

BILL ANALYSIS

Senate Research Center
77R5733 JMG-D

S.B. 1175
By: Wentworth
Natural Resources
4/2/2001
As Filed

DIGEST AND PURPOSE

Texas has a lengthy history of efforts to lessen the impact of periodic, severe droughts through the use of cloud-seeding technologies. Numerous “rain-making” endeavors sprouted during the epic drought of the 1950s, eventually prompting the Texas Legislature to enact a law governing the use of weather-modification technology. Weather-modification technology involves injecting suitable (“seedable”) clouds with agents such as silver iodide by an airplane. Currently, there are nine rain enhancement projects in operation in Texas. These projects, covering some 44 million acres from the caprock in the Texas High Plains to the coastal prairies south of San Antonio and the lower Rio Grande basin, are designed to be integral parts of a long-term, water management strategy by water conservation districts and other water management authorities to replenish fresh-water supplies in aquifers and reservoirs as well as to help meet the water needs of agriculture, industry, and municipalities. As proposed, S.B. 1175 transfers the weather modification program from the Texas Natural Resource Conservation Commission to the Texas Department of Agriculture (TDA). S.B. 1175 also authorizes TDA to receive and administer grants to political subdivisions for weather modification and control activities since the weather modification program mostly affects farmers, ranchers, and others involved in the agriculture industry. Funding for the weather modification program will be solicited by TDA. S.B. 1175 authorizes TDA to solicit and accept gifts, grants, and other donations from any source in order to procure appropriate amounts of funding.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Agriculture in SECTION 1 (Sections 20.011, 20.032, 20.041, and 20.124, Agriculture Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2, Agriculture Code, by adding Chapter 20, as follows:

**CHAPTER 20. WEATHER MODIFICATION
SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 20.001. SHORT TITLE. Authorizes this chapter to be cited as the weather Modification Act.

Sec. 20.002. DEFINITIONS. Defines “operation,” “research and development,” “weather modification,” and “control.”

[Sections 20.003-20.010 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

Sec. 20.011. RULES. Authorizes the Department of Agriculture (department) to adopt rules necessary to: exercise the powers and perform the duties under this chapter; establish procedures and conditions for the issuance of licenses and permits under this chapter; and

establish standards and instructions to govern the carrying out of research or projects in weather modification and control that the department considers necessary or desirable to minimize danger to health or property.

Sec. 20.012. STUDIES; INVESTIGATIONS; HEARINGS. Authorizes the department to make any studies or investigations, obtain any information, and hold any hearings necessary or proper to administer or enforce this chapter or any rules or orders issued under this chapter.

Sec. 20.013. ADVISORY COMMITTEES. Authorizes the department to establish advisory committees to advise and make recommendations to the department concerning legislation, policies, administration, research, and other matters related to the department's duties, powers, or functions under this chapter.

Sec. 20.014. PERSONNEL. Authorizes the commissioner of agriculture (commissioner), as provided by the General Appropriations Act, to appoint and fix the compensation of any personnel, including specialists and consultants, necessary to perform duties and functions under this chapter.

Sec. 20.015. MATERIALS AND EQUIPMENT. Authorizes the department to acquire in the manner provided by law any materials, equipment, and facilities necessary to the performance of its duties and functions under this chapter.

Sec. 20.016. INTERSTATE COMPACTS. Authorizes the commissioner to represent the state in matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control.

Sec. 20.017. CONTRACTS, COOPERATIVE AGREEMENTS, ETC. (a) Authorizes the department to cooperate with public or private agencies to promote the purposes of this chapter.

(b) Authorizes the department to enter into cooperative agreements with the United States or any of its agencies, with counties and municipalities of this state, or with any private or public agencies for conducting weather modification or cloud-seeding operations.

(c) Authorizes the department to represent the state, counties, municipalities, and public and private agencies in contracting with private concerns for the performance of weather modification or cloud-seeding operations.

Sec. 20.018. PROMOTION OF RESEARCH AND DEVELOPMENT. Requires the department, in order to assist in expanding the theoretical and practical knowledge of weather modification and control, to promote certain research and development. Authorizes the department with approval of the commissioner to conduct and contract for research and development activities relating to the purposes of this section.

Sec. 20.019. GRANTS, GIFTS, ETC. Authorizes the department, subject to any limitations imposed by law, to accept federal grants, private gifts, and donations from any other source. Authorizes the department, unless the use of the money is restricted or subject to any limitations provided by law, to spend the money for the administration of this chapter or authorize by grant, contract, or cooperative arrangement the use of the money to encourage research and development by a public or private agency.

Sec. 20.020. DISPOSITION OF LICENSE AND PERMIT FEES. Requires the department to deposit all license and permit fees in the state treasury.

[Sections 20.021-20.030 reserved for expansion]

SUBCHAPTER C. LICENSES AND PERMITS

Sec. 20.031. LICENSE AND PERMIT REQUIRED. Prohibits a person, except as provided by rule of the department under Section 20.032, from engaging in activities for weather modification and control without a weather modification license and weather modification permit issued by the department or in violation of any term or condition of the license or permit.

Sec. 20.032. EXEMPTIONS. Requires the department, to the extent it considers exemptions practical, to provide by rule for exempting certain activities from the license and permit requirements of this chapter.

Sec. 20.033. ISSUANCE OF LICENSE. Requires the department, in accordance with the rules adopted under this chapter, to issue a weather modification license to certain applicants. Provides that if the applicant is an organization, the competence is required to be demonstrated by the individual or individuals who are to be in control and in charge of the operation for the applicant.

Sec. 20.034. LICENSE FEE. Provides that the fee for an original or renewal license is \$150.

Sec. 20.035. EXPIRATION DATE. Provides that each original or renewal license expires at the end of the state fiscal year for which it was issued.

Sec. 20.036. RENEWAL LICENSE. Requires the department, at the expiration of the license period, to issue a renewal license to each applicant who pays the license fee and who has the qualifications necessary for issuance of an original license.

Sec. 20.037. ISSUANCE OF PERMIT. Authorizes the department to issue a weather modification permit to certain applicants, in accordance with the rules adopted under this chapter and on a finding that the weather modification and control operation as proposed in the permit application will not significantly dissipate the clouds and prevent their natural course of developing rain in the area where the operation is to be conducted to the material detriment of persons or property in that area, and after approval at an election if covered by Section 20.041. Requires the department to hold a public hearing on the permit, if requested to do so by at least 25 persons.

Sec. 20.038. PERMIT FEE. Provides that the fee for each permit is \$75.

Sec. 20.039. SCOPE OF PERMIT. Provides that a separate permit is required for each operation. Provides that if an operation is to be conducted under contract, a permit is required for each separate contract. Prohibits the department from issuing a permit for a contracted operation unless it covers a continuous period not to exceed four years.

Sec. 20.040. APPLICATION AND NOTICE OF INTENTION. Requires a license holder, before undertaking any operation, to file an application for a permit and have a notice of intention published as required by this chapter.

Sec. 20.041. ELECTION FOR APPROVAL OF A PERMIT THAT INCLUDES AUTHORIZATION FOR HAIL SUPPRESSION. (a) Defines “target area” and “operational area.”

(b) Provides that no part of an operational area may be more than eight miles from the limits of the target area. Requires the operational area to be described by metes and bounds or other specific bounded description and set out in the application for a permit.

Authorizes the department, if the application for a permit does not describe the operational area, to designate an area located inside and up to eight miles from the limits of the target area described in the application as the operational area of the permit for the purposes of this chapter.

(c) Prohibits a permit from being issued by the department before the end of the 30-day period immediately following the first publication of notice and then only in certain counties.

(d) Requires persons eligible to vote in elections held under this section to include qualified voters in counties or parts of counties included in the target area or operational area. Authorizes an election, if the target area or operational area includes only part of a county, to be held only in the election precincts that are included entirely within or are partially included in those areas. Provides that all qualified voters in those precincts are entitled to vote in these elections.

(e) Requires the county clerk of each county within the target area or operational area, on written request of at least 25 qualified voters residing in the target area or operational area mentioned in the notice requesting an election accompanied by unsigned petitions, to certify and mark for identification petitions for circulation. Requires an application for a petition seeking an election to disapprove the issuance of a permit to contain a certain heading and contain certain information. Requires an application for a petition seeking an election to approve the issuance of a permit to contain a certain heading and contain certain information. Requires the commissioners court of each county, on the return to the county clerks of petitions signed by at least 10 percent of the qualified voters residing in each county within the target area or operational area in the notice requesting an election, to call and hold an election. Provides that notice under Chapter 111 (County Budget), Local Government Code, of the commissioners court meeting to call and hold the election is not required. Requires the date of the election to be determined by the commissioners court in accordance with this section, notwithstanding Sections 41.004 (Special Election Within Particular Period) and 41.0041 (Election on Measure After Particular Period), Election Code. Requires the petition to be filed with the clerk of each county within 30 days immediately following the first publication of notice. Requires the election to be held within 45 days after the date the petition is received to determine whether or not the qualified voters in the target area or operational area approve the issuance of the permit. Requires the clerk of each county within the target area or operation area, immediately on calling the election, to notify the commissioner of the date of the election. Requires elections to be held in accordance with the Election Code, except as otherwise provided in this chapter.

(f) Requires the petition for the election to be written in a certain manner. Requires each qualified voter signing the petition to give the voter's full name and address and voter registration number. Requires the commissioners court, within five days after the date of receiving a petition under this section, to have the county clerk of the county check the names on the petition against the voter registration lists of the county and certify to the commissioners court the number of qualified voters signing the petition as reflected by checking the county's voter registration lists. Requires the county clerk, if only a part of a county is included in the target area or operational area, to also certify that those signing the petition reside in an election precinct in the county totally or partially included in the target area or operational area. Requires the petition, on certification by the county clerk, to be filed with the official records of the county and be made available for public inspection.

(g) Requires a person filing a petition with the county clerk to deposit with the county

clerk an amount of money estimated by the county clerk to be sufficient to cover the costs of the election, to be held by the county clerk until the result of the election to approve or disapprove the issuance of the permit is officially announced. Requires the county clerk, if the result of the election favors the party petitioning for the election, to return the deposit to the person filing the petition or to the person's agent or attorney, but requires the county clerk, if the result of the election does not favor the party petitioning for the election, to pay the cost and expenses of the election from the deposit and return the balance of the deposit to the person filing the petition or to the person's agent or attorney.

(h) Requires the ballots for an election under this section to be printed in a certain manner.

(i) Requires the order calling the election to provide for the time and place or places for holding the election, the form of the ballots, and the presiding judge for each voting place.

(j) Requires the commissioners court to publish a copy of the election order in a newspaper of general circulation in the county or in the part of the county within the target area or operational area at least 30 days preceding the day of the election.

(k) Requires the presiding judge of each voting place to supervise the counting of all votes cast and shall certify the results to the commissioners court within five days after the date of the election. Provides that a copy of the results is to be filed with the county clerk and is a public record.

(l) Requires the commissioners court to declare the results within five days after the results are filed.

(m) Requires the commissioners court of each county holding an election to send certified copies of the results of the election to the commissioner within 24 hours after the results are declared under Subsection (k).

(n) Prohibits a permit from being issued if a majority of the qualified voters voting in the election precincts any part of which are located in the target area vote against issuance of the permit. Authorizes the department, if a majority of the qualified voters voting in the election precincts any part of which are located within the target area vote in favor of issuance of the permit, to issue the permit as provided in this subchapter, except that if a majority of the qualified voters voting in either of the following areas vote against issuance of the permit, those areas are required to be excluded from the coverage of the permit: any election precinct, any part of which is located in the operational area; or any election precinct located wholly within the target area and contiguous with its outer boundary.

(o) Authorizes a permit, if the department finds that a weather modification and control operation is still feasible, to be issued covering areas in which no election is requested or areas in which the voters give their approval as provided in this section.

(p) Prohibits an application for a permit covering all or part of the same target area or operational area that was denied from being considered and prohibits a permit under that application for a period of two years following the date of the election from being issued by the department and prohibits an election from being held under this chapter, if a permit is denied under Subsection (n).

(q) Provides that if a permit including authorization for hail suppression is to cover only

a part of a county, only those qualified voters residing in an election precinct or precincts of the county included in the target area or operational area are eligible to sign a petition and to vote at an election under this section. Provides that in computing the vote, only a majority of qualified voters residing in those areas and voting in the election is necessary to carry the proposition in that county.

(r) Prohibits a permit being issued that provides for or allows the seeding of clouds for hail suppression outside the target area or within those counties or parts of counties located in the operational or target areas that were excluded from the coverage of the permit by an election under Subsection (n). Authorizes seeding to be done in those counties or parts of counties located in the operational or target area which were not excluded from the coverage of the permit by virtue of an election under Subsection (n), provided the seeding is reasonably calculated to take effect only within the target area. Provides that this subsection does not prohibit the observation of cloud and cloud formations.

(s) Authorizes the department to monitor any program under conditions the department determines advisable.

(t) Requires the commissioners court of any county outside but adjacent to a county included in the operational area of an existing or proposed permit, on petition as provided in this section, to call and hold an election on the proposition of whether or not the qualified voters of the county approve of the issuance of any permit authorizing hail suppression in the county. Prohibits the department, if the county voters voting in the election disapprove the issuance of permits authorizing hail suppression, from issuing a permit covering the county until the proposition has been approved at a subsequent election.

(u) Prohibits any county or part of a county, if that county or part of a county has disapproved the issuance of a permit at the previous election held under this section, from being included in any permit issued by the department until the voters of that county or part of a county have participated in a subsequent election at which a permit is approved. Provides that the applicant for a permit that includes that county or part of a county has the burden of petitioning for an election and depositing costs in the manner provided by this section for the original election to approve or disapprove a permit.

(v) Requires the department by rule to define hail suppression as used in this section, using the most current scientifically accepted technological concepts.

Sec. 20.042. CONTENT OF NOTICE. Requires the applicant, in the notice of intention, to include certain information.

Sec. 20.043. PUBLICATION OF NOTICE. Requires the notice of intention to be published at least once a week for three consecutive weeks in a newspaper of general circulation published in each county in which the operation is to be conducted and in each county that includes any part of the affected area. Requires publication to be made in a newspaper having general circulation in the county, if in any such county no newspaper of general circulation is published.

Sec. 20.044. PROOF OF PUBLICATION; AFFIDAVIT. Requires the applicant to file proof of the publication, together with the publishers' affidavits, with the department during the 15-day period immediately following the date of the last publication.

Sec. 20.045. PROOF OF FINANCIAL RESPONSIBILITY. Provides that proof of financial responsibility is made by showing to the satisfaction of the department that the license holder

has the ability to respond in damages for liability that might reasonably result from the operation for which the permit is sought.

Sec. 20.046. MODIFICATION OF PERMIT. Authorizes the department to modify the terms and conditions of a permit under certain circumstances.

Sec. 20.047. SCOPE OF ACTIVITY. Requires the license holder, once a permit is issued, to confine the license holder's activities substantially within the limits of time and area specified in the notice of intention, except to the extent that the limits are modified by the department. Requires the license holder to also comply with any terms and conditions of the permit as originally issued or as subsequently modified by the department. Provides that failure of a license holder to comply with the provisions of this section is a violation of this chapter.

Sec. 20.048. RECORDS AND REPORTS. (a) Requires a license holder to keep a record of each operation conducted under a permit, showing certain information.

(b) Requires the department to require written reports covering each operation, whether the operation is exempt or conducted under a permit.

(c) Requires a license holder, at the time and in the manner required by the department, to submit a written report containing the information described by Subsection (a).

(d) Requires all information on an operation to be submitted to the department before it is released to the public.

(e) Requires the reports and records in the custody of the department to be kept open for public inspection.

[Sections 20.049-20.050 reserved for expansion]

SUBCHAPTER D. ADMINISTRATIVE PENALTY

Sec. 20.051. MAXIMUM AMOUNT. (a) Authorizes the department to assess an administrative penalty against a person as provided by this section if the person violates certain provisions, rules, or permits.

(b) Prohibits the amount of the administrative penalty for a violation of this chapter from exceeding \$2,500 a day for each violation.

(c) Provides that each day that a continuing violation occurs may be considered a separate violation. Authorizes the department to authorize an installment payment schedule for an administrative penalty assessed under this section.

Sec. 20.052. FACTORS TO BE CONSIDERED IN DETERMINATION OF PENALTY AMOUNT. Requires the department, in determining the amount of an administrative penalty, to consider certain factors.

Sec. 20.053. REPORT OF VIOLATION. Authorizes the commissioner, if after examination of a possible violation and the facts surrounding that possible violation the commissioner concludes that a violation has occurred, to issue a preliminary report in accordance with department rules that includes recommendations regarding any penalty or corrective action.

Sec. 20.054. NOTICE OF REPORT. Requires the department, not later than the 10th day after the date on which the report of a violation is issued, to give written notice of the report, in

accordance with department rules, to the person charged with the violation.

Sec. 20.055. CONSENT. Authorizes the person charged, not later than the 20th day after the date on which notice is received, to give to the department written consent to the department's report, including the recommended penalty, or make a written request for a hearing.

Sec. 20.056. DEFAULT. Requires the department by order, if the person charged with the violation consents to the penalty recommended by the department or does not timely respond to the notice, to assess the penalty or order a hearing to be held on the recommendations in the commissioner's report. Requires the department to give written notice of its decision to the person charged, if the department assesses the penalty.

Sec. 20.057. HEARING. Requires the department to order and to give notice of the hearing, if the person charged requests or the department orders a hearing. Authorizes the department by order to find that a violation has occurred and to assess a penalty, find that a violation has occurred but that a penalty should not be assessed, or find that a violation has not occurred. Requires the department, in making a penalty decision, to analyze each factor prescribed by Section 20.052. Provides that all proceedings under this section are subject to Chapter 2001 (Administrative Procedure), Government Code.

Sec. 20.058. NOTICE OF DECISION. Requires the department to give notice of its decision to the person charged. Requires the department, if the department finds that a violation has occurred and assesses a penalty, to give written notice of certain information to the person charged.

Sec. 20.059. NOTICE OF PENALTY. Requires the department, if required to give notice of a penalty under Section 20.056 or 20.058, to publish notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

Sec. 20.060. PAYMENT OF PENALTY; PETITION FOR REVIEW. Requires the person charged with the penalty, within the 30-day period immediately following the date on which the department's order is final, as provided by Section 2001.144 (Decisions; When Final), Government Code, to make certain payments or file a petition for judicial review contesting the occurrence of the violation and the amount of the penalty.

Sec. 20.061. STAYS. Authorizes a person who acts under Section 20.060(3), within the 30-day period described by Section 20.060, to perform certain requirements.

Sec. 20.062. CONSENT TO AFFIDAVIT. Authorizes the department, if the department receives a copy of an affidavit under Section 20.061(2), to file with the court, within five days after the date the copy is received, a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or give the supersedeas bond.

Sec. 20.063. JUDICIAL REVIEW. Provides that judicial review of the order or decision of the department assessing the penalty is under Chapter 2001G (Contested Cases: Judicial Review), Government Code.

Sec. 20.064. PENALTY REDUCED OR NOT ASSESSED. Requires the department, if the person paid the penalty and if the penalty is reduced or not assessed by the court, to remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or to execute a release of the bond if a supersedeas bond has been posted. Requires the accrued interest on amounts remitted by the department under this section to be paid at a rate equal to

the rate charged on loans to depository institutions by the New York Federal Reserve Bank and to be paid for the period beginning on the date the penalty is paid to the department under Section 20.060 and ending on the date the penalty is remitted.

Sec. 20.065. REFERRAL TO ATTORNEY GENERAL. Provides that a person who does not comply with Section 20.060 waives the right to judicial review, and authorizes the department to refer the matter to the attorney general for enforcement.

Sec. 20.066. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. Authorizes the department to compromise, modify, or remit, with or without conditions, an administrative penalty imposed under this chapter. Authorizes the department, in determining the appropriate amount of a penalty for settlement of an administrative enforcement matter, to consider a respondent's willingness to contribute to supplemental environmental projects that are approved by the department, giving preference to projects that benefit the community in which the alleged violation occurred. Authorizes the department to approve a supplemental environmental project with activities in territory of the United Mexican States if the project substantially benefits territory in this state in a manner described by this section. Prohibits the department from approving a project that is necessary to bring a respondent into compliance with environmental laws or that is necessary to remediate environmental harm caused by the respondent's alleged violation.

Defines "supplemental environmental project."

Sec. 20.067. FULL AND COMPLETE SATISFACTION. Provides that payment of an administrative penalty under this subchapter is full and complete satisfaction of the violation for which the penalty is assessed and precludes any other civil or criminal penalty for the same violation.

Sec. 20.068. DISPOSITION OF PENALTY. Requires a penalty collected under this subchapter to be deposited to the credit of the general revenue fund.

Sec. 20.069. FINDINGS OF FACT NOT REQUIRED; RESERVATIONS. Provides that the department, notwithstanding any other provision to the contrary, is not required to make findings of fact or conclusions of law other than an uncontested finding that the department has jurisdiction in an agreed order compromising or settling an alleged violation of a statute within the department's jurisdiction or of a rule adopted or order or permit issued under such a statute. Authorizes an agreed administrative order to include certain reservations.

Sec. 20.070. INADMISSIBILITY. Provides that an agreed administrative order issued by the department is not admissible against a party to the order in a civil proceeding unless the proceeding is brought by the attorney general's office to enforce the terms of the order or pursue a violation of a statute within the department's jurisdiction or of a rule adopted or order or permit issued under such a statute.

Sec. 20.071. RECOVERY OF PENALTY. Authorizes an administrative penalty owed under this subchapter to be recovered in a civil action brought by the attorney general at the request of the department.

Sec. 20.072. CORRECTIVE ACTION. Authorizes the department, if a person violates any statute or rule within the department's jurisdiction, to assess against the person an administrative penalty under this subchapter and order the person to take corrective action.

Sec. 20.073. HEARING POWERS. Authorizes the department to call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering the provisions of this chapter or the

rules, orders, or other actions of the department.

Sec. 20.074. PUBLIC COMMENT. (a) Requires the department, before the department approves an administrative order or proposed agreement to settle an administrative enforcement action initiated under this chapter to which the department is a party, to allow the public to comment in writing on the proposed order or agreement. Requires notice of the opportunity to comment to be published in the Texas Register not later than the 30th day before the date on which the public comment period closes.

(b) Requires the department to promptly consider any written comments and authorizes it to withdraw or withhold consent to the proposed order or agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter, another statute within the department's jurisdiction, or a rule adopted or order or permit issued under such a statute. Provides that further notice of changes to the proposed order or agreement is not required to be published if those changes arise from comments submitted in response to a previous notice.

(c) Provides that this section does not apply to a criminal enforcement proceeding or an emergency order or other emergency relief that is not a final order of the department.

(d) Provides that Chapter 2001, Government Code, does not apply to public comment under this section.

[Sections 20.075-20.080 reserved for expansion]

SUBCHAPTER E. CIVIL PENALTIES

Sec. 20.081. VIOLATION. Prohibits a person from causing, suffering, allowing, or permitting a violation of this chapter or a rule adopted or order or permit issued under this chapter.

Sec. 20.082. MAXIMUM PENALTY. Requires a person who causes, suffers, allows, or permits a violation of this chapter or a rule adopted or order or permit issued under this chapter, to be assessed for each violation a civil penalty not less than \$50 or greater than \$5,000 for each day of each violation as the court or jury considers proper. Provides that each day of a continuing violation is a separate violation.

Sec. 20.083. CONTINUING VIOLATIONS. Requires the defendant, if it is shown on a trial of a defendant that the defendant has previously been assessed a civil penalty for a violation of this chapter or a rule adopted or order or permit issued under this chapter within the year before the date on which the violation being tried occurred, to be assessed a civil penalty not less than \$100 or greater than \$25,000 for each subsequent day and for each subsequent violation. Provides that each day of a continuing violation is a separate violation.

Sec. 20.084. INJUNCTIVE RELIEF. (a) Authorizes the department to enforce a department rule or a provision of a permit issued by the department by injunction or other appropriate remedy.

(b) Authorizes the department, if it appears that a violation or threat of violation of this chapter or a rule adopted or order or permit issued under this chapter has occurred or is about to occur, to have a suit instituted in district court for injunctive relief to restrain the violation or threat of violation.

(c) Authorizes the suit to be brought in the county in which the defendant resides or in

the county in which the violation or threat of violation occurs.

(d) Authorizes the court, in a suit brought under this section to enjoin a violation or threat of violation described by Subsection (b), to grant the department, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including a temporary restraining order and, after notice and hearing, a temporary or permanent injunction.

(e) Requires the attorney general or the prosecuting attorney in a county in which the violation occurs, on request of the department, to initiate a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty.

Sec. 20.085. RESOLUTION THROUGH ADMINISTRATIVE ORDER. Authorizes the attorney general's office and the department to agree to resolve any violation, before or after referral, by an administrative order issued under this chapter by the department with the approval of the attorney general.

Sec. 20.086. DIVISION OF CIVIL PENALTY. Requires a civil penalty recovered in a suit brought under this chapter by a local government to be equally divided between the state and the local government that brought the suit.

Sec. 20.087. ATTORNEY'S FEES. Provides that if the state prevails in a suit under this chapter it may recover reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Sec. 20.088. PARKS AND WILDLIFE DEPARTMENT JURISDICTION. (a) Authorizes the Texas Parks and Wildlife Department (TPWD), in the same manner as the department, to have a suit instituted in a district court for injunctive relief or civil penalties, or both, as authorized by this chapter, against the person who committed, is committing, or is threatening to commit the violation, if it appears that a violation or threat of violation of a rule, permit, or order of the department adopted or issued under this chapter has occurred or is occurring that affects aquatic life or wildlife.

(b) Provides that TPWD is entitled to recover damages for the injury in a suit brought under this section for a violation that is the proximate cause of injury to aquatic life or wildlife normally taken for commercial or sport purposes or to species on which the aquatic life or wildlife is directly dependent for food. Authorizes the court, in determining damages, to consider the valuation of the injured resources established in rules adopted by the Parks and Wildlife Department under Chapter 12D (Recovery by the State for Value of Fish, Shellfish, Reptile, Amphibian, Bird, or Animal), Parks and Wildlife Code, or the replacement cost of the injured resources. Requires any recovery of damages for injury to aquatic life or wildlife to be deposited to the credit of the game, fish, and water safety account under Section 11.032 (Game, Fish, and Water Safety Account; Sources), Parks and Wildlife Code, and requires TPWD to use money recovered in a suit to replenish or enhance the injured resources.

(c) Authorizes the actual cost of investigation, reasonable attorney's fees, and reasonable expert witness fees to also be recovered, and requires those recovered amounts to be credited to the same operating accounts from which expenditures occurred.

(d) Provides that this section does not limit recovery for damages available under other laws.

Sec. 20.089. COMMENTS. (a) Requires the attorney general to permit the public to comment in writing on the proposed order, judgment, or other agreement, before the department approves an agreed final judgment, consent order, voluntary settlement agreement, or other voluntary agreement that would finally settle a civil enforcement action initiated under this chapter to which this state is a party or before the court signs a judgment or other agreement settling a judicial enforcement action other than an enforcement action under Section 113 or 120 or Title II of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

(b) Requires the notice of the opportunity to comment to be published in the Texas Register not later than the 30th day before the date on which the public comment period closes.

(c) Requires the attorney general to promptly consider any written comments and authorizes the attorney general to withdraw or withhold consent to the proposed order, judgment, or other agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter or a rule adopted or order or permit issued under this chapter. Provides that further notice of changes to the proposed order, judgment, or other agreement is not required to be published if those changes arise from comments submitted in response to a previous notice.

(d) Prohibits the attorney general from opposing intervention by a person who has standing to intervene as provided by Rule 60, Texas Rules of Civil Procedure.

(e) Provides that this section does not apply to criminal enforcement proceedings, or proposed temporary restraining orders, temporary injunctions, emergency orders, or other emergency relief that is not a final judgment or final order of the court or department.

(f) Provides that Chapter 2001, Government Code, does not apply to public comment under this section.

[Section 20.090 reserved for expansion]

SUBCHAPTER F. CRIMINAL PENALTY

Sec. 20.091. VIOLATION. Provides that a person commits an offense if the person violates this chapter or a rule adopted or order or permit issued under this chapter. Provides that an offense under this section is a misdemeanor and is punishable by a fine of not more than \$1,000, confinement for a period not to exceed 30 days, or both.

Sec. 20.092. REPEAT OFFENSES. Provides that if it is shown at the trial of the defendant that the defendant has previously been convicted of the same offense under this chapter, the maximum punishment is doubled with respect to both the fine and confinement, unless the section creating the offense specifies otherwise.

Sec. 20.093. SEPARATE OFFENSES. Provides that each day a person engages in conduct proscribed by this chapter constitutes a separate offense.

Sec. 20.094. DISPOSITION OF FINES. Requires a fine recovered through a prosecution brought under this subchapter to be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, the court is authorized to apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.

Sec. 20.095. VENUE. Provides that venue for prosecution of an alleged violation under this subchapter is in certain counties.

Sec. 20.096. NOTICE OF CONVICTION. Authorizes a person other than an individual that has been adjudged guilty of an offense to be ordered by the court to give notice of the conviction to any person the court considers appropriate, in addition to a sentence that may be imposed under this subchapter.

Sec. 20.097. JUDGMENT OF CONVICTION. Requires the clerk of the court in which the conviction is returned, on conviction, to send a copy of the judgment to the department.

Sec. 20.098. ALLEGATIONS. Provides that in alleging the name of a defendant private corporation, it is sufficient to state in the complaint, indictment, or information the corporate name or to state any name or designation by which the corporation is known or may be identified. Provides that it is not necessary to allege that the defendant was lawfully incorporated.

Sec. 20.099. SUMMONS AND ARREST. Requires the court or clerk, after a complaint is filed or an indictment or information presented against a private corporation under this subchapter, to issue a summons to the corporation. Requires the summons to be in the same form as a *capias* except that it is required to meet certain requirements. Prohibits an individual from being arrested upon a complaint, indictment, or information against a private corporation.

Sec. 20.100. SERVICE OF SUMMONS. (a) Requires a peace officer to serve a summons on a private corporation by personally delivering a copy of it to the corporation's registered agent for service. Requires the peace officer to serve the summons by personally delivering a copy of it to the president or a vice president of the corporation, if a registered agent has not been designated or cannot with reasonable diligence be found at the registered office.

(b) Requires the peace officer to serve the summons on the secretary of state, if the peace officer certifies on the return that the peace officer diligently but unsuccessfully attempted to effect service under Subsection (a) or if the corporation is a foreign corporation that has no certificate of authority. Requires the secretary of state, on receipt of the summons copy, to immediately forward it by certified or registered mail, return receipt requested, addressed to the defendant corporation at its registered office or, if it is a foreign corporation, at its principal office in the state or country under whose law it was incorporated.

(c) Requires the secretary of state to keep a permanent record of the date and time of receipt and the disposition of each summons served under Subsection (b) together with the return receipt.

Sec. 20.101. ARRAIGNMENT AND PLEADINGS. Provides that in any criminal action instituted against a private corporation, appearance is for the purpose of arraignment and the corporation has 10 full days after the day the arraignment takes place and before the day the trial begins to file written pleadings.

Sec. 20.102. APPEARANCE. (a) Provides that a defendant private corporation appears through counsel or its representative.

(b) Provides that if a private corporation does not appear in response to summons or appears but does not plead, the corporation is considered to be present in person for all purposes, and the court is required to enter a plea of not guilty on the corporation's behalf and may proceed with trial, judgment, and sentencing.

(c) Provides that after appearing and entering a plea in response to summons, if a private corporation is absent without good cause at any time during later proceedings, the corporation is considered to be present in person for all purposes, and the court is authorized to proceed with trial, judgment, or sentencing.

Sec. 20.103. FINE TREATED AS JUDGMENT IN CIVIL ACTION. Requires the fine to be entered and docketed by the clerk of the court as a judgment against the person, and requires the fine to be of the same force and effect and be enforced against the person in the same manner as if the judgment were recovered in a civil action, if a person other than an individual is found guilty of a violation of this subchapter and a fine is imposed.

Sec. 20.104. EFFECT OF CERTAIN OTHER LAWS. Authorizes conduct punishable as an offense under this subchapter that is also punishable under another law to be prosecuted under either law.

Sec. 20.105. DEFENSE EXCLUDED. Provides that it is not a defense to prosecution under this subchapter that the person did not know of or was not aware of a rule, order, or statute.

[Sections 20.106-20.110 reserved for expansion]

SUBCHAPTER G. DEFENSES

Sec. 20.111. ACT OF GOD. Provides that if a person can establish that an event that would otherwise be a violation of a statute within the department's jurisdiction or a rule adopted or order or permit issued under such a statute was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of that statute, rule, order, or permit.

Sec. 20.112. DEFENSE EXCLUDED. Provides that unless otherwise provided by this chapter, the fact that a person holds a permit issued by the department does not relieve that person from liability for the violation of a statute within the department's jurisdiction or a rule adopted or order or permit issued under such a statute.

[Sections 20.113-20.120 reserved for expansion]

SUBCHAPTER H. REVOCATION AND SUSPENSION OF PERMITS AND LICENSES

Sec. 20.121. DEFINITIONS. Defines "license," "exemption," "permit holder," and "holder of a permit."

Sec. 20.122. GROUNDS FOR REVOCATION OR SUSPENSION OF PERMIT. Provides that this section applies to a permit or exemption issued by the department under this chapter or a rule adopted under this chapter. Authorizes the department, after notice and hearing, to revoke, suspend, or revoke and reissue a permit or exemption on certain grounds.

Sec. 20.123. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE. Provides that this section applies to a license issued or a rule adopted under this chapter. Authorizes the department, after notice and hearing, to suspend or revoke a license the department has issued, place on probation a person whose license has been suspended, reprimand the holder of a license, or refuse to renew or reissue a license on certain grounds.

Sec. 20.124. PROCEDURES. Requires the department by rule to establish procedures for public notice and any public hearing under this subchapter.

Sec. 20.125. HEARINGS. Requires a hearing under this subchapter to be conducted in

accordance with the hearing rules adopted by the department and the applicable provisions of Chapter 2001, Government Code.

Sec. 20.126. CONSENT. Authorizes the commissioner, if the holder of a permit or license requests or consents to the revocation or suspension of the permit or license, to revoke or suspend the permit or license without a hearing.

Sec. 20.127. OTHER RELIEF. Provides that a proceeding brought by the department under this subchapter does not affect the department's authority to bring suit for injunctive relief or a penalty, or both, under this chapter.

Sec. 20.128. PROBATION REQUIREMENTS. Authorizes the department, if a license suspension is probated, to require the holder of the license to perform certain tasks.

[Sections 20.129-20.130 reserved for expansion]

SUBCHAPTER I. IMMUNITY; LEGAL RELATIONSHIPS

Sec. 20.131. IMMUNITY OF STATE. Provides that the state and its officers and employees are immune from liability for all weather modification and control activities conducted by private persons and groups.

Sec. 20.132. PRIVATE LEGAL RELATIONSHIPS. Provides that this chapter does not affect private legal relationships, except that an operation conducted under the license and permit requirements of this chapter is not an ultrahazardous activity which makes the participants subject to liability without fault. Provides that the fact that a person holds a license or permit under this chapter or that the person has complied with this chapter or the regulations issued under this chapter is not admissible as evidence in any legal proceeding brought against the person.

SECTION 2. Amends Section 5.013(a), Water Code, by deleting text regarding the “state’s weather modification program” from the general jurisdiction of the Texas Natural Resource Conservation Commission.

SECTION 3. Amends Section 7.052(a), Water Code, by removing Chapter 18 of this code from the list of chapters that contain violation provisions.

SECTION 4. Amends Section 7.102, Water Code, to make a conforming change.

SECTION 5. Amends Section 7.302, Water Code, by deleting text regarding “a permit issued under Chapter 18.” Makes a conforming change.

SECTION 6. Amends Section 7.303, Water Code, by deleting text regarding “a permit issued under Chapter 18.”

SECTION 7. Repealer: Chapter 18 (Weather Modification) and Section 7.144 (Violation Relating to Weather Modification), Water Code.

SECTION 8. Provides that all provisions, including rights, responsibilities, and funding, regarding the administration of the weather modification program are transferred with the program to the department. Sets forth other provisions regarding the transfer of the program to the department. Requires the department to adopt rules to implement Chapter 20, Agriculture Code, as added by this Act, not later than December 31, 2001.

SECTION 9. Effective date: September 1, 2001.

BILL ANALYSIS

Senate Research Center
77R5733 JMG-D

S.B. 1175
By: Wentworth
Natural Resources
4/2/2001
As Filed

DIGEST AND PURPOSE

Texas has a lengthy history of efforts to lessen the impact of periodic, severe droughts through the use of cloud-seeding technologies. Numerous “rain-making” endeavors sprouted during the epic drought of the 1950s, eventually prompting the Texas Legislature to enact a law governing the use of weather-modification technology. Weather-modification technology involves injecting suitable (“seedable”) clouds with agents such as silver iodide by an airplane. Currently, there are nine rain enhancement projects in operation in Texas. These projects, covering some 44 million acres from the caprock in the Texas High Plains to the coastal prairies south of San Antonio and the lower Rio Grande basin, are designed to be integral parts of a long-term, water management strategy by water conservation districts and other water management authorities to replenish fresh-water supplies in aquifers and reservoirs as well as to help meet the water needs of agriculture, industry, and municipalities. As proposed, S.B. 1175 transfers the weather modification program from the Texas Natural Resource Conservation Commission to the Texas Department of Agriculture (TDA). S.B. 1175 also authorizes TDA to receive and administer grants to political subdivisions for weather modification and control activities since the weather modification program mostly affects farmers, ranchers, and others involved in the agriculture industry. Funding for the weather modification program will be solicited by TDA. S.B. 1175 authorizes TDA to solicit and accept gifts, grants, and other donations from any source in order to procure appropriate amounts of funding.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Agriculture in SECTION 1 (Sections 20.011, 20.032, 20.041, and 20.124, Agriculture Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2, Agriculture Code, by adding Chapter 20, as follows:

**CHAPTER 20. WEATHER MODIFICATION
SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 20.001. SHORT TITLE. Authorizes this chapter to be cited as the weather Modification Act.

Sec. 20.002. DEFINITIONS. Defines “operation,” “research and development,” “weather modification,” and “control.”

[Sections 20.003-20.010 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

Sec. 20.011. RULES. Authorizes the Department of Agriculture (department) to adopt rules necessary to: exercise the powers and perform the duties under this chapter; establish procedures and conditions for the issuance of licenses and permits under this chapter; and

establish standards and instructions to govern the carrying out of research or projects in weather modification and control that the department considers necessary or desirable to minimize danger to health or property.

Sec. 20.012. STUDIES; INVESTIGATIONS; HEARINGS. Authorizes the department to make any studies or investigations, obtain any information, and hold any hearings necessary or proper to administer or enforce this chapter or any rules or orders issued under this chapter.

Sec. 20.013. ADVISORY COMMITTEES. Authorizes the department to establish advisory committees to advise and make recommendations to the department concerning legislation, policies, administration, research, and other matters related to the department's duties, powers, or functions under this chapter.

Sec. 20.014. PERSONNEL. Authorizes the commissioner of agriculture (commissioner), as provided by the General Appropriations Act, to appoint and fix the compensation of any personnel, including specialists and consultants, necessary to perform duties and functions under this chapter.

Sec. 20.015. MATERIALS AND EQUIPMENT. Authorizes the department to acquire in the manner provided by law any materials, equipment, and facilities necessary to the performance of its duties and functions under this chapter.

Sec. 20.016. INTERSTATE COMPACTS. Authorizes the commissioner to represent the state in matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control.

Sec. 20.017. CONTRACTS, COOPERATIVE AGREEMENTS, ETC. (a) Authorizes the department to cooperate with public or private agencies to promote the purposes of this chapter.

(b) Authorizes the department to enter into cooperative agreements with the United States or any of its agencies, with counties and municipalities of this state, or with any private or public agencies for conducting weather modification or cloud-seeding operations.

(c) Authorizes the department to represent the state, counties, municipalities, and public and private agencies in contracting with private concerns for the performance of weather modification or cloud-seeding operations.

Sec. 20.018. PROMOTION OF RESEARCH AND DEVELOPMENT. Requires the department, in order to assist in expanding the theoretical and practical knowledge of weather modification and control, to promote certain research and development. Authorizes the department with approval of the commissioner to conduct and contract for research and development activities relating to the purposes of this section.

Sec. 20.019. GRANTS, GIFTS, ETC. Authorizes the department, subject to any limitations imposed by law, to accept federal grants, private gifts, and donations from any other source. Authorizes the department, unless the use of the money is restricted or subject to any limitations provided by law, to spend the money for the administration of this chapter or authorize by grant, contract, or cooperative arrangement the use of the money to encourage research and development by a public or private agency.

Sec. 20.020. DISPOSITION OF LICENSE AND PERMIT FEES. Requires the department to deposit all license and permit fees in the state treasury.

[Sections 20.021-20.030 reserved for expansion]

SUBCHAPTER C. LICENSES AND PERMITS

Sec. 20.031. LICENSE AND PERMIT REQUIRED. Prohibits a person, except as provided by rule of the department under Section 20.032, from engaging in activities for weather modification and control without a weather modification license and weather modification permit issued by the department or in violation of any term or condition of the license or permit.

Sec. 20.032. EXEMPTIONS. Requires the department, to the extent it considers exemptions practical, to provide by rule for exempting certain activities from the license and permit requirements of this chapter.

Sec. 20.033. ISSUANCE OF LICENSE. Requires the department, in accordance with the rules adopted under this chapter, to issue a weather modification license to certain applicants. Provides that if the applicant is an organization, the competence is required to be demonstrated by the individual or individuals who are to be in control and in charge of the operation for the applicant.

Sec. 20.034. LICENSE FEE. Provides that the fee for an original or renewal license is \$150.

Sec. 20.035. EXPIRATION DATE. Provides that each original or renewal license expires at the end of the state fiscal year for which it was issued.

Sec. 20.036. RENEWAL LICENSE. Requires the department, at the expiration of the license period, to issue a renewal license to each applicant who pays the license fee and who has the qualifications necessary for issuance of an original license.

Sec. 20.037. ISSUANCE OF PERMIT. Authorizes the department to issue a weather modification permit to certain applicants, in accordance with the rules adopted under this chapter and on a finding that the weather modification and control operation as proposed in the permit application will not significantly dissipate the clouds and prevent their natural course of developing rain in the area where the operation is to be conducted to the material detriment of persons or property in that area, and after approval at an election if covered by Section 20.041. Requires the department to hold a public hearing on the permit, if requested to do so by at least 25 persons.

Sec. 20.038. PERMIT FEE. Provides that the fee for each permit is \$75.

Sec. 20.039. SCOPE OF PERMIT. Provides that a separate permit is required for each operation. Provides that if an operation is to be conducted under contract, a permit is required for each separate contract. Prohibits the department from issuing a permit for a contracted operation unless it covers a continuous period not to exceed four years.

Sec. 20.040. APPLICATION AND NOTICE OF INTENTION. Requires a license holder, before undertaking any operation, to file an application for a permit and have a notice of intention published as required by this chapter.

Sec. 20.041. ELECTION FOR APPROVAL OF A PERMIT THAT INCLUDES AUTHORIZATION FOR HAIL SUPPRESSION. (a) Defines “target area” and “operational area.”

(b) Provides that no part of an operational area may be more than eight miles from the limits of the target area. Requires the operational area to be described by metes and bounds or other specific bounded description and set out in the application for a permit.

Authorizes the department, if the application for a permit does not describe the operational area, to designate an area located inside and up to eight miles from the limits of the target area described in the application as the operational area of the permit for the purposes of this chapter.

(c) Prohibits a permit from being issued by the department before the end of the 30-day period immediately following the first publication of notice and then only in certain counties.

(d) Requires persons eligible to vote in elections held under this section to include qualified voters in counties or parts of counties included in the target area or operational area. Authorizes an election, if the target area or operational area includes only part of a county, to be held only in the election precincts that are included entirely within or are partially included in those areas. Provides that all qualified voters in those precincts are entitled to vote in these elections.

(e) Requires the county clerk of each county within the target area or operational area, on written request of at least 25 qualified voters residing in the target area or operational area mentioned in the notice requesting an election accompanied by unsigned petitions, to certify and mark for identification petitions for circulation. Requires an application for a petition seeking an election to disapprove the issuance of a permit to contain a certain heading and contain certain information. Requires an application for a petition seeking an election to approve the issuance of a permit to contain a certain heading and contain certain information. Requires the commissioners court of each county, on the return to the county clerks of petitions signed by at least 10 percent of the qualified voters residing in each county within the target area or operational area in the notice requesting an election, to call and hold an election. Provides that notice under Chapter 111 (County Budget), Local Government Code, of the commissioners court meeting to call and hold the election is not required. Requires the date of the election to be determined by the commissioners court in accordance with this section, notwithstanding Sections 41.004 (Special Election Within Particular Period) and 41.0041 (Election on Measure After Particular Period), Election Code. Requires the petition to be filed with the clerk of each county within 30 days immediately following the first publication of notice. Requires the election to be held within 45 days after the date the petition is received to determine whether or not the qualified voters in the target area or operational area approve the issuance of the permit. Requires the clerk of each county within the target area or operation area, immediately on calling the election, to notify the commissioner of the date of the election. Requires elections to be held in accordance with the Election Code, except as otherwise provided in this chapter.

(f) Requires the petition for the election to be written in a certain manner. Requires each qualified voter signing the petition to give the voter's full name and address and voter registration number. Requires the commissioners court, within five days after the date of receiving a petition under this section, to have the county clerk of the county check the names on the petition against the voter registration lists of the county and certify to the commissioners court the number of qualified voters signing the petition as reflected by checking the county's voter registration lists. Requires the county clerk, if only a part of a county is included in the target area or operational area, to also certify that those signing the petition reside in an election precinct in the county totally or partially included in the target area or operational area. Requires the petition, on certification by the county clerk, to be filed with the official records of the county and be made available for public inspection.

(g) Requires a person filing a petition with the county clerk to deposit with the county

clerk an amount of money estimated by the county clerk to be sufficient to cover the costs of the election, to be held by the county clerk until the result of the election to approve or disapprove the issuance of the permit is officially announced. Requires the county clerk, if the result of the election favors the party petitioning for the election, to return the deposit to the person filing the petition or to the person's agent or attorney, but requires the county clerk, if the result of the election does not favor the party petitioning for the election, to pay the cost and expenses of the election from the deposit and return the balance of the deposit to the person filing the petition or to the person's agent or attorney.

(h) Requires the ballots for an election under this section to be printed in a certain manner.

(i) Requires the order calling the election to provide for the time and place or places for holding the election, the form of the ballots, and the presiding judge for each voting place.

(j) Requires the commissioners court to publish a copy of the election order in a newspaper of general circulation in the county or in the part of the county within the target area or operational area at least 30 days preceding the day of the election.

(k) Requires the presiding judge of each voting place to supervise the counting of all votes cast and shall certify the results to the commissioners court within five days after the date of the election. Provides that a copy of the results is to be filed with the county clerk and is a public record.

(l) Requires the commissioners court to declare the results within five days after the results are filed.

(m) Requires the commissioners court of each county holding an election to send certified copies of the results of the election to the commissioner within 24 hours after the results are declared under Subsection (k).

(n) Prohibits a permit from being issued if a majority of the qualified voters voting in the election precincts any part of which are located in the target area vote against issuance of the permit. Authorizes the department, if a majority of the qualified voters voting in the election precincts any part of which are located within the target area vote in favor of issuance of the permit, to issue the permit as provided in this subchapter, except that if a majority of the qualified voters voting in either of the following areas vote against issuance of the permit, those areas are required to be excluded from the coverage of the permit: any election precinct, any part of which is located in the operational area; or any election precinct located wholly within the target area and contiguous with its outer boundary.

(o) Authorizes a permit, if the department finds that a weather modification and control operation is still feasible, to be issued covering areas in which no election is requested or areas in which the voters give their approval as provided in this section.

(p) Prohibits an application for a permit covering all or part of the same target area or operational area that was denied from being considered and prohibits a permit under that application for a period of two years following the date of the election from being issued by the department and prohibits an election from being held under this chapter, if a permit is denied under Subsection (n).

(q) Provides that if a permit including authorization for hail suppression is to cover only

a part of a county, only those qualified voters residing in an election precinct or precincts of the county included in the target area or operational area are eligible to sign a petition and to vote at an election under this section. Provides that in computing the vote, only a majority of qualified voters residing in those areas and voting in the election is necessary to carry the proposition in that county.

(r) Prohibits a permit being issued that provides for or allows the seeding of clouds for hail suppression outside the target area or within those counties or parts of counties located in the operational or target areas that were excluded from the coverage of the permit by an election under Subsection (n). Authorizes seeding to be done in those counties or parts of counties located in the operational or target area which were not excluded from the coverage of the permit by virtue of an election under Subsection (n), provided the seeding is reasonably calculated to take effect only within the target area. Provides that this subsection does not prohibit the observation of cloud and cloud formations.

(s) Authorizes the department to monitor any program under conditions the department determines advisable.

(t) Requires the commissioners court of any county outside but adjacent to a county included in the operational area of an existing or proposed permit, on petition as provided in this section, to call and hold an election on the proposition of whether or not the qualified voters of the county approve of the issuance of any permit authorizing hail suppression in the county. Prohibits the department, if the county voters voting in the election disapprove the issuance of permits authorizing hail suppression, from issuing a permit covering the county until the proposition has been approved at a subsequent election.

(u) Prohibits any county or part of a county, if that county or part of a county has disapproved the issuance of a permit at the previous election held under this section, from being included in any permit issued by the department until the voters of that county or part of a county have participated in a subsequent election at which a permit is approved. Provides that the applicant for a permit that includes that county or part of a county has the burden of petitioning for an election and depositing costs in the manner provided by this section for the original election to approve or disapprove a permit.

(v) Requires the department by rule to define hail suppression as used in this section, using the most current scientifically accepted technological concepts.

Sec. 20.042. CONTENT OF NOTICE. Requires the applicant, in the notice of intention, to include certain information.

Sec. 20.043. PUBLICATION OF NOTICE. Requires the notice of intention to be published at least once a week for three consecutive weeks in a newspaper of general circulation published in each county in which the operation is to be conducted and in each county that includes any part of the affected area. Requires publication to be made in a newspaper having general circulation in the county, if in any such county no newspaper of general circulation is published.

Sec. 20.044. PROOF OF PUBLICATION; AFFIDAVIT. Requires the applicant to file proof of the publication, together with the publishers' affidavits, with the department during the 15-day period immediately following the date of the last publication.

Sec. 20.045. PROOF OF FINANCIAL RESPONSIBILITY. Provides that proof of financial responsibility is made by showing to the satisfaction of the department that the license holder

has the ability to respond in damages for liability that might reasonably result from the operation for which the permit is sought.

Sec. 20.046. MODIFICATION OF PERMIT. Authorizes the department to modify the terms and conditions of a permit under certain circumstances.

Sec. 20.047. SCOPE OF ACTIVITY. Requires the license holder, once a permit is issued, to confine the license holder's activities substantially within the limits of time and area specified in the notice of intention, except to the extent that the limits are modified by the department. Requires the license holder to also comply with any terms and conditions of the permit as originally issued or as subsequently modified by the department. Provides that failure of a license holder to comply with the provisions of this section is a violation of this chapter.

Sec. 20.048. RECORDS AND REPORTS. (a) Requires a license holder to keep a record of each operation conducted under a permit, showing certain information.

(b) Requires the department to require written reports covering each operation, whether the operation is exempt or conducted under a permit.

(c) Requires a license holder, at the time and in the manner required by the department, to submit a written report containing the information described by Subsection (a).

(d) Requires all information on an operation to be submitted to the department before it is released to the public.

(e) Requires the reports and records in the custody of the department to be kept open for public inspection.

[Sections 20.049-20.050 reserved for expansion]

SUBCHAPTER D. ADMINISTRATIVE PENALTY

Sec. 20.051. MAXIMUM AMOUNT. (a) Authorizes the department to assess an administrative penalty against a person as provided by this section if the person violates certain provisions, rules, or permits.

(b) Prohibits the amount of the administrative penalty for a violation of this chapter from exceeding \$2,500 a day for each violation.

(c) Provides that each day that a continuing violation occurs may be considered a separate violation. Authorizes the department to authorize an installment payment schedule for an administrative penalty assessed under this section.

Sec. 20.052. FACTORS TO BE CONSIDERED IN DETERMINATION OF PENALTY AMOUNT. Requires the department, in determining the amount of an administrative penalty, to consider certain factors.

Sec. 20.053. REPORT OF VIOLATION. Authorizes the commissioner, if after examination of a possible violation and the facts surrounding that possible violation the commissioner concludes that a violation has occurred, to issue a preliminary report in accordance with department rules that includes recommendations regarding any penalty or corrective action.

Sec. 20.054. NOTICE OF REPORT. Requires the department, not later than the 10th day after the date on which the report of a violation is issued, to give written notice of the report, in

accordance with department rules, to the person charged with the violation.

Sec. 20.055. CONSENT. Authorizes the person charged, not later than the 20th day after the date on which notice is received, to give to the department written consent to the department's report, including the recommended penalty, or make a written request for a hearing.

Sec. 20.056. DEFAULT. Requires the department by order, if the person charged with the violation consents to the penalty recommended by the department or does not timely respond to the notice, to assess the penalty or order a hearing to be held on the recommendations in the commissioner's report. Requires the department to give written notice of its decision to the person charged, if the department assesses the penalty.

Sec. 20.057. HEARING. Requires the department to order and to give notice of the hearing, if the person charged requests or the department orders a hearing. Authorizes the department by order to find that a violation has occurred and to assess a penalty, find that a violation has occurred but that a penalty should not be assessed, or find that a violation has not occurred. Requires the department, in making a penalty decision, to analyze each factor prescribed by Section 20.052. Provides that all proceedings under this section are subject to Chapter 2001 (Administrative Procedure), Government Code.

Sec. 20.058. NOTICE OF DECISION. Requires the department to give notice of its decision to the person charged. Requires the department, if the department finds that a violation has occurred and assesses a penalty, to give written notice of certain information to the person charged.

Sec. 20.059. NOTICE OF PENALTY. Requires the department, if required to give notice of a penalty under Section 20.056 or 20.058, to publish notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

Sec. 20.060. PAYMENT OF PENALTY; PETITION FOR REVIEW. Requires the person charged with the penalty, within the 30-day period immediately following the date on which the department's order is final, as provided by Section 2001.144 (Decisions; When Final), Government Code, to make certain payments or file a petition for judicial review contesting the occurrence of the violation and the amount of the penalty.

Sec. 20.061. STAYS. Authorizes a person who acts under Section 20.060(3), within the 30-day period described by Section 20.060, to perform certain requirements.

Sec. 20.062. CONSENT TO AFFIDAVIT. Authorizes the department, if the department receives a copy of an affidavit under Section 20.061(2), to file with the court, within five days after the date the copy is received, a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or give the supersedeas bond.

Sec. 20.063. JUDICIAL REVIEW. Provides that judicial review of the order or decision of the department assessing the penalty is under Chapter 2001G (Contested Cases: Judicial Review), Government Code.

Sec. 20.064. PENALTY REDUCED OR NOT ASSESSED. Requires the department, if the person paid the penalty and if the penalty is reduced or not assessed by the court, to remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or to execute a release of the bond if a supersedeas bond has been posted. Requires the accrued interest on amounts remitted by the department under this section to be paid at a rate equal to

the rate charged on loans to depository institutions by the New York Federal Reserve Bank and to be paid for the period beginning on the date the penalty is paid to the department under Section 20.060 and ending on the date the penalty is remitted.

Sec. 20.065. REFERRAL TO ATTORNEY GENERAL. Provides that a person who does not comply with Section 20.060 waives the right to judicial review, and authorizes the department to refer the matter to the attorney general for enforcement.

Sec. 20.066. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. Authorizes the department to compromise, modify, or remit, with or without conditions, an administrative penalty imposed under this chapter. Authorizes the department, in determining the appropriate amount of a penalty for settlement of an administrative enforcement matter, to consider a respondent's willingness to contribute to supplemental environmental projects that are approved by the department, giving preference to projects that benefit the community in which the alleged violation occurred. Authorizes the department to approve a supplemental environmental project with activities in territory of the United Mexican States if the project substantially benefits territory in this state in a manner described by this section. Prohibits the department from approving a project that is necessary to bring a respondent into compliance with environmental laws or that is necessary to remediate environmental harm caused by the respondent's alleged violation.

Defines "supplemental environmental project."

Sec. 20.067. FULL AND COMPLETE SATISFACTION. Provides that payment of an administrative penalty under this subchapter is full and complete satisfaction of the violation for which the penalty is assessed and precludes any other civil or criminal penalty for the same violation.

Sec. 20.068. DISPOSITION OF PENALTY. Requires a penalty collected under this subchapter to be deposited to the credit of the general revenue fund.

Sec. 20.069. FINDINGS OF FACT NOT REQUIRED; RESERVATIONS. Provides that the department, notwithstanding any other provision to the contrary, is not required to make findings of fact or conclusions of law other than an uncontested finding that the department has jurisdiction in an agreed order compromising or settling an alleged violation of a statute within the department's jurisdiction or of a rule adopted or order or permit issued under such a statute. Authorizes an agreed administrative order to include certain reservations.

Sec. 20.070. INADMISSIBILITY. Provides that an agreed administrative order issued by the department is not admissible against a party to the order in a civil proceeding unless the proceeding is brought by the attorney general's office to enforce the terms of the order or pursue a violation of a statute within the department's jurisdiction or of a rule adopted or order or permit issued under such a statute.

Sec. 20.071. RECOVERY OF PENALTY. Authorizes an administrative penalty owed under this subchapter to be recovered in a civil action brought by the attorney general at the request of the department.

Sec. 20.072. CORRECTIVE ACTION. Authorizes the department, if a person violates any statute or rule within the department's jurisdiction, to assess against the person an administrative penalty under this subchapter and order the person to take corrective action.

Sec. 20.073. HEARING POWERS. Authorizes the department to call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering the provisions of this chapter or the

rules, orders, or other actions of the department.

Sec. 20.074. PUBLIC COMMENT. (a) Requires the department, before the department approves an administrative order or proposed agreement to settle an administrative enforcement action initiated under this chapter to which the department is a party, to allow the public to comment in writing on the proposed order or agreement. Requires notice of the opportunity to comment to be published in the Texas Register not later than the 30th day before the date on which the public comment period closes.

(b) Requires the department to promptly consider any written comments and authorizes it to withdraw or withhold consent to the proposed order or agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter, another statute within the department's jurisdiction, or a rule adopted or order or permit issued under such a statute. Provides that further notice of changes to the proposed order or agreement is not required to be published if those changes arise from comments submitted in response to a previous notice.

(c) Provides that this section does not apply to a criminal enforcement proceeding or an emergency order or other emergency relief that is not a final order of the department.

(d) Provides that Chapter 2001, Government Code, does not apply to public comment under this section.

[Sections 20.075-20.080 reserved for expansion]

SUBCHAPTER E. CIVIL PENALTIES

Sec. 20.081. VIOLATION. Prohibits a person from causing, suffering, allowing, or permitting a violation of this chapter or a rule adopted or order or permit issued under this chapter.

Sec. 20.082. MAXIMUM PENALTY. Requires a person who causes, suffers, allows, or permits a violation of this chapter or a rule adopted or order or permit issued under this chapter, to be assessed for each violation a civil penalty not less than \$50 or greater than \$5,000 for each day of each violation as the court or jury considers proper. Provides that each day of a continuing violation is a separate violation.

Sec. 20.083. CONTINUING VIOLATIONS. Requires the defendant, if it is shown on a trial of a defendant that the defendant has previously been assessed a civil penalty for a violation of this chapter or a rule adopted or order or permit issued under this chapter within the year before the date on which the violation being tried occurred, to be assessed a civil penalty not less than \$100 or greater than \$25,000 for each subsequent day and for each subsequent violation. Provides that each day of a continuing violation is a separate violation.

Sec. 20.084. INJUNCTIVE RELIEF. (a) Authorizes the department to enforce a department rule or a provision of a permit issued by the department by injunction or other appropriate remedy.

(b) Authorizes the department, if it appears that a violation or threat of violation of this chapter or a rule adopted or order or permit issued under this chapter has occurred or is about to occur, to have a suit instituted in district court for injunctive relief to restrain the violation or threat of violation.

(c) Authorizes the suit to be brought in the county in which the defendant resides or in

the county in which the violation or threat of violation occurs.

(d) Authorizes the court, in a suit brought under this section to enjoin a violation or threat of violation described by Subsection (b), to grant the department, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including a temporary restraining order and, after notice and hearing, a temporary or permanent injunction.

(e) Requires the attorney general or the prosecuting attorney in a county in which the violation occurs, on request of the department, to initiate a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty.

Sec. 20.085. RESOLUTION THROUGH ADMINISTRATIVE ORDER. Authorizes the attorney general's office and the department to agree to resolve any violation, before or after referral, by an administrative order issued under this chapter by the department with the approval of the attorney general.

Sec. 20.086. DIVISION OF CIVIL PENALTY. Requires a civil penalty recovered in a suit brought under this chapter by a local government to be equally divided between the state and the local government that brought the suit.

Sec. 20.087. ATTORNEY'S FEES. Provides that if the state prevails in a suit under this chapter it may recover reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Sec. 20.088. PARKS AND WILDLIFE DEPARTMENT JURISDICTION. (a) Authorizes the Texas Parks and Wildlife Department (TPWD), in the same manner as the department, to have a suit instituted in a district court for injunctive relief or civil penalties, or both, as authorized by this chapter, against the person who committed, is committing, or is threatening to commit the violation, if it appears that a violation or threat of violation of a rule, permit, or order of the department adopted or issued under this chapter has occurred or is occurring that affects aquatic life or wildlife.

(b) Provides that TPWD is entitled to recover damages for the injury in a suit brought under this section for a violation that is the proximate cause of injury to aquatic life or wildlife normally taken for commercial or sport purposes or to species on which the aquatic life or wildlife is directly dependent for food. Authorizes the court, in determining damages, to consider the valuation of the injured resources established in rules adopted by the Parks and Wildlife Department under Chapter 12D (Recovery by the State for Value of Fish, Shellfish, Reptile, Amphibian, Bird, or Animal), Parks and Wildlife Code, or the replacement cost of the injured resources. Requires any recovery of damages for injury to aquatic life or wildlife to be deposited to the credit of the game, fish, and water safety account under Section 11.032 (Game, Fish, and Water Safety Account; Sources), Parks and Wildlife Code, and requires TPWD to use money recovered in a suit to replenish or enhance the injured resources.

(c) Authorizes the actual cost of investigation, reasonable attorney's fees, and reasonable expert witness fees to also be recovered, and requires those recovered amounts to be credited to the same operating accounts from which expenditures occurred.

(d) Provides that this section does not limit recovery for damages available under other laws.

Sec. 20.089. COMMENTS. (a) Requires the attorney general to permit the public to comment in writing on the proposed order, judgment, or other agreement, before the department approves an agreed final judgment, consent order, voluntary settlement agreement, or other voluntary agreement that would finally settle a civil enforcement action initiated under this chapter to which this state is a party or before the court signs a judgment or other agreement settling a judicial enforcement action other than an enforcement action under Section 113 or 120 or Title II of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

(b) Requires the notice of the opportunity to comment to be published in the Texas Register not later than the 30th day before the date on which the public comment period closes.

(c) Requires the attorney general to promptly consider any written comments and authorizes the attorney general to withdraw or withhold consent to the proposed order, judgment, or other agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter or a rule adopted or order or permit issued under this chapter. Provides that further notice of changes to the proposed order, judgment, or other agreement is not required to be published if those changes arise from comments submitted in response to a previous notice.

(d) Prohibits the attorney general from opposing intervention by a person who has standing to intervene as provided by Rule 60, Texas Rules of Civil Procedure.

(e) Provides that this section does not apply to criminal enforcement proceedings, or proposed temporary restraining orders, temporary injunctions, emergency orders, or other emergency relief that is not a final judgment or final order of the court or department.

(f) Provides that Chapter 2001, Government Code, does not apply to public comment under this section.

[Section 20.090 reserved for expansion]

SUBCHAPTER F. CRIMINAL PENALTY

Sec. 20.091. VIOLATION. Provides that a person commits an offense if the person violates this chapter or a rule adopted or order or permit issued under this chapter. Provides that an offense under this section is a misdemeanor and is punishable by a fine of not more than \$1,000, confinement for a period not to exceed 30 days, or both.

Sec. 20.092. REPEAT OFFENSES. Provides that if it is shown at the trial of the defendant that the defendant has previously been convicted of the same offense under this chapter, the maximum punishment is doubled with respect to both the fine and confinement, unless the section creating the offense specifies otherwise.

Sec. 20.093. SEPARATE OFFENSES. Provides that each day a person engages in conduct proscribed by this chapter constitutes a separate offense.

Sec. 20.094. DISPOSITION OF FINES. Requires a fine recovered through a prosecution brought under this subchapter to be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, the court is authorized to apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.

Sec. 20.095. VENUE. Provides that venue for prosecution of an alleged violation under this subchapter is in certain counties.

Sec. 20.096. NOTICE OF CONVICTION. Authorizes a person other than an individual that has been adjudged guilty of an offense to be ordered by the court to give notice of the conviction to any person the court considers appropriate, in addition to a sentence that may be imposed under this subchapter.

Sec. 20.097. JUDGMENT OF CONVICTION. Requires the clerk of the court in which the conviction is returned, on conviction, to send a copy of the judgment to the department.

Sec. 20.098. ALLEGATIONS. Provides that in alleging the name of a defendant private corporation, it is sufficient to state in the complaint, indictment, or information the corporate name or to state any name or designation by which the corporation is known or may be identified. Provides that it is not necessary to allege that the defendant was lawfully incorporated.

Sec. 20.099. SUMMONS AND ARREST. Requires the court or clerk, after a complaint is filed or an indictment or information presented against a private corporation under this subchapter, to issue a summons to the corporation. Requires the summons to be in the same form as a *capias* except that it is required to meet certain requirements. Prohibits an individual from being arrested upon a complaint, indictment, or information against a private corporation.

Sec. 20.100. SERVICE OF SUMMONS. (a) Requires a peace officer to serve a summons on a private corporation by personally delivering a copy of it to the corporation's registered agent for service. Requires the peace officer to serve the summons by personally delivering a copy of it to the president or a vice president of the corporation, if a registered agent has not been designated or cannot with reasonable diligence be found at the registered office.

(b) Requires the peace officer to serve the summons on the secretary of state, if the peace officer certifies on the return that the peace officer diligently but unsuccessfully attempted to effect service under Subsection (a) or if the corporation is a foreign corporation that has no certificate of authority. Requires the secretary of state, on receipt of the summons copy, to immediately forward it by certified or registered mail, return receipt requested, addressed to the defendant corporation at its registered office or, if it is a foreign corporation, at its principal office in the state or country under whose law it was incorporated.

(c) Requires the secretary of state to keep a permanent record of the date and time of receipt and the disposition of each summons served under Subsection (b) together with the return receipt.

Sec. 20.101. ARRAIGNMENT AND PLEADINGS. Provides that in any criminal action instituted against a private corporation, appearance is for the purpose of arraignment and the corporation has 10 full days after the day the arraignment takes place and before the day the trial begins to file written pleadings.

Sec. 20.102. APPEARANCE. (a) Provides that a defendant private corporation appears through counsel or its representative.

(b) Provides that if a private corporation does not appear in response to summons or appears but does not plead, the corporation is considered to be present in person for all purposes, and the court is required to enter a plea of not guilty on the corporation's behalf and may proceed with trial, judgment, and sentencing.

(c) Provides that after appearing and entering a plea in response to summons, if a private corporation is absent without good cause at any time during later proceedings, the corporation is considered to be present in person for all purposes, and the court is authorized to proceed with trial, judgment, or sentencing.

Sec. 20.103. FINE TREATED AS JUDGMENT IN CIVIL ACTION. Requires the fine to be entered and docketed by the clerk of the court as a judgment against the person, and requires the fine to be of the same force and effect and be enforced against the person in the same manner as if the judgment were recovered in a civil action, if a person other than an individual is found guilty of a violation of this subchapter and a fine is imposed.

Sec. 20.104. EFFECT OF CERTAIN OTHER LAWS. Authorizes conduct punishable as an offense under this subchapter that is also punishable under another law to be prosecuted under either law.

Sec. 20.105. DEFENSE EXCLUDED. Provides that it is not a defense to prosecution under this subchapter that the person did not know of or was not aware of a rule, order, or statute.

[Sections 20.106-20.110 reserved for expansion]

SUBCHAPTER G. DEFENSES

Sec. 20.111. ACT OF GOD. Provides that if a person can establish that an event that would otherwise be a violation of a statute within the department's jurisdiction or a rule adopted or order or permit issued under such a statute was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of that statute, rule, order, or permit.

Sec. 20.112. DEFENSE EXCLUDED. Provides that unless otherwise provided by this chapter, the fact that a person holds a permit issued by the department does not relieve that person from liability for the violation of a statute within the department's jurisdiction or a rule adopted or order or permit issued under such a statute.

[Sections 20.113-20.120 reserved for expansion]

SUBCHAPTER H. REVOCATION AND SUSPENSION OF PERMITS AND LICENSES

Sec. 20.121. DEFINITIONS. Defines "license," "exemption," "permit holder," and "holder of a permit."

Sec. 20.122. GROUNDS FOR REVOCATION OR SUSPENSION OF PERMIT. Provides that this section applies to a permit or exemption issued by the department under this chapter or a rule adopted under this chapter. Authorizes the department, after notice and hearing, to revoke, suspend, or revoke and reissue a permit or exemption on certain grounds.

Sec. 20.123. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE. Provides that this section applies to a license issued or a rule adopted under this chapter. Authorizes the department, after notice and hearing, to suspend or revoke a license the department has issued, place on probation a person whose license has been suspended, reprimand the holder of a license, or refuse to renew or reissue a license on certain grounds.

Sec. 20.124. PROCEDURES. Requires the department by rule to establish procedures for public notice and any public hearing under this subchapter.

Sec. 20.125. HEARINGS. Requires a hearing under this subchapter to be conducted in

accordance with the hearing rules adopted by the department and the applicable provisions of Chapter 2001, Government Code.

Sec. 20.126. CONSENT. Authorizes the commissioner, if the holder of a permit or license requests or consents to the revocation or suspension of the permit or license, to revoke or suspend the permit or license without a hearing.

Sec. 20.127. OTHER RELIEF. Provides that a proceeding brought by the department under this subchapter does not affect the department's authority to bring suit for injunctive relief or a penalty, or both, under this chapter.

Sec. 20.128. PROBATION REQUIREMENTS. Authorizes the department, if a license suspension is probated, to require the holder of the license to perform certain tasks.

[Sections 20.129-20.130 reserved for expansion]

SUBCHAPTER I. IMMUNITY; LEGAL RELATIONSHIPS

Sec. 20.131. IMMUNITY OF STATE. Provides that the state and its officers and employees are immune from liability for all weather modification and control activities conducted by private persons and groups.

Sec. 20.132. PRIVATE LEGAL RELATIONSHIPS. Provides that this chapter does not affect private legal relationships, except that an operation conducted under the license and permit requirements of this chapter is not an ultrahazardous activity which makes the participants subject to liability without fault. Provides that the fact that a person holds a license or permit under this chapter or that the person has complied with this chapter or the regulations issued under this chapter is not admissible as evidence in any legal proceeding brought against the person.

SECTION 2. Amends Section 5.013(a), Water Code, by deleting text regarding the “state’s weather modification program” from the general jurisdiction of the Texas Natural Resource Conservation Commission.

SECTION 3. Amends Section 7.052(a), Water Code, by removing Chapter 18 of this code from the list of chapters that contain violation provisions.

SECTION 4. Amends Section 7.102, Water Code, to make a conforming change.

SECTION 5. Amends Section 7.302, Water Code, by deleting text regarding “a permit issued under Chapter 18.” Makes a conforming change.

SECTION 6. Amends Section 7.303, Water Code, by deleting text regarding “a permit issued under Chapter 18.”

SECTION 7. Repealer: Chapter 18 (Weather Modification) and Section 7.144 (Violation Relating to Weather Modification), Water Code.

SECTION 8. Provides that all provisions, including rights, responsibilities, and funding, regarding the administration of the weather modification program are transferred with the program to the department. Sets forth other provisions regarding the transfer of the program to the department. Requires the department to adopt rules to implement Chapter 20, Agriculture Code, as added by this Act, not later than December 31, 2001.

SECTION 9. Effective date: September 1, 2001.