

## **BILL ANALYSIS**

Senate Research Center  
82R17541 JXC-F

H.B. 1808  
By: Cook (Nichols)  
Government Organization  
4/15/2011  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The purpose of this bill is to enact the recommendations of the Sunset Advisory Commission on the Texas State Soil and Water Conservation Board (SWCB). SWCB works directly with owners and operators of agricultural land to develop and implement conservation plans involving land treatment measures for erosion control, water quantity, and water quality purposes. To achieve its mission, SWCB provides technical assistance to 216 local soil and water conservation districts; serves as the lead state agency for the prevention, management, and abatement of agricultural and forestry-related nonpoint source pollution; and administers grant programs for the maintenance and repair of flood control dams, water supply enhancement, development of water quality management plans, and management and abatement of agricultural nonpoint source pollution.

SWCB is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the legislature. The Sunset review found that SWCB continues to be needed, but lacks processes and systems to ensure that its programs are effective and accountable to the state.

SWCB is governed by Chapters 201 (Soil and Water Conservation) and 203 (Brush Control), Agriculture Code.

This legislation addresses issues differently from current law by requiring SWCB to establish specific program goals and statewide grant practices, and to measure impacts for state-funded programs; clarifying that the state board's brush control efforts should focus on water supply enhancement and changing the name of the program from brush control to water supply enhancement; requiring the state board to develop a system to rank and prioritize water supply enhancement projects, rather than areas of the state, based on water conservation need and water yield; specifying criteria for project prioritization, including projected water yield through a model in a feasibility study; and clarifying terminology in statute for what is a watershed project, a sub-basin or area within a watershed project, and a cost-share contract within areas of a watershed.

H.B. 1808 requires SWCB to establish a process to contract for feasibility studies on new water supply enhancement projects; requires SWCB to prioritize areas and cost-share applications within each water supply enhancement project and vary cost-share amounts according to these priorities; and requires SWCB to ensure follow-up brush control treatment and assess overall program effectiveness.

H.B. 1808 clarifies SWCB's role regarding terrestrial invasive plant species; continues SWCB for 12 years and requires a special purpose review of the implementation of Sunset recommendations as part of the 2015 Sunset review cycle; and applies and updates standard Sunset language relating to complaints, alternative dispute resolution, and impartial appointments, grounds for removal, and training for SWCB members.

H.B. 1808 amends current law relating to the continuation and functions of the State Soil and Water Conservation Board.

## **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Soil and Water Conservation Board in SECTION 14 (Section 203.053, Agriculture Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 201, Agriculture Code, by adding Section 201.0111, as follows:

Sec. 201.0111. APPOINTMENTS. Requires appointments to the Texas State Soil and Water Conservation Board (SWCB) to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

SECTION 2. Amends Sections 201.0142(a) and (c), Agriculture Code, as follows:

(a) Prohibits a person who is elected or appointed and qualifies for office as a member of SWCB from voting, deliberating, or being counted as a member in attendance at a meeting of SWCB until the person completes a training program that complies with this section.

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

SECTION 3. Amends Section 201.0151(a), Agriculture Code, as follows:

(a) Provides that it is a ground for removal from SWCB that a member:

(1) does not, if the member is elected, have at the time of election the qualifications required by Section 201.013(c); or if the member is appointed, have at the time of taking office the qualifications required by Section 201.011(2), rather than Section 201.013(c) of this code;

(2) does not maintain during service on SWCB the qualifications required by Section 201.011(2) or 201.013(c), rather than the qualification required by Subsection (c) of Section 201.013 of this code;

(3) is ineligible for membership under Section 201.0141; or

(4)-(5) Makes no changes to these subdivisions.

Makes a nonsubstantive change.

SECTION 4. Amends Section 201.0231, Agriculture Code, as follows:

Sec. 201.0231. COMPLAINTS. (a) Requires SWCB to maintain a central database of complaints filed with SWCB offices and a system to promptly and efficiently act on a complaint filed with a SWCB office. Requires SWCB to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. Deletes existing text relating to requiring SWCB to maintain a file on each written complaint filed with SWCB that includes the name of the person who filed the complaint, the date the complaint is received by SWCB, the name of each person contacted in relation to the complaint, and an explanation of the reason the file was closed, if SWCB closed the file without taking action other than to investigate the complaint.

(b) Requires SWCB to make information available describing its procedures for complaint investigation and resolution.

(c) Requires SWCB to periodically notify the parties to the complaint of the status of the complaint until final disposition, rather than requires SWCB, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation. Deletes existing Subsection (d) designation. Deletes existing text of Subsection (c) requiring SWCB to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the state board's policies and procedures relating to complaint investigation and resolution.

SECTION 5. Amends Section 201.025, Agriculture Code, as follows:

Sec. 201.025. SUNSET PROVISION. Provides that SWCB is subject to Chapter 325 (Texas Sunset Act), Government Code. Provides that unless continued in existence as provided by that chapter, SWCB is abolished and this chapter expires September 1, 2023, rather than September 1, 2011.

SECTION 6. Amends Subchapter B, Chapter 201, Agriculture Code, by adding Sections 201.029 and 201.030, as follows:

Sec. 201.029. GRANT PROGRAM ADMINISTRATION. (a) Defines, in this section, "grant program."

(b) Requires SWCB to:

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

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

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

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

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

Sec. 201.030. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) Requires SWCB to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of SWCB rules, and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Government Bodies), Government Code, to assist in the resolution of internal and external disputes under the state board's jurisdiction.

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

(c) Requires SWCB to coordinate the implementation of the policy adopted under Subsection (a), provide training as needed to implement the procedures for

negotiated rulemaking or alternative dispute resolution and collect data concerning the effectiveness of those procedures.

SECTION 7. Amends Section 201.202(b), Agriculture Code, to require SWCB to designate priorities among the various land improvement measures, including brush control and other water supply enhancement activities.

SECTION 8. Amends the heading to Chapter 203, Agriculture Code, to read as follows:

#### CHAPTER 203. WATER SUPPLY ENHANCEMENT

SECTION 9. Amends Section 203.001, Agriculture Code, by adding Subdivisions (5), (6), (7), and (8), to define "area," "project," "proposal," and "water supply enhancement."

SECTION 10. Amends Section 203.002, Agriculture Code, as follows:

Sec. 203.002. New heading: PURPOSE OF PROGRAM. Requires that the water supply enhancement program be implemented, administered, operated, and financed as provided by this chapter. Provides that the purpose of the water supply enhancement program is to increase available surface water and groundwater through selective control, removal, or reduction of noxious brush species that are detrimental to water conservation, and revegetation of land on which noxious brush has been controlled, removed, or reduced. Deletes existing text providing that the Texas Brush Control Program is created and is required to be implemented, administered, operated, and financed as provided by this chapter.

SECTION 11. Amends Section 203.011, Agriculture Code, as follows:

Sec. 203.011. AUTHORITY OF BOARD. Provides that SWCB has jurisdiction over and, with the assistance of local districts, is required to administer the water supply enhancement program, rather than brush control, program under this chapter. Provides that this chapter does not limit SWCB's authority to control, remove, or reduce brush under any program SWCB administers under Chapter 201 (Soil and Water Conservation).

SECTION 12. Amends Section 203.016, Agriculture Code, to make conforming changes.

SECTION 13. Amends Section 203.051, Agriculture Code, as follows:

Sec. 203.051. STATE PLAN. (a) Creates this subsection from existing text. Requires SWCB to prepare and adopt a state water supply enhancement plan that includes a comprehensive strategy for managing brush in all areas of the state where brush is contributing to a substantial water conservation problem, rather than that shall include a comprehensive strategy for managing brush in all areas of the state where brush is contributing to a substantial water conservation problem, and rank areas of the state in need of a brush control program, as provided by Section 203.053. Makes a conforming change.

(b) Requires that the plan adopted under this section list the goals SWCB establishes under Section 201.029 for the water supply enhancement program. Requires that these goals include a goal describing the intended use of a water supply enhanced or conserved by the program, such as agricultural purposes or drinking water purposes, and a goal describing the populations that the water supply enhancement program will target.

SECTION 14. Amends Section 203.053, Agriculture Code, as follows:

Sec. 203.053. New heading: CRITERIA FOR ACCEPTING AND PRIORITIZING WATER SUPPLY ENHANCEMENT PROJECTS. (a) Requires SWCB to adopt rules establishing criteria for accepting project proposals, and a system to prioritize projects for

each funding cycle, giving priority to projects that balance the most critical water conservation need and the highest projected water yield.

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

(c) Requires SWCB to consult with stakeholders, including hydrologists and representatives from soil and water conservation districts, to develop by rule standard methods of reporting the projected water yield under Subsection (b).

(d) Creates this subsection from existing text. Requires SWCB, in prioritizing projects under Subsection (a)(2), rather than ranking areas under the plan, to consider:

(1) the need for conservation of water resources within the territory of the project, based on the state water plan adopted under Section 16.051 (State Water Plan: Drought, Conservation, Development, and Management; Effect of Plan), Water Code, rather than the location of various brush infestations;

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

(3) any method the project may use to control brush, rather than the various management methods that may be used to control brush.;

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

(5) the location and size of the project;

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

(7) the implementation schedule of the project; and

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

(e) Authorizes SWCB, in prioritizing projects under Subsection (a)(2), to consider scientific research on the effects of brush removal on water supply, and any other criteria that SWCB considers relevant to assure that the water supply enhancement program, rather than brush control program, can be most effectively, efficiently, and economically implemented.

Deletes existing Subsection (b) requiring SWCB, in ranking areas, to give priority to areas with the most critical water conservation needs and in which brush control and revegetation projects will be most likely to produce substantial water conservation.

SECTION 15. Amends Section 203.056(a), Agriculture Code, as follows:

(a) Requires SWCB, before January 31 of each year, to submit to the governor, the speaker of the house, and the lieutenant governor a report of the activities of the water supply enhancement program during the immediately preceding calendar year, including

a comprehensive analysis of the program's effectiveness and a report on program participant compliance with plans created under Section 203.162. Makes a conforming change.

SECTION 16. Amends Subchapter C, Chapter 203, Agriculture Code, by adding Section 203.057, as follows:

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

(b) Authorizes SWCB to:

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

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

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

SECTION 17. Amends Section 203.101, Agriculture Code, to make a conforming change.

SECTION 18. Amends Section 203.102, Agriculture Code, to make a conforming and a nonsubstantive change.

SECTION 19. Amends the heading to Section 203.104, Agriculture Code, to read as follows:

Sec. 203.104. SUPERVISION OF COST-SHARING CONTRACTS.

SECTION 20. Amends Sections 203.104(a) and (c), Agriculture Code, as follows:

(a) Each district on behalf of the board may inspect and supervise cost-sharing contracts, rather than projects, within its jurisdiction in which state money is provided under Subchapter E (Cost Sharing for Brush Control). Makes a nonsubstantive change.

(c) Makes a conforming change.

SECTION 21. Amends the heading to Subchapter E, Chapter 203, Agriculture Code, to read as follows:

SUBCHAPTER E. COST SHARING FOR WATER SUPPLY ENHANCEMENT

SECTION 22. Amends Section 203.151, Agriculture Code, to make a conforming change.

SECTION 23. Amends Section 203.154, Agriculture Code, as follows:

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

(b) Provides that a person is not eligible to participate in or to receive money from the state water supply enhancement program if the person is simultaneously receiving any cost-share money for brush control on the same acreage from a federal government program. Deletes existing text relating to the state brush control program. Makes a conforming change.

(c) Authorizes SWCB to grant an exception to Subsection (b) if SWCB finds that joint participation of the state water supply enhancement program and any federal brush control program will enhance the efficiency and effectiveness of the water supply enhancement program, rather than a project, lessen the state's financial commitment to the person receiving money from the water supply enhancement program through a cost-sharing contract, rather than a project, and not exceed 80 percent of the total cost of the cost-sharing contract. Makes conforming changes.

(d)-(e) Makes conforming changes.

SECTION 24. Amends Section 203.156, Agriculture Code, as follows:

Sec. 203.156. APPLICATION FOR COST SHARING. Requires a person, including a political subdivision of this state, that desires to participate with the state in the water supply enhancement program and to obtain cost-sharing participation by the state to file an application for a cost-sharing contract with the district board in the district in which the land on which the contract, rather than project, is to be performed, rather than accomplished, is located. Makes a conforming change.

SECTION 25. Amends Section 203.157, Agriculture Code, as follows:

Sec. 203.157. CONSIDERATIONS IN PASSING ON APPLICATION. Requires SWCB, in passing on an application for cost sharing, to consider certain factors, including the location of the land that is subject to the cost-sharing contract; the method of control the applicant will use; the total cost of the contract; the amount of land to be included in the contract; and whether the applicant is financially able to provide the applicant's share of the money for the project, rather than the location of the project; the method of control that is to be used by the project applicant; the total cost of the project; the amount of land to be included in the project; and whether the applicant for the project is financially able to provide his share of the money for the project

SECTION 26. Amends Section 203.158, Agriculture Code, as follows:

Sec. 203.158. APPROVAL OF APPLICATION. Authorizes SWCB to approve an application for cost sharing if, after considering the factors listed in Section 203.157 and any other relevant factors, SWCB finds the owner of the land fully agrees to cooperate in the cost-sharing contract, and the method of eradication is a method approved by the board under Section 203.055. Deletes existing Subdivision (3) relating to the project is a higher priority than other projects submitted in accordance with SWCB's plan. Makes conforming and nonsubstantive changes.

SECTION 27. Amends Sections 203.160(a), (d), and (e), Agriculture Code, as follows:

(a) Requires SWCB or the governing board of the designated district on approval of an application for cost sharing to negotiate cost-sharing contracts with the successful applicants in the project territory, rather than project area.

(d) Requires SWCB to examine the contract and if SWCB finds that the contract meets all the conditions of SWCB's resolution, instructions, and rules, to approve the contract and provide to the individual on faithful performance of the terms of the contract, rather than completion of the project, the money that constitutes the state's share of the project.

(e) Makes a conforming change.

SECTION 28. Amends Subchapter E, Chapter 203, Agriculture Code, by adding Section 203.162, as follows:

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

(b) Requires that a plan created under this section include provisions for brush control or other water supply enhancement activities, a provision for follow-up brush control, a provision requiring the landowner to limit the average brush coverage on the land that is subject to the contract to not more than five percent throughout the course of the 10-year plan, and periodic dates throughout the course of the 10-year plan on which SWCB will inspect the status of brush control on the land that is subject to the contract.

(c) Prohibits a plan created under this section from conditioning implementation of the provision for follow-up brush control on receipt of additional funding for the follow-up brush control from a state source other than the original cost-sharing contract.

SECTION 29. Amends Section 776.006, Government Code, by adding Subsection (c), to authorize SWCB to accept and administer conditional or other loans, grants, gifts, or other funds from the state or federal government or other sources to carry out its functions under this chapter.

SECTION 30. Repealers: Section 201.0152 (Application); Section 203.152 (Brush Control Fund); Section 203.153 (Use of Money in Brush Control Fund); and Section 203.159 (Priority of Projects), Agriculture Code.

SECTION 31. Requires the Sunset Advisory Commission, notwithstanding Section 201.025, Agriculture Code, as amended by this Act, to conduct a special-purpose review of SWCB as part of the Sunset Advisory Commission's review of agencies for the 84th Legislature. Requires that the Sunset Advisory Commission's report to the 84th Legislature regarding the special-purpose review of SWCB be limited to evaluating SWCB's implementation of the Sunset Advisory Commission's recommendations to the 82nd Legislature regarding flood control, the water quality management plan, and the water supply enhancement program. Authorizes the report to include any recommendations the Sunset Advisory Commission considers appropriate based on the special-purpose review.

SECTION 32. Effective date: September 1, 2011.