

BILL ANALYSIS

Senate Research Center
77R5733 JMG-D

C.S.S.B. 1175
By: Wentworth
Natural Resources
4-12-2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Texas has a lengthy history of efforts to lessen the impact of periodic, severe droughts through the use of cloud-seeding technologies. Numerous "rain-making" endeavors sprouted during the epic drought of the 1950s, eventually prompting the Texas Legislature to enact a law governing the use of weather-modification technology. Weather-modification technology involves injecting suitable ("seedable") clouds with agents such as silver iodide by an airplane. Currently, there are nine rain enhancement projects in operation in Texas. These projects, covering some 44 million acres from the caprock in the Texas High Plains to the coastal prairies south of San Antonio and the lower Rio Grande basin, are designed to be integral parts of a long-term, water management strategy by water conservation districts and other water management authorities to replenish fresh-water supplies in aquifers and reservoirs as well as to help meet the water needs of agriculture, industry, and municipalities. C.S.S.B. 1175 transfers the weather modification program from the Texas Natural Resource Conservation Commission to the Texas Department of Licensing and Regulation(department). C.S.S.B. 1175 also authorizes the department to receive and administer grants to political subdivisions for weather modification and control activities since the weather modification program mostly affects farmers, ranchers, and others involved in the agriculture industry. Funding for the weather modification program will be solicited by TDA. C.S.S.B 1175 authorizes the department to solicit and accept gifts, grants, and other donations from any source in order to procure appropriate amounts of funding.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Licensing and Regulation in SECTIONS 1.11, 1.32, 1.41, 1.64, and SECTION 3.07 and to the Texas Department of Agriculture in SECTION 2.01 (Section 20.004, Agriculture Code) in this bill..

SECTION BY SECTION ANALYSIS

ARTICLE 1

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 1.01. DEFINITIONS. Defines "commissioner," "department," "operation," "research and development," "weather modification and control," "weather modification and control program," and "weather modification and control grant program."

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

SECTION 1.11. RULES. Authorizes the Texas Department of Licensing and Regulation (department) to adopt rules necessary to: exercise the powers and perform the duties under this article; establish procedures and conditions for the issuance of licenses and permits under this article; and establish standards and instructions to govern the carrying out of research or projects in weather modification and control that the department considers necessary or desirable to minimize danger to health or property.

SECTION 1.12. STUDIES; INVESTIGATIONS; HEARINGS. Authorizes the department to make

any studies or investigations, obtain any information, and hold any hearings necessary or proper to administer or enforce this chapter or any rules or orders issued under this article.

SECTION 1.13. ADVISORY COMMITTEES. Authorizes the department to establish advisory committees to advise and make recommendations to the department concerning legislation, policies, administration, research, and other matters related to the department's duties, powers, or functions under this article.

SECTION 1.14. PERSONNEL. Authorizes the commissioner of licensing and regulation (commissioner), as provided by the General Appropriations Act, to appoint and fix the compensation of any personnel, including specialists and consultants, necessary to perform duties and functions under this article.

SECTION 1.15. MATERIALS AND EQUIPMENT. Authorizes the department to acquire in the manner provided by law any materials, equipment, and facilities necessary to the performance of its duties and functions under this article.

SECTION 1.16. INTERSTATE COMPACTS. Authorizes the commissioner to represent the state in matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control.

SECTION 1.17. CONTRACTS, COOPERATIVE AGREEMENTS, ETC. (a) Authorizes the department to cooperate with public or private agencies to promote the purposes of this article.

(b) Authorizes the department to enter into cooperative agreements with the United States or any of its agencies, with counties and municipalities of this state, or with any private or public agencies for conducting weather modification or cloud-seeding operations.

(c) Authorizes the department to represent the state, counties, municipalities, and public and private agencies in contracting with private concerns for the performance of weather modification or cloud-seeding operations.

SECTION 1.18. PROMOTION OF RESEARCH AND DEVELOPMENT. Requires the department, in order to assist in expanding the theoretical and practical knowledge of weather modification and control, to promote certain research and development. Authorizes the department with approval of the commissioner to conduct and contract for research and development activities relating to the purposes of this section.

SECTION 1.19. GRANTS, GIFTS, ETC. Authorizes the department, subject to any limitations imposed by law, to accept federal grants, private gifts, and donations from any other source. Authorizes the department, unless the use of the money is restricted or subject to any limitations provided by law, to spend the money for the administration of this article.

SECTION 1.20. DISPOSITION OF LICENSE AND PERMIT FEES. Requires the department to deposit all license and permit fees in the state treasury.

SUBCHAPTER C. LICENSES AND PERMITS

SECTION 1.31. LICENSE AND PERMIT REQUIRED. Prohibits a person, except as provided by rule of the department under Section 1.32, from engaging in activities for weather modification and control without a weather modification license and weather modification permit issued by the department or in violation of any term or condition of the license or permit.

SECTION 1.32. EXEMPTIONS. Requires the department by rule, to the extent it considers exemptions practical, to provide for exempting certain activities from the license and permit

requirements of this article. Authorizes the department by rule to modify or revoke an exemption.

SECTION 1.33. ISSUANCE OF LICENSE. Requires the department, in accordance with the rules adopted under this chapter, to issue a weather modification license to certain applicants. Provides that if the applicant is an organization, the competence is required to be demonstrated by the individual or individuals who are to be in control and in charge of the operation for the applicant.

SECTION 1.34. LICENSE FEE. Provides that the fee for an original or renewal license is \$150.

SECTION 1.35. EXPIRATION DATE. Provides that each original or renewal license expires at the end of the state fiscal year for which it was issued.

SECTION 1.36. RENEWAL LICENSE. Requires the department, at the expiration of the license period, to issue a renewal license to each applicant who pays the license fee and who has the qualifications necessary for issuance of an original license.

SECTION 1.37. ISSUANCE OF PERMIT. Authorizes the department to issue a weather modification permit to certain applicants, in accordance with the rules adopted under this chapter and on a finding that the weather modification and control operation as proposed in the permit application will not significantly dissipate the clouds and prevent their natural course of developing rain in the area where the operation is to be conducted to the material detriment of persons or property in that area, and after approval at an election if covered by Section 20.041. Requires the department to hold a public hearing on the permit, if requested to do so by at least 25 persons.

SECTION 1.38. PERMIT FEE. Provides that the fee for each permit is \$75.

SECTION 1.39. SCOPE OF PERMIT. Provides that a separate permit is required for each operation. Provides that if an operation is to be conducted under contract, a permit is required for each separate contract. Prohibits the department from issuing a permit for a contracted operation unless it covers a continuous period not to exceed four years.

SECTION 1.40. APPLICATION AND NOTICE OF INTENTION. Requires a license holder, before undertaking any operation, to file an application for a permit and have a notice of intention published as required by this chapter.

SECTION 1.41. ELECTION FOR APPROVAL OF A PERMIT THAT INCLUDES AUTHORIZATION FOR HAIL SUPPRESSION. (a) Defines “target area” and “operational area.”

(b) Provides that no part of an operational area may be more than eight miles from the limits of the target area. Requires the operational area to be described by metes and bounds or other specific bounded description and set out in the application for a permit. Authorizes the department, if the application for a permit does not describe the operational area, to designate an area located inside and up to eight miles from the limits of the target area described in the application as the operational area of the permit for the purposes of this chapter.

(c) Prohibits a permit from being issued by the department before the end of the 30-day period immediately following the first publication of notice and then only in certain counties.

(d) Requires persons eligible to vote in elections held under this section to include qualified voters in counties or parts of counties included in the target area or operational area. Authorizes an election, if the target area or operational area includes only part of a county, to be held only in the election precincts that are included entirely within or are partially included in those areas. Provides that all qualified voters in those precincts are entitled to vote in these elections.

(e) Requires the county clerk of each county within the target area or operational area, on written request of at least 25 qualified voters residing in the target area or operational area mentioned in the notice requesting an election accompanied by unsigned petitions, to certify and mark for identification petitions for circulation. Requires an application for a petition seeking an election to disapprove the issuance of a permit to contain a certain heading and contain certain information. Requires an application for a petition seeking an election to approve the issuance of a permit to contain a certain heading and contain certain information. Requires the commissioners court of each county, on the return to the county clerks of petitions signed by at least 10 percent of the qualified voters residing in each county within the target area or operational area in the notice requesting an election, to call and hold an election. Provides that notice under Chapter 111 (County Budget), Local Government Code, of the commissioners court meeting to call and hold the election is not required. Requires the date of the election to be determined by the commissioners court in accordance with this section, notwithstanding Sections 41.004 (Special Election Within Particular Period) and 41.0041 (Election on Measure After Particular Period), Election Code. Requires the petition to be filed with the clerk of each county within 30 days immediately following the first publication of notice. Requires the election to be held within 45 days after the date the petition is received to determine whether or not the qualified voters in the target area or operational area approve the issuance of the permit. Requires the clerk of each county within the target area or operation area, immediately on calling the election, to notify the commissioner of the date of the election. Requires elections to be held in accordance with the Election Code, except as otherwise provided in this chapter.

(f) Requires the petition for the election to be written in a certain manner. Requires each qualified voter signing the petition to give the voter's full name and address and voter registration number. Requires the commissioners court, within five days after the date of receiving a petition under this section, to have the county clerk of the county check the names on the petition against the voter registration lists of the county and certify to the commissioners court the number of qualified voters signing the petition as reflected by checking the county's voter registration lists. Requires the county clerk, if only a part of a county is included in the target area or operational area, to also certify that those signing the petition reside in an election precinct in the county totally or partially included in the target area or operational area. Requires the petition, on certification by the county clerk, to be filed with the official records of the county and be made available for public inspection.

(g) Requires a person filing a petition with the county clerk to deposit with the county clerk an amount of money estimated by the county clerk to be sufficient to cover the costs of the election, to be held by the county clerk until the result of the election to approve or disapprove the issuance of the permit is officially announced. Requires the county clerk, if the result of the election favors the party petitioning for the election, to return the deposit to the person filing the petition or to the person's agent or attorney, but requires the county clerk, if the result of the election does not favor the party petitioning for the election, to pay the cost and expenses of the election from the deposit and return the balance of the deposit to the person filing the petition or to the person's agent or attorney.

(h) Requires the ballots for an election under this section to be printed in a certain manner.

(i) Requires the order calling the election to provide for the time and place or places for holding the election, the form of the ballots, and the presiding judge for each voting place.

(j) Requires the commissioners court to publish a copy of the election order in a newspaper of general circulation in the county or in the part of the county within the target area or operational area at least 30 days preceding the day of the election.

(k) Requires the presiding judge of each voting place to supervise the counting of all votes cast and to certify the results to the commissioners court within five days after the date of the

election. Provides that a copy of the results is to be filed with the county clerk and is a public record.

(l) Requires the commissioners court to declare the results within five days after the results are filed.

(m) Requires the commissioners court of each county holding an election to send certified copies of the results of the election to the commissioner within 24 hours after the results are declared under Subsection (k).

(n) Prohibits a permit from being issued if a majority of the qualified voters voting in the election precincts any part of which are located in the target area vote against issuance of the permit. Authorizes the department, if a majority of the qualified voters voting in the election precincts any part of which are located within the target area vote in favor of issuance of the permit, to issue the permit as provided in this subchapter, except that if a majority of the qualified voters voting in either of the following areas vote against issuance of the permit, those areas are required to be excluded from the coverage of the permit: any election precinct, any part of which is located in the operational area; or any election precinct located wholly within the target area and contiguous with its outer boundary.

(o) Authorizes a permit, if the department finds that a weather modification and control operation is still feasible, to be issued covering areas in which no election is requested or areas in which the voters give their approval as provided in this section.

(p) Prohibits an application for a permit covering all or part of the same target area or operational area that was denied from being considered and prohibits a permit under that application for a period of two years following the date of the election from being issued by the department and prohibits an election from being held under this chapter, if a permit is denied under Subsection (n).

(q) Provides that if a permit including authorization for hail suppression is to cover only a part of a county, only those qualified voters residing in an election precinct or precincts of the county included in the target area or operational area are eligible to sign a petition and to vote at an election under this section. Provides that in computing the vote, only a majority of qualified voters residing in those areas and voting in the election is necessary to carry the proposition in that county.

(r) Prohibits a permit being issued that provides for or allows the seeding of clouds for hail suppression outside the target area or within those counties or parts of counties located in the operational or target areas that were excluded from the coverage of the permit by an election under Subsection (n). Authorizes seeding to be done in those counties or parts of counties located in the operational or target area which were not excluded from the coverage of the permit by virtue of an election under Subsection (n), provided the seeding is reasonably calculated to take effect only within the target area. Provides that this subsection does not prohibit the observation of cloud and cloud formations.

(s) Authorizes the department to monitor any program under conditions the department determines advisable.

(t) Requires the commissioners court of any county outside but adjacent to a county included in the operational area of an existing or proposed permit, on petition as provided in this section, to call and hold an election on the proposition of whether or not the qualified voters of the county approve of the issuance of any permit authorizing hail suppression in the county. Prohibits the department, if the county voters voting in the election disapprove the issuance of permits authorizing hail suppression, from issuing a permit covering the county until the proposition has

been approved at a subsequent election.

(u) Prohibits any county or part of a county, if that county or part of a county has disapproved the issuance of a permit at the previous election held under this section, from being included in any permit issued by the department until the voters of that county or part of a county have participated in a subsequent election at which a permit is approved. Provides that the applicant for a permit that includes that county or part of a county has the burden of petitioning for an election and depositing costs in the manner provided by this section for the original election to approve or disapprove a permit.

(v) Requires the department by rule to define hail suppression as used in this section, using the most current scientifically accepted technological concepts.

SECTION 1.42. CONTENT OF NOTICE. Requires the applicant, in the notice of intention, to include certain information.

SECTION 1.43. PUBLICATION OF NOTICE. Requires the notice of intention required under Section 1.40 to be published at least once a week for three consecutive weeks in a newspaper of general circulation published in each county in which the operation is to be conducted.

SECTION 1.44. PROOF OF PUBLICATION; AFFIDAVIT. Requires the applicant to file proof of the publication, together with the publishers' affidavits, with the department during the 15-day period immediately following the date of the last publication.

SECTION 1.45. PROOF OF FINANCIAL RESPONSIBILITY. Provides that proof of financial responsibility is made by showing to the satisfaction of the department that the license holder has the ability to respond in damages for liability that might reasonably result from the operation for which the permit is sought.

SECTION 1.46. MODIFICATION OF PERMIT. Authorizes the department to modify the terms and conditions of a permit under certain circumstances.

SECTION 1.47. SCOPE OF ACTIVITY. Requires the license holder, once a permit is issued, to confine the license holder's activities substantially within the limits of time and area specified in the notice of intention, except to the extent that the limits are modified by the department. Requires the license holder to comply with any terms and conditions of the permit as originally issued or as subsequently modified by the department.

SECTION 1.48. RECORDS AND REPORTS. (a) Requires a license holder to keep a record of each operation conducted under a permit, showing certain information.

(b) Requires the department to require written reports covering each operation, whether the operation is exempt or conducted under a permit. Requires a license holder to submit a written report at the time and in the manner required by the department.

(c) Requires all information on an operation to be submitted to the department before it is released to the public.

(d) Requires the reports and records in the custody of the department to be kept open for public inspection.

SUBCHAPTER D. SANCTIONS

SECTION 1.51. Provides that a person who violates this article is subject to Subchapters F and G,

Chapter 51 (Texas Department of Licensing and Regulation), Occupations Code, in the same manner as a person regulated by the Texas Department of Licensing and Regulation under other law is subject to those subchapters.

SECTION 1.52. ACT OF GOD. Provides that if a person can establish that an event that would otherwise be a violation of this article or a rule adopted or order or permit issued under this article was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of this article or a rule, order, or permit issued under this article.

SECTION 1.53. DEFENSE EXCLUDED. Provides that unless otherwise provided by this article, the fact that a person holds a permit issued by the department does not relieve that person from liability for the violation of this article or a rule adopted or order or permit issued under this article.

SUBCHAPTER E. REVOCATION AND SUSPENSION

SECTION 1.61. DEFINITIONS. Defines “permit holder.”

SECTION 1.62. GROUNDS FOR REVOCATION OR SUSPENSION OF PERMIT. Authorizes the department, after notice and hearing, to revoke or suspend a permit issued under this article on certain grounds.

SECTION 1.63. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE. Provides that this section applies to a license issued or a rule adopted under this article. Authorizes the department, after notice and hearing, to suspend or revoke a license issued under this article, place on probation a person whose license has been suspended, reprimand the holder of a license, or refuse to renew or reissue a license on certain grounds.

SECTION 1.64. PROCEDURES. Requires the department by rule to establish procedures for public notice and any public hearing under this subchapter.

SECTION 1.65. HEARINGS. Requires a hearing under this subchapter to be conducted in accordance with the hearing rules adopted by the department and the applicable provisions of Chapter 2001, Government Code.

SECTION 1.66. CONSENT. Authorizes the commissioner, if a permit holder or license holder requests or consents to the revocation or suspension of the permit or license, to revoke or suspend the permit or license without a hearing.

SECTION 1.67. OTHER RELIEF. Provides that a proceeding brought by the department under this subchapter does not affect the department's authority to bring suit for injunctive relief or a penalty, or both, under this article.

SECTION 1.68. PROBATION REQUIREMENTS. Authorizes the department, if a license suspension is probated, to require the license holder to perform certain tasks.

SUBCHAPTER F. IMMUNITY; LEGAL RELATIONSHIPS

SECTION 1.71. IMMUNITY OF STATE. Provides that the state and its officers and employees are immune from liability for all weather modification and control activities conducted by private persons or groups.

SECTION 1.72. PRIVATE LEGAL RELATIONSHIPS. Provides that this article does not affect private legal relationships, except that an operation conducted under the license and permit requirements of this article is not an ultrahazardous activity which makes the participants subject to liability without fault. Provides that the fact that a person holds a license or permit under this article or

that the person has complied with this chapter or the regulations issued under this article is not admissible as evidence in any legal proceeding brought against the person.

ARTICLE 2

SECTION 2.01. Amends Title 2, Agriculture Code, by adding Chapter 20, as follows:

CHAPTER 20. WEATHER MODIFICATION AND CONTROL GRANT PROGRAM

Sec. 20.001. FINDINGS. Provides that the legislature finds that the weather modification and control activities may have a significant impact on Texas agriculture. Provides that the legislature further finds that the Department of Agriculture (department) is the proper state agency to administer grants to political subdivisions for weather modification and control activities.

Sec. 20.002. DEFINITION. Defines “weather modification and control.”

Sec. 20.003. WEATHER MODIFICATION AND CONTROL GRANT PROGRAM. Requires the department to develop and administer a program awarding matching grants to political subdivisions of this state for weather modification and control.

Sec. 20.004. RULES. Authorizes the department to adopt rules necessary to administer this chapter.

Sec. 20.005. CONTRACTS. Authorizes the department to enter into contracts with public or private entities to assist the department in the administration or evaluation of the weather modification and control grant program or to conduct research relating to the effectiveness of weather modification and control activities.

Sec. 20.006. FUNDING. Authorizes the department to accept appropriations and solicit and accept gifts, grants, and other donations from any source to administer the weather modification and control grant program.

ARTICLE 3

SECTION 3.01. Amends Section 5.013(a), Water Code, by deleting text regarding the “state’s weather modification program” from the general jurisdiction of the Texas Natural Resource Conservation Commission.

SECTION 3.02. Amends Section 7.052(a), Water Code, by removing Chapter 18 of this code from the list of chapters that contain violation provisions.

SECTION 3.03. Amends Section 7.102, Water Code, to make a conforming change.

SECTION 3.04. Amends Section 7.302, Water Code, by deleting text regarding “a permit issued under Chapter 18.” Makes a conforming change.

SECTION 3.05. Amends Section 7.303, Water Code, by deleting text regarding “a permit issued under Chapter 18.”

SECTION 3.06. Repealer: Chapter 18 (Weather Modification) and Section 7.144 (Violation Relating to Weather Modification), Water Code.

SECTION 3.07. (a) Provides that on the effective date of this Act, all powers, duties, obligations, rights, records, employees, and property of the Texas Natural Resource Conservation Commission

(commission) that are used by that agency on the effective date this Act to administer the weather modification program are transferred to the Texas Department of Licensing and Regulation.

(b) Provides that on the effective date of this Act, and as provided by the General Appropriations Act, all powers, duties, obligations, rights, contracts, records, property, and unspent and unobligated appropriations and other funds of the commission that are used by that agency on the effective date of this Act to administer the weather modification grant program are transferred to the Texas Department of Agriculture.

(c) Provides that all rules, policies, procedures, and decisions that affect the weather modification program are continued in effect until superseded by a rule or other appropriate action of the Texas Department of Licensing and Regulation.

(d) Provides that any action or proceeding before the commission relating to the weather modification program is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, without change in status, the position of the commission in any action or proceeding relating to the weather modification program to which the commission is a party.

(e) Provides that the weather modification program established under Chapter 18, Water Code, is abolished on the effective date of this Act. Prohibits the commission from awarding a grant under that program on or after that date.

(f) Requires the Texas Department of Licensing and Regulation to adopt rules to implement Article I of this Act not later than December 31, 2001.

ARTICLE 4

SECTION 4.01. Effective date: September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

Differs from As Filed version by transferring proposed language into Articles.

ARTICLE 1. Differs from As Filed version by adding additional definitions and making nonsubstantive changes to conform to legislative writing style.

ARTICLE 2. Differs from As Filed version by adding Chapter 20 to Title 2, Agriculture Code, regarding the weather modification and control grant program.

ARTICLE 3. Differs from As Filed version by adding new language to clarify provisions regarding the transfer of the weather modification program from the Texas Natural Resource Conservation Commission to the Texas Department of Licensing and Regulation, rather than to the Department of Agriculture as in the original.

ARTICLE 4. No change regarding the effective date.