

BILL ANALYSIS

Senate Research Center

C.S.H.B. 3442
By: Pickett (Averitt)
Finance
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Committee Report (Substituted)

DIGEST AND PURPOSE

Due to the current budget shortfall, state agencies and institutions of higher education were asked to prioritize spending based on core functions and essential services. Legislators looked to these priorities in preparation of the budget; however, certain statutory changes are also needed to conform with appropriations levels in the 2004-05 General Appropriations Act. C.S.H.B. 3442 authorizes these statutory changes for the natural resources agencies listed under Article VI of the 2004-05 General Appropriations Act. C.S.H.B. 3442 also addresses the implementation of a new freshwater fishing stamp, changes in the Soil and Water Conservation Board and its brush control program, and the transfer of certain powers from the Railroad Commission of Texas to the Texas Department of Transportation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Railroad Commission in SECTION 3 (Section 102.006, Utilities Code), SECTION 12 (Section 2, Article 6448a, V.T.C.S.), and SECTION 13 (Section 121.211, Utilities Code) of this bill.

Rulemaking authority is expressly granted to the Texas Animal Health Commission in SECTION 5 (Section 161.060, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to the Parks and Wildlife Commission in SECTION 9 (Sections 31.032, 31.039, 31.0412, and 31.0465, Parks and Wildlife Code) and SECTION 10 (Sections 43.802, 43.804, and 43.806, Parks and Wildlife Code) of this bill.

In SECTION 11, rulemaking authority granted to the Railroad Commission of Texas for the implementation or enforcement of Chapter 133, Natural Resources Code, is a rule of the Texas Department of Transportation (TxDOT) and remains in effect until changed by TxDOT.

SECTION BY SECTION ANALYSIS

SECTION 1. REDUCTION OF EXPENDITURES AND IMPOSITION OF CHARGES GENERALLY. (a) Provides that this section applies to any state agency that receives an appropriation under Article VI of the General Appropriations Act.

(b) Provides that notwithstanding any other statute of this state, each state agency to which this section applies is authorized to reduce or recover expenditures by taking certain measures.

SECTION 2. TEXAS ANIMAL HEALTH COMMISSION; DUTIES REGARDING RIDING STABLES. (a) Requires the Texas Animal Health Commission to reduce its expenditures of state money related to regulating equine riding stables.

(b) Repealer: Chapter 2053 (Riding Stables), Occupations Code.

SECTION 3. ADMINISTRATIVE HEARINGS OF RAILROAD COMMISSION OF TEXAS. Amends Section 102.006, Utilities Code, as follows:

Sec. 102.006. New heading: ADMINISTRATIVE HEARINGS IN CONTESTED CASES. (a) Requires the railroad commission (RRC) by rule to provide for

administrative hearings in contested cases to be conducted by one or more members of the railroad commission, by RRC hearings examiners, or by the utility division of the State Office of Administrative Hearings (SOAH). Requires the rules to provide for a railroad commission hearings examiner or the utility division of SOAH to conduct each hearing in a contested case that is not conducted by one or more RRC members.

(b) Authorizes RRC to delegate to a RRC hearings examiner or to the utility division of SOAH the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) Requires RRC by rule to define the procedures by which it delegates final decision-making authority under Subsection (b) to a railroad commission hearings examiner or to the utility division of SOAH.

(d) Provides that for purposes of judicial review, the final decision, rather than administrative law judge's decision, of a railroad commission hearings examiner or an administrative law judge of SOAH in a matter delegated under Subsection (b) has the same effect as a final decision of RRC unless a member of the commission requests formal review of the decision.

(e) Requires SOAH to charge RRC a fixed annual rate for hearings conducted by the office under this section only if the legislature appropriates money for that purpose. Provides that if the legislature does not appropriate money for the payment of a fixed annual rate under this section, SOAH must charge RRC an hourly rate of not more than \$90 per hour for hearings conducted by the office under this section.

SECTION 4. TEXAS DEPARTMENT OF AGRICULTURE. (a) Amends Section 146.021, Agriculture Code, to authorize the Texas Department of Agriculture (TDA), notwithstanding any other law, to use any portion of fees collected under this section that remains after spending the proceeds of the fees to meet other necessary expenses incurred under this section for expenses related to maintenance of or repairs to TDA facilities.

(b) Amends Section 13.101(a), Agriculture Code, to decrease the frequency with which TDA is required to inspect and test a weight or measure for correctness by a sealer from every three years to every four years, under certain circumstances.

(c) Repealer: Article 8614 (Sales of Certain Fuel Mixtures), V.T.C.S.

(d) Effective date of this section: September 1, 2003.

SECTION 5. ANIMAL HEALTH COMMISSION. (a) Amends Subchapter C, Chapter 161, Agricultural Code, by adding Section 161.060, as follows:

Sec. 161.060. INSPECTION FEES. Authorizes the Animal Health Commission (TAHC) to charge a fee, as provided by TAHC rule, for an inspection made by TAHC.

(b) Effective date of this section: September 1, 2003.

SECTION 6. GENERAL LAND OFFICE OIL SPILL RECOVERY. (a) Amends Sections 40.155(a), (c), and (d), Natural Resources Code, as follows:

(a) Increases the threshold amount of the unencumbered balance in the fund from \$25 million to \$40 million.

(c) and (d) Make conforming changes.

(b) Effective date for this section: September 1, 2003.

SECTION 7. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY. (a) Amends Section 5.701, Water Code, by adding Subsection (r), as follows:

(r) Prohibits the fee for processing a request for an expedited letter from the executive director of the Texas Commission on Environmental Quality (TCEQ) stating the total depth of surface casing needed during the drilling of wells to protect usable ground waters in the state and required for the processing of certain permits from the Railroad Commission of Texas from exceeding \$75.

(b) Amends Section 26.351(f), Water Code, to require a corrective action plan for sites found under Subdivision (2) , to be initiated and proceeding according to the requirements and deadlines in the approved plan no later than March 1, 2005, rather than March 1, 2004.

(c) Amends Section 26.3573(r), Water Code, to prohibit the petroleum storage tank remediation account from being used to reimburse any person for corrective action performed after September 1, 2006, rather than September 1, 2005.

(d) Amends Section 26.3573(s), Water Code, to prohibit the petroleum storage tank remediation account from being used to reimburse any person for corrective action contained in a reimbursement claim filed with TCEQ after March 1, 2007, rather than March 1, 2006.

(e) Amends Section 26.35731(c), Water Code, to require TCEQ, not later than the 90th day after the date on which TCEQ receives a completed application for reimbursement from the petroleum storage tank remediation account, to send a fund payment report to the owner or operator of a petroleum storage tank system that is seeking reimbursement, if sufficient funds are available to make the payment.

(f) Effective date of this section: September 1, 2003.

SECTION 8. TEXAS PARKS AND WILDLIFE DEPARTMENT FEES. (a) Amends Section 11.032, Parks and Wildlife Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires the Texas Parks and Wildlife Department (TPWD) to deposit to the credit of the game, fish, and water safety account all revenue, less allowable costs, from certain sources, including vessel registration fees, rather than motorboat registration fees; vessel, rather than motorboat, manufacturer or dealer licensing fees, rather than registration fees; and vessel and outboard motor titling fees. Makes nonsubstantive changes.

(c) Requires TPWD, not later than the 10th day of each month, to transfer 15 percent of all amounts collected during the previous month from sources described by Subsection(b)(15), (16), or (22) to the state parks account.

(b) Effective date of this section: September 1, 2003.

SECTION 9. TEXAS PARKS AND WILDLIFE DEPARTMENT REGULATION OF MARINE BUSINESSES. (a) Amends Section 31.003, Parks and Wildlife Code, by amending Subdivision (7) and adding Subdivision (16), as follows:

(7) Redefines “dealer.”

(16) Defines “distributor.”

(b) Amends Subchapter A, Chapter 31, Parks and Wildlife Code, by adding Section 31.007, as follows:

Sec. 31.007. DEALER REQUIREMENTS. Requires a dealer to display in each

of the dealer's places of business a sign that contains certain information and to operate in a space sufficient to maintain an office, service area, and display of products.

(c) Amends Section 31.021, Parks and Wildlife Code, as follow:

Sec. 31.021. **REQUIRED NUMBERING.** (a) Deletes from the requirement that each vessel on the water be numbered in accordance with the provisions, the specification that the vessel be documented.

(b) Specifies that the identifying number set forth in the certificate properly displayed on each side of the bow of the vessel is as required by this chapter.

(d) Amends Section 31.032, Parks and Wildlife Code, as follows:

Sec. 31.032. **NUMBERING ON BOW.** (a) Creates this subsection from existing text. Specifies that the owner of a vessel is required to paint on or attach to each side of the vessel near the bow, the identification number and a validation decal in the manner prescribed by TPWD.

(b) Provides that the owner of a vessel required to be numbered under this subchapter and documented by the United States Coast Guard is not required to attach an identification number as required by Subsection (a).

(c) Requires the Parks and Wildlife Commission (commission) to adopt rules for the placement of the validation decal in an alternative location for antique boats. Defines "antique boat."

(e) Amends Section 31.039, Parks and Wildlife Code, as follows:

Sec. 31.039. **PUBLIC RECORDS; FEES.** (a) Creates this subsection from existing text.

(b) Authorizes the commission, by rule, to charge a fee for access to ownership records and other records made or kept under this chapter.

(f) Amends Section 31.041, Parks and Wildlife Code, as follows:

Sec. 31.041. **New heading: DEALER'S, DISTRIBUTOR'S, AND MANUFACTURER'S LICENSE.** (a) Prohibits a person from engaging in business in this state as a dealer, distributor, or manufacturer, unless the person holds a license issued under this section. Requires a dealer to have a license for each place of business owned and operated by the person.

(b) Requires the commission to establish the form and manner for a display of a license issued under this section.

(c) Requires TPWD to issue a dealer, distributor, or manufacturer number to each dealer, distributor, or manufacturer licensed under this section in the manner provided by Section 31.031(b) (Numbering Pattern).

(d) Creates this section from existing text. Includes a distributor, along with a dealer or manufacturer of vessels in this state as authorized to use, rather than obtain, the dealer's, distributor's, or manufacturer's number for vessels the dealer, distributor, or manufacturer wishes to show, demonstrate, or test on the water of this state instead of securing a certificate of number for each vessel. Provides that, for purposes of this subsection, "show, demonstrate, or test" does not include the use of a

vessel for recreational purposes or for participation in a contest for event. Makes a conforming change.

(e) Redesignates this subsection from Subsection (b). Requires that the application for a license, rather than a number, under this section to state certain information. Requires an application submitted by a dealer to be accompanied by certain documents. Provides that the two-year fee for a dealer's, distributor's, or manufacturer's number is \$500, rather than \$45 or an amount set by the commission. Prohibits a license, rather than a number, from being issued until the provisions of this section have been satisfied. Makes conforming changes.

(f) Redesignates this subsection from Subsection (c). Includes a reference to Subsection (c). Requires the form of the facsimile and the manner of display of the number to be prescribed by TPWD. Makes conforming changes.

(g) Redesignates this subsection from Subsection (d). Deletes text referring to transferring a vessel or outboard motor. Makes conforming changes.

(g) Amends Subchapter B, Chapter 31, Parks and Wildlife Code, by adding Sections 31.0411, 31.0412, and 31.0413, as follows:

Sec. 31.0411. TERM OF LICENSE; TRANSFER. (a) Provides that except as provided by Subsection (b), a license issued under Section 31.041 is valid for two years from the date of issuance and is prohibited from being transferred to another person.

(b) Provides that a license issued under Section 31.041 in the name of a business remains valid for the business location specified on the license if a change of ownership or business name occurs.

(c) Authorizes a license issued under Section 31.041 to be transferred to a new address under certain circumstances.

Sec. 31.0412. LICENSING RULES. Authorizes the commission to adopt rules regarding licenses issued under Section 31.041, including certain rules regulating certain activities.

Sec. 31.0413. EXEMPTION FROM DEALER LICENSING REQUIREMENTS. Provides that the dealer licensing provisions of this subchapter do not apply to the sale of a canoe, kayak, punt, rowboat, rubber raft, paddle boat, or other vessel that is less than 12 feet in length and has a horsepower rating of five or less, or to the sale of an outboard motor with a manufacturer's rating of five horsepower or less.

(h) Amends Section 31.042(b), Parks and Wildlife Code, to delete as a cause for cancellation of certificates and voiding of numbers, the issuance of a marine document by the Bureau of Customs for the same vessel. Makes nonsubstantive changes.

(i) Amends Subchapter B, Chapter 31, Parks and Wildlife Code, by adding Section 31.044, as follows:

Sec. 31.044. INSPECTIONS. Prohibits a dealer, distributor, or manufacturer from refusing to allow TPWD or a peace officer to inspect a vessel, outboard motor, or records relating to the possession, origination, ownership, or transfer of a vessel or outboard motor at a dealership or distributor's or manufacturer's place of business during normal business hours.

(j) Amends Subchapter B-1, Chapter 31, Parks and Wildlife Code, by adding Section 31.0465, as follows:

Sec. 31.0465. APPEAL REGARDING CERTIFICATE OF TITLE; BOND; RULES. (a) Authorizes an applicant for a certificate of title under Section 31.046 (Application for Certificate of Title) to appeal TPWD's refusal to issue the title by filing a bond with TPWD as provided by this section.

(b) Requires a bond filed under this section to meet certain criteria.

(c) Authorizes TPWD to issue the certificate of title to the person filing the bond if the applicant proves that the vessel or outboard motor is not stolen and that issuance of a certificate of title would not defraud the owner or a lienholder of the vessel or outboard motor, to TPWD's satisfaction.

(d) Provides that a person described by Subsection (b)(5) has a right of action to recover on the bond for a breach of condition of the bond described by Subsection (b)(5). Prohibits the aggregate liability of the surety to all persons from exceeding the amount of the bond.

(e) Provides that a bond filed under this section expires on the third anniversary of the date the bond became effective. Requires TPWD to return an expired bond to the person who filed the bond unless TPWD has been notified of a pending action to recover on the bond.

(f) Requires TPWD, on return of a bond under Subsection (e), to issue a certificate of title to the person to whom the bond is returned.

(g) Authorizes the commission, in addition to the situation described by Subsection (c), by rule, to define acceptable situations in which certificates of title are authorized to be issued after filing a bond under this section.

(k) Amends Section 31.049(c), Parks and Wildlife Code, to delete text referring to a duplicate original certificate.

(l) Amends Section 31.053, Parks and Wildlife Code, by adding Subsection (f) to require a person who is not licensed as a dealer, distributor, or manufacturer under this chapter to obtain a certificate or number or certificate of title to a vessel or outboard motor in the person's name before transferring the certificate of number or certificate of title.

(m) Amends Section 31.127(a), Parks and Wildlife Code, to include in the list of actions that constitute committing an offense that is a Class C Parks and Wildlife Code misdemeanor, a person who violates or fails to comply with a proclamation of the commission entered under this chapter or a city ordinance or order of a commissioners court or a political subdivision of the state made or entered under this chapter.

(n) Requires the commission, not later than January 1, 2004, to adopt any rules necessary to implement Subsections (a) - (l) of this section.

(o) Makes application of Section 31.041, Parks and Wildlife Code this Act prospective to March 1, 2004.

(p) Effective date of this section: September 1, 2003.

SECTION 10. TEXAS PARKS AND WILDLIFE DEPARTMENT: FRESHWATER FISHING STAMP. (a) Amends Chapter 43, Parks and Wildlife Code, by adding Subchapter U, as follows:

SUBCHAPTER U. FRESHWATER FISHING STAMP

Sec. 43.801. DEFINITION. Defines “fresh water.”

Sec. 43.082. FRESHWATER FISHING STAMP REQUIRED. (a) Provides that, except as provided by Subsection (b) or (c), no person is authorized to engage in fishing in fresh water for sporting purposes in this state unless the person has acquired a freshwater fishing stamp issued to the person by TPWD. Authorizes the commission, by rule, to adopt requirements relating to possessing a freshwater fishing stamp required by this section.

(b) Provides that a person who is exempted from obtaining a fishing license under Chapter 46 (Fishing Licenses) is not required to obtain a freshwater fishing stamp.

(c) Authorizes the commission, by rule, to exempt a person from the freshwater fishing stamp requirement of this section.

Sec. 43.803. FISHING LICENSE REQUIRED. Provides that the acquisition of a freshwater fishing stamp does not authorize a person to fish in fresh water for sporting purposes without having acquired a fishing license as provided by Chapter 46 (Fishing Licenses). Provides that the acquisition of a freshwater fishing stamp does not authorize a person to fish at any time or by any means not otherwise authorized by this code.

Sec. 43.804. DESIGN AND ISSUANCE OF STAMPS. (a) Authorizes TPWD to issue a freshwater fishing stamp to any person on the payment to TPWD of \$5. Requires a stamp, except as provided by Subsection (e), to be signed on its face by the person using it, for the stamp to be valid for fishing purposes.

(b) Authorizes TPWD to issue a collectible freshwater fishing stamp to any person who pays TPWD \$5. Provides that a collectible freshwater fishing stamp does not authorize a person to fish and is not valid for fishing purposes.

(c) Requires the commission, by rule, to prescribe the form, design, and manner of issuance of the freshwater fishing stamp and the collectible freshwater fishing stamp. Provides that TPWD retains all reproduction rights to the design of the freshwater fishing stamp and the collectible freshwater fishing stamp.

(d) Authorizes the commission to contract with and pay a person for designing and producing the freshwater fishing stamp or the collectible freshwater fishing stamp.

(e) Authorizes the commission, by rule, to prescribe alternate requirements for identifying the purchaser of a freshwater fishing stamp issued in an automated manner.

Sec. 43.805. DISPOSITION OF STAMP FEES. (a) Requires the net receipts from freshwater fishing stamp and collectible freshwater fishing stamp sales, after deduction of any collection fee, to be sent to TPWD.

(b) Authorizes the net receipts from freshwater fishing stamp sales to be spent only for certain purposes.

(c) Authorizes the net receipts from collectible freshwater fishing stamp sales to be spent only for certain purposes.

Sec. 43.806. EXPIRATION OF STAMP. (a) Provides that a freshwater fishing stamp, except as provided by Subsection (b) or (c), is valid for fishing only during the yearly period for which the stamp is issued, without regard to the date on which the stamp was acquired. Provides that each yearly period begins on September 1 of the year in which the stamp is issued or another date set by the commission. Authorizes the commission, by rule, to set the amount of a stamp fee for a stamp issued during a transition period at

an amount lower than prescribed in this subchapter and provide for a stamp term for a transition period that is shorter or longer than one year.

(b) Provides that a freshwater fishing stamp issued before September 1, or another date set by the commission, that does not expire until August 31 of the next year, or another date set by the commission, is valid from the date of issuance through August 31 of the next year, or another date set by the commission.

(c) Provides that a freshwater fishing stamp issued in conjunction with a license issued under Section 46.005 or 46.0051 expires on the later of the license expiration date or the date printed on the stamp.

Sec. 43.807. REFUSAL TO SHOW STAMP. Provides that a person fishing in fresh water for sporting purposes who refuses on demand of any game management officer or peace officer to show a freshwater fishing stamp or proof that the person is exempt under Section 43.802(b), or a rule adopted under that section, is presumed to be in violation of Section 43.802.

Sec. 43.808. PENALTY. Provides that a person who violates Section 43.802 is guilty of a Class C Parks and Wildlife misdemeanor.

Sec. 43.809. EXPIRATION OF SUBCHAPTER. Provides that this subchapter expires September 1, 2014.

(b) Repealer: Subchapters N (Freshwater Trout Stamp) and Q (Muzzleloader Hunting Stamp), Parks and Wildlife Code.

(c) Effective date of this section: September 1, 2004.

SECTION 11. TRANSFER OF RAILROAD COMMISSION OF TEXAS FUNCTIONS RELATED TO QUARRY AND PIT SAFETY. (a) Provides that on September 1, 2003

(1) All powers, duties, functions, and activities performed by the Railroad Commission (RRC) of Texas under Chapter 133, Natural Resources Code, immediately before that date are transferred to the Texas Department of Transportation (TxDOT);

(2) All employees of the RRC whose primary duties relate to the implementation of Chapter 133, Natural Resources Code, become TxDOT employees;

(3) A rule, form, order, or procedure adopted by RRC for the implementation or enforcement of Chapter 133, Natural Resources Code, is a rule form order or procedure of TxDOT and remains in effect until changed by TxDOT;

(4) A reference in Chapter 133, Natural Resources Code, to RRC means TxDOT;

(5) A permit or certification in effect under Chapter 133, Natural Resources Code, that was issued by RRC is continued in effect as a permit or certification issued by TxDOT; and

(6) a complaint, investigation, or other proceeding under Chapter 133, Natural Resources Code, pending before the RRC is transferred without change in status to TxDOT.

(b) Effective date of this section: September 1, 2003.

SECTION 12. RAILROAD COMMISSION OF TEXAS FUNCTIONS RELATED TO RAILROAD SAFETY. (a) Amends Article 6448a, V.T.C.S., as follows:

Art. 6448a. New heading: IMPLEMENTATION OF FEDERAL RAILROAD SAFETY ACT OF 1970.

Sec. 1. Creates this section from existing text.

Sec. 2. (a) Requires RRC by rule to adopt reasonable fees to be assessed annually against railroads operating within the state.

(b) Requires RRC by rule to establish the method by which fees are calculated and assessed.

(c) Prohibits the total amount of fees estimated to be collected by rule adopted by RRC under this section from exceeding the amount estimated by RRC to be necessary to recover the costs of administering RRC's rail safety program.

(d) Authorizes RRC, in adopting a fee structure, to consider the gross ton miles for railroad operations within the state for each railroad operating in the state, to provide for the equitable allocation among railroads of the cost of administering RRC's rail safety program.

(e) Requires a fee collected under this section to be deposited to the credit of the general revenue fund to be used for the rail safety program.

(b) Effective date for this section: September 1, 2003.

SECTION 13. RAILROAD COMMISSION OF TEXAS FUNCTIONS RELATED TO PIPELINES. (a) Amends Subchapter E, Chapter 121, Utilities Code, by adding Section 121.211, as follow:

Sec. 121.211. PIPELINE SAFETY FEES. Authorizes RRC, by rule, to adopt an inspection fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities and natural gas master metered pipelines and their pipeline facilities subject to this chapter.

(b) Authorizes RRC, by rule, to establish the method by which the fee is calculated and assessed. Authorizes RRC, in adopting a fee structure, to consider any factors necessary to provide for the equitable allocation among operators of the cost of administering RRC's pipeline safety program under this chapter.

(c) Prohibits the total amount of fees estimated to be collected by rule adopted by RRC under this section from exceeding the amount estimated by RRC to be necessary to recover the costs of administering RRC's pipeline safety program under this chapter, excluding costs that are fully funded by federal sources.

(d) Authorizes RRC to assess each investor-owned and each municipally owned natural gas distribution system subject to this chapter an annual inspection fee not to exceed 50 cents for each service line reported by the system on the Distribution annual Report, Form RSPA F7100. 1-1, due on March 15 of each year. Provides that the fee is due on March 15 of each year.

(e) Authorizes RRC to assess each operator of a natural gas master metered system subject to this chapter an annual inspection fee not to exceed \$100 for each master metered system. Provides that the fee is due June 30 of each year.

(f) Authorizes RRC to assess a late payment penalty of 10 percent of the total assessment due under Subsection (d) or (e) that is not paid within 30 days after the annual due date established by the applicable subsection.

(g) Requires each investor-owned and municipally owned natural gas distribution company and each natural gas master meter operator to recover as a surcharge to its existing rates the amounts paid to RRC under this section. Prohibits amounts

collected under this subsection by an investor-owned natural gas distribution company from being included in the revenue or gross receipts of the company for the purpose of calculating municipal franchise fees or any tax imposed under Subchapter B, Chapter 182, Tax Code, or under Chapter 122. Provides that those amounts are not subject to a sales and use tax imposed by Chapter 151, Tax Code, or Chapters 321 through 327, Tax Code.

(h) Requires a fee to be deposited to the credit of the general revenue fund to be used for the pipeline safety program.

(b) Effective date of this section: September 1, 2003.

SECTION 14. SOIL AND WATER CONSERVATION BOARD. (a) Amends Section 201.011, Agriculture Code, as follows:

Sec. 201.011. **COMPOSITION.** Provides that the State Soil and Water Conservation Board (SWCB) is a state agency composed of seven, rather than five, certain members.

(b) Amends Section 201.015(b), Agriculture Code, to provide that the term of office of an elected member of SWCB begins on the day after the day on which the member was elected. Provides that the term of one member appointed by the governor expires February 1 of each odd-numbered year, and the term of the other member appointed by the governor expires February 1 of each even-numbered year.

(c) Amends Section 201.016, Agriculture Code, to provide that vacancies on SWCB are filled by election in the manner provide by this subchapter for an unexpired term or for a full term.

(d) Amends Subchapter B, Chapter 201, Agriculture Code, by adding Sections 201.028 and 201.029, as follows:

Sec. 201.028. **SEMIANNUAL REPORT.** Requires SWCB, not later than January 1 and July 1 of each year, to prepare and deliver a report to certain elected officials relating to the status of SWCB's budget areas of responsibility assigned to SWCB.

Sec. 201.029. **MANAGEMENT AUDIT.** Requires the state auditor, in coordination with the Legislative Budget Board (LBB), not later than March 1, 2004, to conduct a management audit of SWCB and deliver the audit report to certain elected officials. Requires the audit to include an evaluation of the administrative budget for SWCB. Provides that this section expires April 1, 2004.

(e) Amends Sections 203.011-203.013, Agriculture Code, as follows:

Sec. 203.011. **AUTHORITY OF BOARD.** Provides that SWCB has jurisdiction over and is required to administer the brush control program under this chapter with the assistance of local districts.

Sec. 203.012. **RULES.** Requires SWCB, after consulting with local districts, reasonable rules that are necessary to carry out this chapter.

Sec. 203.013. **AUTHORITY OF DISTRICTS.** Deletes text referring to the location of a critical area.

(f) Amends Section 203.016, Agriculture Code, to require SWCB to consult the Texas Water Development Board (TWDB) and TDA in regard to the effects to the brush control program on water quantity as well as with TPWD in regard to the effects of the brush control program on fish and wildlife.

(g) Amends Section 203.051, Agriculture Code, to require SWCB to prepare and adopt a state brush control plan required to 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, rather than designate, areas in the state in need of a brush control program. Deletes text referring to critical need.

(h) Amends Sections 203.052(b), (c), and (d), Agriculture Code, as follows:

(b) Includes in the required content of the notice instructions for each district to submit comments on the proposed plan. Makes nonsubstantive changes.

(c) Requires SWCB to enter any written comments received on the proposed plan into the record of the hearing and consider all written testimony before taking final action on the proposed plan.

(d) Makes a conforming change.

(i) Amends Section 203.053, Agriculture Code, as follows:

Sec. 203.053. New heading: CRITERIA FOR EVALUATING BRUSH CONTROL AREAS. (a) Requires SWCB, in ranking areas under the plan, to consider the amount of water produced by a project and the severity of water shortage in the areas, as well as other criteria. Makes conforming changes.

(b) Makes a conforming change.

(j) Amends Section 203.055, Agriculture Code, as follows:

Sec. 203.055. APPROVED METHODS FOR BRUSH CONTROL. (a) Makes a conforming change.

(b) Authorizes SWCB to approve a method for use under the cost-sharing program provided by Subchapter E of this chapter if SWCB finds that the proposed method will have a beneficial impact on the development of water sources and wildlife habitat and will allow the revegetation of the area after the brush is removed with plants that are beneficial to stream flows, groundwater levels, livestock, and wildlife, as well as other effects.

(k) Amends Section 203.101, Agriculture Code, to make a conforming change.

(l) Amends Section 203.154, Agriculture Code, by amending Subsections (a) and (c) and adding Subsection (d), as follows:

(a) Authorizes not more than 70 percent, rather than 80 percent, of the total cost of a single brush control project to be made available as the state's share in cost sharing.

(c) Authorizes SWCB to grant an exception to Subsection (b) of this section if SWCB finds that joint participation of the state brush control program and any federal brush control program will not exceed 80 percent of the total cost of the project.

(d) Provides that a political subdivision of this state is eligible for cost sharing under this brush control program as long as the state's share does not exceed 50 percent of any one project.

(m) Amends Sections 203.156-203.158, Agriculture Code, as follows:

Sec. 203.156. APPLICATION FOR COST SHARING. Includes a political

subdivision of this state, as a person.

Sec. 203.157. CONSIDERATIONS IN PASSING ON APPLICATION. Requires SWCB, in passing on an application for cost sharing, to consider the location of the project and any comments and recommendations submitted by a local district, TWDB, or TPWD, as well as other factors.

Sec. 203.158. APPROVAL OF APPLICATION. Authorizes SWCB to approve an application if, after considering the factors listed in Section 203.157 of this code and any other relevant factors, SWCB finds the project ranks higher than other projects submitted in accordance with the board's plan, as well as other findings. Makes a conforming change.

(n) Amends Sections 203.159(a) and (c), Agriculture Code, as follows:

(a) Requires, rather than authorizes, SWCB, if the demand for funds under this cost-sharing program is greater than funds available, to establish certain priorities.

(c) Requires SWCB to consider quantity of stream flows, the quantity of groundwater, and the amount of water conservation from the eradication of brush each to be a priority. Deletes text referring to dedicated land.

(o) Repealer: Sections 203.001(5) (Critical area) and 203.155 (Limit to Critical Areas and Approved Methods), Agriculture Code.

(p) Requires the governor, in making initial appointments to SWCB under Section 201.011, Agriculture Code, as amended by this section, to designate one member to serve a term expiring February 1, 2004, and the other member to serve a term expiring February 1, 2005.

(q) Requires SWCB to prepare and deliver the first report required by Section 201.028, Agriculture Code, as added by this section, not later than January 1, 2004.

(r) Effective date of this section: September 1, 2003.

SECTION 15. EFFECTIVE DATE. Effective date: upon passage or September 1, 2003.