

## **BILL ANALYSIS**

Senate Research Center

H.B. 2310  
By: Chisum (Zaffirini)  
Natural Resources  
5/10/2001  
Committee Report (Amended)

### **DIGEST AND PURPOSE**

The State Soil and Water Conservation Board (board) works with agricultural landowners to protect the state's soil and water resources through voluntary, nonregulatory programs. The board does so by defining the state's management plan for abating nonpoint source pollution from agricultural and forestry operations and by providing technical assistance and financial incentives to farmers who establish water quality management plans as well as ranchers participating in a pilot brush control project.

The board is subject to the Texas Sunset Act and will be abolished on September 1, 2001, unless continued by the legislature. The Sunset Advisory Commission recommended continuation of the agency, along with several statutory modifications. H.B. 2310 provides for the continuation of the board and implements the Sunset Advisory Commission's recommendations regarding nonpoint source pollution abatement, outreach to the agricultural community, and local soil and water conservation district elections.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to soil and water conservation districts in SECTION 13 (Section 201.073, Agriculture Code).

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 201.004(a), Agriculture Code, as follows:

- (a) Requires the entity responsible for giving notice, if this chapter requires that notice of a hearing or an election be given, to: publish notice at least twice, with an interval of at least seven days between the publication dates, in a newspaper or other publication of general circulation within the appropriate area; and (rather than or) post notice for at least two weeks at a reasonable number of conspicuous places within the appropriate area, including, if possible, public places where it is customary to post notices concerning county or municipal affairs generally.

SECTION 2. Amends Section 201.0141, Agriculture Code, as follows:

Sec. 201.0141. New heading: INELIGIBILITY TO SERVE ON BOARD;  
INELIGIBILITY FOR CERTAIN POSITIONS. (a) Defines "Texas trade association"

- (b) Prohibits a person from being (rather than serving as) a member of the State Soil and Water Conservation Board (state board) or acting as the general counsel to the state board if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because (rather than by virtue) of the person's activities for compensation on behalf of a profession related to the operation of the state board. Makes a nonsubstantive change.

- (c) Prohibits a person from being (rather than serving as) a member of the state board

and from being a state board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, under certain conditions. Makes conforming changes.

SECTION 3. Amends Chapter 201B, Agriculture Code, by adding Section 201.0142, as follows:

Sec. 201.0142. TRAINING PROGRAM FOR MEMBERS OF STATE BOARD. Prohibits a person who is elected and qualifies for office as a member of the state board from voting, deliberating, or being counted as a member in attendance at a meeting of the state board until the person completes a training program that complies with this section. Sets forth requirements for the training program. Provides that a person elected to the state board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program, regardless of whether attendance at the program occurs before or after the person qualifies for office.

SECTION 4. Amends Section 201.0151, Agriculture Code, as follows:

Sec. 201.0151. Sets forth grounds for removal from the state board. Provides that the validity of an action of the state board is not affected by the fact that the action was taken when a ground for removal of a state board member exists. Sets forth guidelines regarding notification of potential grounds for removal.

SECTION 5. Amends Section 201.019(f), Agriculture Code, as follows:

(f) Requires the executive director or the executive director's designee (rather than the state board) to provide to members of the state board and state board employees, as often as necessary, information regarding the requirements for office or employment (rather than their qualifications) under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers and employees. Makes nonsubstantive changes.

SECTION 6. Amends Section 201.0191, Agriculture Code, as follows:

Sec. 201.0191. Requires the executive director or the executive director's designee to prepare and maintain a written policy statement that implements (rather than to assure implementation of) a program of equal employment opportunity to ensure that (rather than whereby) all personnel decisions (rather than transactions) are made without regard to race, color, disability (rather than handicap), sex, religion, age, or national origin. Sets forth requirements for the policy statement. Makes nonsubstantive changes.

SECTION 7. Amends Chapter 201B, Agriculture Code, by adding Section 201.0192, as follows:

Sec. 201.0192. STATE EMPLOYEE INCENTIVE INFORMATION. Requires the executive director or the executive director's designee to provide to state board employees information and training on the benefits and methods of participating in the state employee incentive program under Chapter 2108B (State Employee Incentive Program), Government Code.

SECTION 8. Amends Section 201.023(a), Agriculture Code, to require the state board, except as provided by Section 201.081 (rather than 201.080 of this code), to deposit all money and securities received by it in the state treasury to the credit of a special fund known as the state soil conservation fund.

SECTION 9. Amends Section 201.0231, Agriculture Code, as follows:

Sec. 201.0231. COMPLAINTS. Requires the state board to maintain a file on (rather than keep information about) each written complaint filed with the state board. Sets forth requirements for the file. Requires the board 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. Requires the state board, 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. Makes conforming changes.

SECTION 10. Amends Section 201.025, Agriculture Code, to provide that, unless continued in existence as provided by Chapter 325, Government Code (Texas Sunset Act), the State Soil and Water Conservation Board is abolished and this chapter expires September 1, 2013 (rather than 2001).

SECTION 11. Amends Section 201.026, Agriculture Code, as follows:

Sec. 201.026. NONPOINT SOURCE POLLUTION. (a) No change.

(b) Requires the state board, as the lead agency, to perform certain functions.

(c) Provides that, except as required by Subchapter L, Chapter 26 (Water Quality Control), Water Code, a permit or other authorization is not required under that chapter as a prerequisite for the land application of animal waste for beneficial use at agronomic rates to property that is not owned or controlled by the owner or operator of a facility that Chapter 26, Water Code, requires to hold a permit or other authorization. Provides that this section does not affect the authority of the Texas Natural Resource Conservation Commission to investigate or take enforcement action against a point source discharge under Section 26.121 (Unauthorized Discharges Prohibited), Water Code.

(d) Authorizes the state board, on the request of the owner of land on which animal waste is applied for agricultural purposes, to create and certify a water quality management plan for the land.

(e) Makes a nonsubstantive change.

(f) Makes nonsubstantive and conforming changes. Prohibits anything herein from impairing the ability of the Texas Department of Agriculture to represent the state before any federal agency in matters relating to the state's overall participation in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.).

(g) Makes a conforming change.

(h) Requires the state board to notify the Texas Natural Resource Conservation Commission not later than the 10th business day after the date the state board decertifies a water quality management plan for an animal feeding operation.

(i) Requires the state board to update the state board's identification of priority areas for the control of nonpoint source pollution at least every four years. Requires the state board, in considering changes to the identified priority areas, to consider certain factors.

(j) Makes a nonsubstantive change.

SECTION 12. Amends Chapter 201B, Agriculture Code, by adding Section 201.027, as follows:

Sec. 201.027. ENFORCEMENT REFERRAL RECORDS. Requires the state board to maintain certain detailed records and sets forth requirements for such records.

SECTION 13. Amends Section 201.073, Agriculture Code, as follows:

Sec. 201.073. (a) Requires the eligible voters to meet each year on a date and at a time and place designated by the existing board of directors. Requires the directors, during July of each year, to designate a date, time, and place for that year's election of directors.

(b) Sets forth eligibility requirements for an election under this section.

(c) Requires the district to post a notice stating the requirements of Subsection (b) in a prominent public place.

(d) Sets forth guidelines regarding a situation in which only one individual files a notice of candidacy for a director's office during the period specified by Subsection (b)(1).

(e) Requires the election, if more than one individual files a notice of candidacy for a director's office during the period specified by Subsection (b)(1), to be held at a meeting of eligible voters scheduled under Subsection (a). Requires the district to print ballots with the names of the candidates for each director's office to be filled. Requires the district by rule to provide for allowing eligible voters by personal appearance to cast votes on printed ballots at a location designated by the district instead of at the meeting. Sets forth requirements for rules and election dates, including early voting. Deletes text requiring the eligible voters meeting for the purpose of electing a director to proceed by electing a chairman, a secretary, and tally clerks. Deletes text regarding nominations. Makes conforming changes. Requires the district by rule to provide for certifying eligible voters voting at the designated location and at the meeting.

(f) Makes a nonsubstantive change. Requires the directors (rather than the secretary) to perform certain functions.

(g) Makes a nonsubstantive change.

SECTION 14. Amends Section 201.303(d), Agriculture Code, to require the state board to perform certain functions.

SECTION 15. (a) Makes application of the changes in law made by this Act in the qualifications of, and the prohibitions applying to, the members of the State Soil and Water Conservation Board prospective regarding the entitlement of a person already serving as a member of the board. Provides that this Act does not prohibit a person who is a member of the State Soil and Water Conservation Board immediately before September 1, 2001, from being reelected as a board member if the person has the qualifications required for the position under Chapter 201 (Soil and Water Conservation), Agriculture Code, as amended by this Act.

(b) Provides that the changes in law made by this Act to Section 201.073, Agriculture Code, apply only to an election of directors of a soil and water conservation district required to be held in 2002 or a subsequent year. Provides that an election of a director in 2001 is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 16. Effective date: September 1, 2001.

