

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas State Soil and Water Conservation Board (SWCB) is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the legislature. The Sunset Advisory Commission found that the agency 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.

The purpose of this bill is to enact the recommendations of the Sunset Advisory Commission on 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.

This legislation requires SWCB to establish specific program goals and statewide grant practices, and to measure impacts for state-funded grant programs; clarifies SWCB's brush control efforts to focus on water supply enhancement and changes the name of the program from Brush Control to Water Supply Enhancement; requires SWCB 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; specifies criteria for project prioritization, including projected water yield through a model in a feasibility study; clarifies 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; 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. This legislation clarifies SWCB's role regarding terrestrial invasive plant species.

This legislation 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. This legislation applies and updates standard Sunset across-the-board language relating to complaints, alternative dispute resolution, and impartial appointments, grounds for removal, and training for members of SWCB.

As proposed, S.B. 645 amends current law relating to the continuation and functions of SWCB.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Soil and Water Conservation Board (SWCB) in SECTION 14 (Section 203.053, Agriculture Code), SECTION 15 (Section 203.0531, Agriculture Code), and SECTION 26 (Section 203.1561, Agriculture Code) of this bill.

Rulemaking authority previously granted to SWCB is modified in SECTION 6 (Section 201.030, 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) Provides that a person elected or appointed to SWCB is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program, regardless of whether attendance at the program occurs before or after the person qualifies for office.

SECTION 3. 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:

(A) if the member is elected, have at the time of election the qualifications required by Section 201.013(c) (relating to requiring a person to be an eligible voter of the conservation district and to be actively engaged in farming or ranching); or

(B) if the member is appointed, have at the time of taking office the qualifications required by Section 201.011(2) (relating to requiring a person be actively engaged in certain businesses related to agriculture and is not a member of the board of directors of a conservation district), rather than the qualifications required by Subsection (c) of Section 201.013 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 qualifications required by Subsection (c) of Section 201.013 of this code;

(3) is ineligible for membership under Section 201.0141 (Ineligibility to Serve on Board; Ineligibility for Certain Positions);

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

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

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 an 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 requiring SWCB to maintain a file on each written complaint filed with SWCB. Deletes existing Subsection (b) requiring the file to include the name of the person who filed the complaint, the date the complaint is received by SWCB, the name of the 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. Makes nonsubstantive changes.

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

(c) Redesignates existing Subsection (d) as Subsection (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 text of Subsection (c) requiring SWCB to provide to the person filing the complaint and to each person who is subject to the complaint a copy of the SWCB's policies and procedures relating to complaint investigation and resolution.

SECTION 5. Amends Section 201.025, Agriculture Code, to provide that unless continued in existence as provided by Chapter 325 (Texas Sunset Act), Government Code, 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, 201.030, and 201.031, 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 Internet website or in any annual publication SWCB 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 Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under SWCB'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 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.

Sec. 201.031. **INVASIVE SPECIES AUTHORITY.** Provides that SWCB is the state's lead agency in controlling terrestrial invasive plant species. Authorizes 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 function as the lead agency.

SECTION 7. Amends Section 201.202(b), Agriculture Code, to require SWCB to designate priorities among the various land improvement measures set forth, 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," respectively.

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, rather than the Texas Brush Control Program, to 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. Makes nonsubstantive changes.

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

Sec. 203.011. **AUTHORITY OF BOARD.** Requires SWCB to have jurisdiction over, and, with the assistance of local districts, 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, as follows:

Sec. 203.016. **CONSULTATION.** Requires SWCB to consult with the Texas Water Development Board (TWDB) in regard to the effects of the water supply enhancement program on water quality, the Department of Agriculture (TDA) in regard to the effects of the water supply enhancement program on agriculture, and the Parks and Wildlife Department (TPWD) in regard to the effects of the water supply enhancement program on fish and wildlife. Makes 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. Deletes existing text requiring

SWCB to prepare and adopt a state brush control plan that is required to include rank areas of the state in need of a brush control program, as provided by Section 203.053. Makes nonsubstantive changes.

(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:

(1) criteria for accepting project proposals; and

(2) a system to prioritize projects, 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 in ranking projects 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), Water Code, rather than the location of various brush infestations;

(2) projected water yield 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 based on 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 SWCB and the entity that will manage the project.

Makes nonsubstantive changes.

(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 can be most effectively, efficiently, and economically implemented. Makes conforming and nonsubstantive changes.

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 Subchapter C, Chapter 203, Agriculture Code, by adding Section 203.0531, as follows:

Sec. 203.0531. PRIORITIZATION OF AREAS WITHIN PROJECTS. Requires SWCB by rule to develop a system to prioritize areas within projects. Requires that the system give priority to areas with the most critical water conservation need balanced with the highest projected water yield.

SECTION 16. 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 17. 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 18. Amends Section 203.101, Agriculture Code, to make a conforming change.

SECTION 19. Amends Section 203.102, Agriculture Code, to make a conforming and a nonsubstantive change.

SECTION 20. Amends the heading to Section 203.104, Agriculture Code, to read as follows:

Sec. 203.104. SUPERVISION OF COST-SHARING CONTRACTS.

SECTION 21. Amends Sections 203.104(a) and (c), Agriculture Code, as follows:

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

(c) Authorizes SWCB to direct a district to manage any problem that arises under a cost-sharing contract for water supply enhancement, rather than brush control, in that district and to report to SWCB.

SECTION 22. Amends the heading to Subchapter E, Chapter 203, Agriculture Code, to read as follows:

SUBCHAPTER E. COST SHARING FOR WATER SUPPLY ENHANCEMENT

SECTION 23. Amends Section 203.151, Agriculture Code, to make a conforming change.

SECTION 24. 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) Prohibits a person from being eligible to participate in or receive money from the state water supply enhancement program, rather than prohibits a person from being eligible to participate in the state brush control program or to receive money from the state brush control program, if the person is simultaneously receiving any cost-share money for brush control on the same acreage from a federal government program.

(c) 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:

(1) enhance the efficiency and effectiveness of the water supply enhancement program, rather than enhance the efficiency and effectiveness of a project;

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

(3) not to exceed 80 percent of the total cost of the cost-sharing contract, rather than the project.

Makes conforming changes.

(d)-(e) Makes conforming changes.

SECTION 25. 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. Requires that the application be in the form provided by SWCB rules. Makes a conforming change.

SECTION 26. Amends Subchapter E, Chapter 203, Agriculture Code, by adding Section 203.1561, as follows:

Sec. 203.1561. **PRIORITIZATION OF COST-SHARING CONTRACTS.** Requires SWCB by rule to develop a system to prioritize cost-sharing contracts. Requires that the system give priority to cost-sharing contracts with the most critical water conservation needs balanced with the highest projected water yields, and determine the state's share of the cost of a cost-sharing contract, allocating a lower state share to lower priority contracts than to high priority contracts.

SECTION 27. 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:

- (1) the location of the land that is subject to the cost-sharing contract;
- (2) the method of control the applicant will use;
- (3) the plans for revegetation;
- (4) the total cost of the contract;
- (5) the amount of land to be included in the contract;
- (6) whether the applicant is financially able to provide the applicant's share of the money for the project;
- (7) the cost-share percentage, if an applicant agrees to a higher degree of financial commitment;
- (8) any comments and recommendations submitted by a local district, TDA, TWDB, or TPWD; and
- (9) any other pertinent information considered necessary by SWCB.

Makes conforming and nonsubstantive changes.

SECTION 28. 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, the method of eradication is a method approved by SWCB under Section 203.055 (Approved Methods for Brush Control), and the application is a higher priority than other applications classified under Section 203.1561, rather than the project is a higher priority than other projects submitted in accordance with SWCB's plan. Makes a conforming change.

SECTION 29. Amends Sections 203.160(a), (d), and (e), Agriculture Code, as follows:

- (a) Requires the board or governing board of the designated district, on approval for an application for cost sharing by SWCB, 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, it is required to approve the contract and provide to the individual on faithful performance of the terms of the contract, rather than on completion of the project, the money that constitutes the state's share of the project.

(e) Authorizes SWCB to develop guidelines to allow partial payment of the state's share of a cost-sharing contract as certain portions or percentages of contracted work are completed, but state money is prohibited from being provided in advance for work remaining to be done. Makes a conforming change.

SECTION 30. 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:

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

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

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

(4) periodic dates throughout the course of the 10-year plan on which 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 31. Amends Section 505.154, Local Government Code, to redefine, for this chapter, "project."

SECTION 32. Amends Sections 11.32 and 151.355, Tax Code, as follows:

Sec. 11.32. CERTAIN WATER CONSERVATION INITIATIVES. Authorizes the governing body of a taxing unit by official action of the governing body adopted in the manner required by law for official actions to exempt from taxation part or all of the assessed value of property on which approve brush control initiatives or other water supply enhancement initiatives as described by Chapter 203, Agriculture Code, water conservation initiatives, or desalination projects have been implemented. Requires that, for purposes of this section, approve brush control or other water supply enhancement, water conservation, and desalination initiatives to be designated pursuant to an ordinance or other law adopted by the governing unit. Makes nonsubstantive changes.

Sec. 151.355. WATER-RELATED EXEMPTIONS. Provides that certain equipment, supplies, and property are exempted from taxes imposed by this chapter including equipment, services, or supplies used solely for activities, rather than brush control, designed to enhance the availability of water, including brush control activities.

SECTION 33. Amends Section 223.044(e) and (f), Transportation Code, as follows:

(e) Authorizes the Texas Transportation Commission to authorize the Texas Department of Transportation to contract with the Texas Department of Criminal Justice for the provision of inmate labor or the labor of persons placed on community supervision for brush control or other water supply enhancement activities, rather than for a brush control project, as defined by Section 203.001, Agriculture Code, on an area located on or adjacent to a state highway system improvement project.

(f) Make a conforming change.

SECTION 34. Amends Section 17.898(a), Water Code, as follows:

(a) Provides that a conservation project is a project that carries out certain functions, including preparing and maintaining land to be used for brush control activities and other water supply enhancement activities in areas of the state where those activities in TWDB's judgment would be most effective, including activities conducted under Chapter 203, Agriculture Code.

SECTION 35. Repealer: Section 201.0152 (Application), Agriculture Code.

Repealer: Section 203.152 (Brush Control Fund), Agriculture Code.

Repealer: Section 203.153 (Use of Money in Brush Control Fund), Agriculture Code.

Repealer: Section 203.159 (Priority of Projects), Agriculture Code.

SECTION 36. Requires the Sunset Advisory Commission (Sunset), notwithstanding Section 201.025, Agriculture Code, as amended by this Act, to conduct a special-purpose review of SWCB as part of Sunset's review of agencies for the 84th Legislature. Requires that Sunset's report to the 84th Legislature regarding the special-purpose review of SWCB be limited to evaluating SWCB's implementation of the Sunset'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 Sunset considers appropriate based on the special-purpose review.

SECTION 37. Effective date: upon passage or September 1, 2011.