

1 plans created under Section 203.162.

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

4 Sec. 203.057. FEASIBILITY STUDIES. (a) The board shall
5 establish a process for providing to persons submitting project
6 proposals assistance in locating a person with expertise in
7 hydrology, water resources, or another technical area pertinent to
8 the evaluation of water supply to conduct a feasibility study for a
9 project using a water yield model as described by Section
10 203.053(b).

11 (b) The board may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 Sec. 203.151. CREATION OF COST-SHARING PROGRAM. As part of

1 the water supply enhancement [~~brush control~~] program, a
2 cost-sharing program is created to be administered under this
3 chapter and rules adopted by the board.

4 SECTION 23. Section 203.154, Agriculture Code, is amended
5 to read as follows:

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

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

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

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

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

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

26 (d) A political subdivision of this state is eligible for
27 cost sharing under the water supply enhancement [~~brush control~~]

1 program, provided that the state's share may not exceed 50 percent
2 of the total cost of a single cost-sharing contract [~~project~~].

3 (e) Notwithstanding any other provision of this section,
4 100 percent of the total cost of a single cost-sharing contract
5 [~~project~~] on public lands may be made available as the state's share
6 in cost sharing.

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

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

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

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

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

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

27 (3) the plans for revegetation;

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

14 SECTION 26. Section 203.158, Agriculture Code, is amended

15 to read as follows:

16 Sec. 203.158. APPROVAL OF APPLICATION. The board may

17 approve an application for cost sharing if, after considering the

18 factors listed in Section 203.157 and any other relevant factors,

19 the board finds:

20 (1) the owner of the land fully agrees to cooperate in

21 the cost-sharing contract [~~project~~]; and

22 (2) the method of eradication is a method approved by

23 the board under Section 203.055 [~~and~~

24 [~~(3) the project is a higher priority than other~~

25 ~~projects submitted in accordance with the board's plan~~].

26 SECTION 27. Sections 203.160(a), (d), and (e), Agriculture

27 Code, are amended to read as follows:

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

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

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

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

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

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

23 (1) provisions for brush control or other water supply
24 enhancement activities;

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

26 (3) a provision requiring the landowner to limit the
27 average brush coverage on the land that is subject to the contract

1 to not more than five percent throughout the course of the 10-year
2 plan; and

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

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

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

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

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

- 18 (1) Section 201.0152;
19 (2) Section 203.152;
20 (3) Section 203.153; and
21 (4) Section 203.159.

22 SECTION 31. Notwithstanding Section 201.025, Agriculture
23 Code, as amended by this Act, the Sunset Advisory Commission shall
24 conduct a special-purpose review of the State Soil and Water
25 Conservation Board as part of the Sunset Advisory Commission's
26 review of agencies for the 84th Legislature. The Sunset Advisory
27 Commission's report to the 84th Legislature regarding the

1 special-purpose review of the State Soil and Water Conservation
2 Board must be limited to evaluating the State Soil and Water
3 Conservation Board's implementation of the Sunset Advisory
4 Commission's recommendations to the 82nd Legislature regarding
5 flood control, the water quality management plan, and the water
6 supply enhancement program. The report may include any
7 recommendations the Sunset Advisory Commission considers
8 appropriate based on the special-purpose review.

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

David Newhurst
President of the Senate

Joe Straus
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.

Robert Haney
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.

Kathy Spaw
Secretary of the Senate

APPROVED: 17 MAY '11
Date

RICK PERRY
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:27pm O'CLOCK
MAY 17 2011
Boyd Rutherford
Secretary of State