

- SUBJECT:** Transferring weather modification and control program from TNRCC
- COMMITTEE:** Agriculture and Livestock — committee substitute recommended
- VOTE:** 7 ayes — Swinford, McReynolds, Christian, Hardcastle, Miller, Brown, Hupp
0 nays
2 absent — Green, Kolkhorst
- WITNESSES:** For — Richard Bowers, North Plains Groundwater Conservation District
Against — None
On — Todd Chenoweth, Texas Natural Resource Conservation Commission; Carol Funderburgh and Martin Hubert, Texas Department of Agriculture
- BACKGROUND:** Weather modification involves seeding clouds to induce rainfall. Specially-equipped aircraft fly into suitable clouds and release particles — usually silver iodide — around which raindrops can form. Weather modification appears to work better in drought-free seasons when there are more clouds suitable for seeding. A number of Texas Natural Resource Conservation Commission (TNRCC) studies have shown that rainfall increased in areas where cloud seeding activities were conducted.

The TNRCC administers the Weather Modification Act (Water Code, chapter 18). The TNRCC assists political subdivisions and other organizations in designing and implementing weather modification programs. The agency is the sole source of state funding for weather modification projects.
- DIGEST:** CSHB 3230 would remove the weather modification program from TNRCC's authority and would authorize the Department of Licensing and Regulation to administer licensing and permitting for the program. It would amend the Agriculture Code to allow the Department of Agriculture to administer the Weather Modification and Control grant program.

Licensing and permitting. The Department of Licensing and Regulation would issue licenses for weather modification and control activities. Certain activities would be exempted from license and permit requirements, such as research and experiments conducted by universities and nonprofits, laboratory experiments, and activities normally conducted for purposes other than modifying precipitation or hail. To obtain a license, an applicant would have to pay a \$150 fee and demonstrate competence in the field of meteorology to the satisfaction of the department.

The department could issue a weather modification permit if it found that the proposed operation would not significantly dissipate clouds and prevent their natural course of developing rain to the material detriment of persons or property in the area. A permit applicant would have to hold a valid weather modification license, pay a \$75 permit fee, publish a notice of intention, and provide proof of financial responsibility. If requested by 25 persons or more, the department would have to hold at least one public hearing in the area where the operation was to be conducted prior to issuing the permit. A separate permit would be required for each operation. To undertake a weather modification operation, a license holder would have to apply for a permit and publish a notice of intention.

On the written request of 25 or more qualified voters, a county clerk would have to circulate a petition for an election to approve or disapprove a permit that included authorization of hail suppression. If a sufficient number of petitions were signed and returned, an election would have to be held within 45 days of the date of return. A permit only could be issued for those areas covered in the permit application that did not request an election or in areas where voters approved a permit.

The department could modify the terms and conditions of a permit if the license holder were first given notice and an opportunity for a hearing and it appeared to the department that modification was necessary to protect health or property. The license holder would have to comply with the terms and conditions of the permit and keep a record of each operation conducted under permit. The department would have to require written reports for exempted and permitted activities.

A person who violated the department's rules, licensing, or permitting requirements authorized under CSHB 3230 would be subject to administrative penalties or sanctions, unless the person established that an alleged violation was caused solely by an act of God, war, strike, riot, or other catastrophe.

The department could revoke or suspend a license or permit after notice and hearing. The department also could place on probation a person whose license was suspended, reprimand a license holder, or refuse to renew or reissue a license after notice and hearing.

The state, its officers, and employees would be immune from liability for all weather modification and control activities conducted by private persons or groups.

In addition, the department could:

- ! adopt rules and establish standards for research projects to minimize danger to health and property;
- ! conduct studies or investigations or obtain information;
- ! establish advisory committees;
- ! appoint and determine compensation for personnel;
- ! acquire materials, equipment, and facilities;
- ! represent the state in interstate compacts;
- ! cooperate with public or private agencies;
- ! promote research and development; and
- ! accept federal grants, private gifts, and donations from any other source.

Grant program. The Department of Agriculture would develop and administer a program to award matching grants to political subdivisions for weather modification and control. The department could enter into contracts with public or private entities to assist the department in administering the grant program or to conduct research on the effectiveness of weather modification. The department could solicit and accept gifts, grants, and other donations from any source to administer the grant program.

This bill would take effect September 1, 2001, and abolish the weather modification program under the TNRCC's authority. The TNRCC could not

award a weather modification grant after that date, and all unobligated and unexpended balances in the weather modification fund, as well as powers, duties, obligations, rights, contracts, records, employees, and property, would be transferred to the Department of Licensing and Regulation.

**SUPPORTERS
SAY:**

CSHB 3230 rightly would move administration of weather modification grants to the Department of Agriculture and regulation of the program to the Department of Licensing and Regulation. The \$5 million program is dwarfed by the TNRCC — an agency with an \$870 million budget for 2000-01 — and many program participants have felt that the program was getting lost in the shuffle. Some have experienced lengthy waits for grant approval and increased administrative costs in order to comply with the extensive contracts used by TNRCC. The Department of Agriculture is smaller and better-suited to administer the weather modification grant program. The agency already administers grant programs, such as for boll weevil eradication and the Texas-Israeli exchange, and has close ties to agriculture, a primary beneficiary of weather modification.

CSHB 3230 would separate regulation of the program from grant administration. A potential conflict of interest arises if an agency regulates an activity for which it also administers grants. For instance, an agency could relax regulatory rules in order to facilitate a grant-funded operation. Transferring regulation of weather modification activities to the Department of Licensing and Regulation would eliminate a potential conflict of interest.

**OPPONENTS
SAY:**

TNRCC is the most appropriate agency to house a weather modification program. The agency already regulates many activities affecting the environment. Weather modification activities often are experimental and could have unknown negative impacts on the environment. TNRCC employs scientists, engineers, and other experts with experience in regulating environmental activities.

NOTES:

The committee substitute differs from the original bill by transferring weather modification licensing and permitting authority to the Department of Licensing and Permitting instead of the Department of Agriculture. The substitute also eliminated provisions in the original version relating to procedures for determining and imposing penalties for violations.

The companion bill, SB 1175 by Wentworth, passed the Senate on the Local and Uncontested Calendar on April 26 and was reported favorably, without amendment, by the House Agriculture and Livestock Committee on May 1, making it eligible to be considered in lieu of HB 3230.