

By: Callegari

H.B. No. 1916

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of weather modification operations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subchapter B, Chapter 301, Agriculture Code, is amended to read as follows:

SUBCHAPTER B. POWERS AND DUTIES OF COUNTIES [~~TEXAS DEPARTMENT OF LICENSING AND REGULATION~~]

SECTION 2. Sections 301.051 and 301.052, Agriculture Code, are amended to read as follows:

Sec. 301.051. ORDERS [~~RULES~~]. A county commissioners court [~~The Texas Department of Licensing and Regulation~~] may issue orders [~~adopt rules~~] necessary to:

(1) exercise the powers and perform the duties under this chapter;

(2) establish procedures and conditions for the issuance of licenses and permits under this chapter; and

(3) establish standards and instructions to govern the carrying out of research or projects in weather modification and control that the commissioners court [~~Texas Department of Licensing and Regulation~~] considers necessary or desirable to minimize danger to health or property.

Sec. 301.052. STUDIES; INVESTIGATIONS; HEARINGS. A commissioners court [~~The Texas Department of Licensing and Regulation~~] may make any studies or investigations, obtain any

1 information, and hold any hearings necessary or proper to
2 administer or enforce this chapter or any ~~[rules or]~~ orders issued
3 under this chapter.

4 SECTION 3. Sections 301.057(a) and (b), Agriculture Code,
5 are amended to read as follows:

6 (a) A county may enter into cooperative agreements with
7 other counties to exercise the powers and perform the duties under
8 ~~[The Texas Department of Licensing and Regulation may cooperate~~
9 ~~with public or private agencies to promote the purposes of]~~ this
10 chapter.

11 (b) A county ~~[The Texas Department of Licensing and~~
12 ~~Regulation]~~ may enter into cooperative agreements with the United
13 States or any of its agencies, with other counties and
14 municipalities of this state, or with any private or public
15 agencies for conducting weather modification or cloud-seeding
16 operations.

17 SECTION 4. Section 301.058(b), Agriculture Code, is amended
18 to read as follows:

19 (b) A county ~~[The Texas Department of Licensing and~~
20 ~~Regulation with approval of the executive director]~~ may conduct and
21 may contract for research and development activities relating to:

22 (1) the theory and development of methods of weather
23 modification and control, including processes, materials, and
24 devices related to these methods;

25 (2) the use of weather modification and control for
26 agricultural, industrial, commercial, and other purposes; and

27 (3) the protection of life and property during

1 research and operational activities [~~the purposes of this section~~].

2 SECTION 5. Sections 301.101, 301.102, 301.103, 301.105,
3 301.106, 301.107, 301.109, 301.110, 301.111, 301.113, 301.114,
4 301.115, 301.116, and 301.117, Agriculture Code, are amended to
5 read as follows:

6 Sec. 301.101. LICENSE AND PERMIT [~~REQUIRED~~]. (a) A
7 commissioners court may require a person who engages in activities
8 for weather modification and control in the county or with intent to
9 affect any part of the county to obtain a license and permit under
10 this chapter.

11 (b) Except as provided by the commissioners court of the
12 county [~~rule of the Texas Department of Licensing and Regulation~~]
13 under Section 301.102, a person may not engage in activities for
14 weather modification and control in a county or with intent to
15 affect any part of the county:

16 (1) without a weather modification license and weather
17 modification permit issued by the county, if the county requires a
18 license and permit [~~the department~~]; or

19 (2) in violation of any term or condition of a [~~the~~]
20 license or permit issued under this chapter.

21 Sec. 301.102. EXEMPTIONS. (a) A commissioners court [~~The~~
22 ~~Texas Department of Licensing and Regulation by rule~~], to the
23 extent it considers exemptions practical, may [~~shall~~] provide for
24 exempting the following activities from any [~~the~~] license and
25 permit requirements the county adopts [~~of this chapter~~]:

26 (1) research, development, and experiments conducted
27 by state and federal agencies, institutions of higher learning, and

1 bona fide nonprofit research organizations;

2 (2) laboratory research and experiments;

3 (3) activities of an emergent nature for protection
4 against fire, frost, sleet, or fog; and

5 (4) activities normally conducted for purposes other
6 than inducing, increasing, decreasing, or preventing precipitation
7 or hail.

8 (b) The commissioners court [~~The Texas Department of~~
9 ~~Licensing and Regulation by rule~~] may modify or revoke an
10 exemption.

11 Sec. 301.103. ISSUANCE OF LICENSE. (a) A commissioners
12 court that requires a license under this chapter shall establish
13 procedures for the county to [~~The Texas Department of Licensing and~~
14 ~~Regulation, in accordance with the rules adopted under this~~
15 ~~chapter, shall~~] issue a weather modification license to each
16 applicant who:

17 (1) pays the license fee; and

18 (2) demonstrates, to the satisfaction of the
19 commissioners court [~~Texas Department of Licensing and~~
20 ~~Regulation~~], competence in the field of meteorology that is
21 reasonably necessary to engage in weather modification and control
22 activities.

23 (b) If the applicant is an organization, the competence must
24 be demonstrated by the individual or individuals who are to be in
25 control and in charge of the operation for the applicant.

26 Sec. 301.105. EXPIRATION DATE. Each original or renewal
27 license expires at the end of the period established by the

1 commissioners court [~~state fiscal year for which it was issued~~].

2 Sec. 301.106. RENEWAL LICENSE. At the expiration of the
3 license period, the county [~~Texas Department of Licensing and~~
4 ~~Regulation~~] shall issue a renewal license to each applicant who
5 pays the license fee and who has the qualifications necessary for
6 issuance of an original license.

7 Sec. 301.107. ISSUANCE OF PERMIT. (a) If the commissioners
8 court of a county requires a permit, the county [~~The Texas~~
9 ~~Department of Licensing and Regulation~~], in accordance with
10 procedures [~~the rules~~] adopted by the commissioners court under
11 this chapter and on a finding that the weather modification and
12 control operation as proposed in the permit application will not
13 significantly dissipate the clouds and prevent their natural course
14 of developing rain in the area in which the operation is to be
15 conducted to the material detriment of persons or property in that
16 area, and after approval at an election if governed by Subchapter D,
17 may issue a weather modification permit to each applicant who:

18 (1) holds a valid weather modification license;

19 (2) files an application for a permit and pays the
20 permit fee;

21 (3) publishes a notice of intention and submits proof
22 of publication as required by this chapter; and

23 (4) furnishes proof of financial responsibility.

24 (b) The commissioners court [~~Texas Department of Licensing~~
25 ~~and Regulation~~] shall, if requested by at least 25 persons, hold at
26 least one public hearing [~~in the area where the operation is to be~~
27 ~~conducted~~] prior to the issuance of a permit.

1 Sec. 301.109. SCOPE OF PERMIT. If the commissioners court
2 requires a permit, a [A] separate permit is required for each
3 operation. If an operation is to be conducted under contract, a
4 permit is required for each separate contract. The county [Texas
5 ~~Department of Licensing and Regulation~~] may not issue a permit for a
6 contracted operation unless the permit [it] covers a continuous
7 period not to exceed four years.

8 Sec. 301.110. [~~APPLICATION AND~~] NOTICE OF INTENTION.
9 Before undertaking any operation, a person who is to conduct the
10 operation must [~~a license holder must file an application for a~~
11 ~~permit and~~] have a notice of intention published as required by this
12 chapter, regardless of whether the commissioners court requires the
13 person to have a license or permit.

14 Sec. 301.111. CONTENT OF NOTICE. In the notice of
15 intention, the person [~~applicant~~] must include:

16 (1) the name and address of the license holder, if the
17 commissioners court requires a license, or of the person who is to
18 conduct the operation, if the court does not require a license;

19 (2) the nature and object of the intended operation
20 and the person or organization on whose behalf it is to be
21 conducted;

22 (3) the area in which and the approximate time during
23 which the operation is to be conducted;

24 (4) the area that is intended to be affected by the
25 operation; and

26 (5) the materials and methods to be used in conducting
27 the operation.

1 Sec. 301.113. PROOF OF PUBLICATION; AFFIDAVIT. A person
2 who publishes notice under Section 301.111 [~~The applicant~~] shall
3 file proof of the publication, together with the publishers'
4 affidavits, with the county [~~Texas Department of Licensing and~~
5 ~~Regulation~~] during the 15-day period immediately after the date of
6 the last publication.

7 Sec. 301.114. PROOF OF FINANCIAL RESPONSIBILITY. Proof of
8 financial responsibility is made by showing to the satisfaction of
9 the county [~~Texas Department of Licensing and Regulation~~] that the
10 license holder has the ability to respond in damages for liability
11 that might reasonably result from the operation for which the
12 permit is sought.

13 Sec. 301.115. MODIFICATION OF PERMIT. A commissioners
14 court [~~The Texas Department of Licensing and Regulation~~] may modify
15 the terms and conditions of a permit the commissioners court issued
16 if:

17 (1) the license holder is first given notice and a
18 reasonable opportunity for a hearing on the need for a
19 modification; and

20 (2) it appears to the commissioners court [~~Texas~~
21 ~~Department of Licensing and Regulation~~] that a modification is
22 necessary to protect the health or property of any person.

23 Sec. 301.116. SCOPE OF ACTIVITY. Once a permit is issued,
24 the license holder shall confine the license holder's activities
25 substantially within the limits of time and area specified in the
26 notice of intention, except to the extent that the limits are
27 modified by the commissioners court that issued the permit [~~Texas~~

1 ~~Department of Licensing and Regulation~~]. The license holder shall
2 comply with any terms and conditions of the permit as originally
3 issued or as subsequently modified by the commissioners court
4 ~~[Texas Department of Licensing and Regulation]~~.

5 Sec. 301.117. RECORDS AND REPORTS. (a) A license holder
6 shall keep a record of each operation conducted under a permit,
7 showing:

- 8 (1) the method employed;
- 9 (2) the type of equipment used;
- 10 (3) the kind and amount of each material used;
- 11 (4) the times and places the equipment is operated;
- 12 (5) the name and mailing address of each individual,
13 other than the license holder, who participates or assists in the
14 operation; and

15 (6) other information required by the county ~~[Texas~~
16 ~~Department of Licensing and Regulation]~~.

17 (b) The county ~~[Texas Department of Licensing and~~
18 ~~Regulation]~~ shall require license holders to submit to the county
19 written reports for each operation, whether the operation is exempt
20 or conducted under a permit. A license holder shall submit a
21 written report at the time and in the manner required by the county
22 ~~[Texas Department of Licensing and Regulation]~~.

23 (c) All information a county requires to be submitted on an
24 operation shall be submitted to the county ~~[Texas Department of~~
25 ~~Licensing and Regulation]~~ before it is released to the public.

26 (d) The reports and records in the custody of the county
27 ~~[Texas Department of Licensing and Regulation]~~ shall be kept open

1 for public inspection.

2 SECTION 6. Section 301.151(b), Agriculture Code, is amended
3 to read as follows:

4 (b) A commissioners court may [~~The Texas Department of~~
5 ~~Licensing and Regulation by rule shall~~] define hail suppression as
6 used in this subchapter. A commissioners court that defines hail
7 suppression shall use [~~, using~~] the most current scientifically
8 accepted technological concepts.

9 SECTION 7. Sections 301.152(b) and (c), Agriculture Code,
10 are amended to read as follows:

11 (b) If a county requires a permit under this chapter for
12 hail suppression, the [~~The~~] operational area must be described by
13 metes and bounds or other specific bounded description and set out
14 in the application for a permit.

15 (c) If the application for a permit does not describe the
16 operational area, the commissioners court [~~Texas Department of~~
17 ~~Licensing and Regulation~~] may designate an area located inside and
18 up to eight miles from the limits of the target area described in
19 the application as the operational area of the permit for the
20 purposes of this chapter.

21 SECTION 8. Section 301.153, Agriculture Code, is amended to
22 read as follows:

23 Sec. 301.153. DATE OF PERMIT ISSUANCE; PERMIT AREA. A
24 county [~~permit~~] may not issue a permit under this subchapter [~~be~~
25 ~~issued by the Texas Department of Licensing and Regulation~~] before
26 the end of the 30-day period immediately following the first
27 publication of notice and then only in:

1 (1) those counties or parts of counties in the target
2 area or operational area in which the majority of the qualified
3 voters voting have approved or have not disapproved the issuance of
4 a permit if an election has been held; or

5 (2) any county or part of a county in the target area
6 or operational area if no petition for an election has been filed.

7 SECTION 9. Sections 301.163(b), (c), and (d), Agriculture
8 Code, are amended to read as follows:

9 (b) If a majority of the qualified voters voting in the
10 election precincts any part of which are located within the target
11 area vote in favor of issuance of the permit, the county [~~Texas~~
12 ~~Department of Licensing and Regulation~~] may issue the permit as
13 provided in this subchapter, except that if a majority of the
14 qualified voters voting in any of the following areas vote against
15 issuance of the permit, that area is excluded from the coverage of
16 the permit:

17 (1) an election precinct any part of which is located
18 in the operational area; or

19 (2) an election precinct located wholly within the
20 target area and contiguous with its outer boundary.

21 (c) If the commissioners court [~~Texas Department of~~
22 ~~Licensing and Regulation~~] finds that a weather modification and
23 control operation is still feasible, a permit may be issued
24 covering areas in which no election is requested or areas in which
25 the voters give their approval as provided by this subchapter.

26 (d) If a permit is denied under Subsection (a), an
27 application for a permit covering all or part of the same target

1 area or operational area that was denied may not be considered, and
2 for a period of two years following the date of the election, a
3 permit under that application may not be issued by the county [~~Texas~~
4 ~~Department of Licensing and Regulation~~] and an election may not be
5 held under this chapter.

6 SECTION 10. Section 301.165, Agriculture Code, is amended
7 to read as follows:

8 Sec. 301.165. MONITOR OF PROGRAM. The commissioners court
9 [~~Texas Department of Licensing and Regulation~~] may monitor any
10 program conducted under this subchapter under conditions the
11 commissioners court [~~Texas Department of Licensing and Regulation~~]
12 determines advisable.

13 SECTION 11. Section 301.166(b), Agriculture Code, is
14 amended to read as follows:

15 (b) If the county voters voting in the election disapprove
16 the issuance of permits authorizing hail suppression, the
17 commissioners court of that county [~~Texas Department of Licensing~~
18 ~~and Regulation~~] may not issue a permit covering the county until the
19 proposition has been approved at a subsequent election.

20 SECTION 12. Section 301.167(a), Agriculture Code, is
21 amended to read as follows:

22 (a) If any county or part of a county has disapproved the
23 issuance of a permit at a previous election held under this
24 subchapter, that county or part of a county may not be included in
25 any permit issued by the commissioners court [~~Texas Department of~~
26 ~~Licensing and Regulation~~] until the voters of that county or part of
27 a county have participated in a subsequent election at which a

1 permit is approved.

2 SECTION 13. Sections 301.201, 301.202, 301.203, 301.252,
3 301.253, 301.254, 301.257, and 301.301, Agriculture Code, are
4 amended to read as follows:

5 Sec. 301.201. CIVIL PENALTIES. A commissioners court may
6 provide civil penalties for a violation of this chapter or an order
7 issued under this chapter [~~person who violates this chapter is~~
8 ~~subject to Subchapters F and G, Chapter 51, Occupations Code, in the~~
9 ~~same manner as a person regulated by the Texas Department of~~
10 ~~Licensing and Regulation under other law is subject to those~~
11 ~~subchapters~~].

12 Sec. 301.202. ACT OF GOD. If a person can establish that an
13 event that would otherwise be a violation of this chapter or an [~~a~~
14 ~~rule adopted or~~] order or permit issued under this chapter was
15 caused solely by an act of God, war, strike, riot, or other
16 catastrophe, the event is not a violation of this chapter or an [~~a~~
17 ~~rule~~] order[~~7~~] or permit issued under this chapter.

18 Sec. 301.203. DEFENSE EXCLUDED. Unless otherwise provided
19 by this chapter, the fact that a person holds a permit issued under
20 this chapter [~~by the Texas Department of Licensing and Regulation~~]
21 does not relieve that person from liability for the violation of
22 this chapter or an [~~a rule adopted or~~] order or permit issued under
23 this chapter.

24 Sec. 301.252. GROUNDS FOR REVOCATION OR SUSPENSION OF
25 PERMIT. After notice and an opportunity for a hearing, a
26 commissioners court [~~the Texas Department of Licensing and~~
27 ~~Regulation~~] may revoke or suspend a permit issued by the

1 commissioners court under this chapter on any of the following
2 grounds:

3 (1) violating any term or condition of the permit, and
4 revocation or suspension is necessary to maintain the quality of
5 water or the quality of air in the state, or to otherwise protect
6 human health and the environment consistent with the objectives of
7 the law within the county's jurisdiction [~~of the Texas Department~~
8 ~~of Licensing and Regulation~~];

9 (2) having a record of environmental violations in the
10 preceding five years related to the permitted operation [~~at the~~
11 ~~permitted site~~];

12 (3) causing a discharge, release, or emission
13 contravening a pollution control standard set by the county [~~Texas~~
14 ~~Department of Licensing and Regulation~~] or contravening the intent
15 of a law within the county's jurisdiction [~~of the Texas Department~~
16 ~~of Licensing and Regulation~~];

17 (4) misrepresenting or failing to disclose fully all
18 relevant facts in obtaining the permit or misrepresenting to the
19 county [~~Texas Department of Licensing and Regulation~~] any relevant
20 fact at any time;

21 (5) being indebted to the county [~~state~~] for fees,
22 payment of penalties, or taxes imposed by the law within the
23 county's [~~department's~~] jurisdiction;

24 (6) failing to ensure that the management of the
25 permitted facility conforms or will conform to the law within the
26 county's jurisdiction [~~of the Texas Department of Licensing and~~
27 ~~Regulation~~];

(7) abandoning the permit or operations under the permit;

(8) the finding by the county [~~Texas Department of Licensing and Regulation~~] that a change in conditions requires discontinuing [~~elimination of~~] the operations [~~discharge~~] authorized by the permit; or

(9) failing to continue to possess qualifications necessary for the issuance of the permit.

Sec. 301.253. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE. (a) This section applies to a license issued under this chapter or under an order issued [~~a rule adopted~~] under this chapter.

(b) After notice and an opportunity for a hearing, a commissioners court [~~the Texas Department of Licensing and Regulation~~] may suspend or revoke a license issued by the commissioners court under this chapter, place on probation a person whose license has been suspended, reprimand a license holder, or refuse to renew or reissue a license on any of the following grounds:

(1) having a record of environmental violations in the preceding five years related to permitted operations [~~at a permit site~~];

(2) committing fraud or deceit in obtaining the license;

(3) demonstrating gross negligence, incompetency, or misconduct while acting as license holder;

(4) making an intentional misstatement or

1 misrepresentation of fact in information required to be maintained
2 or submitted to the county [~~Texas Department of Licensing and~~
3 ~~Regulation~~] by the license holder;

4 (5) failing to keep and transmit records as required
5 by a law within the county's jurisdiction [~~of the Texas Department~~
6 ~~of Licensing and Regulation~~];

7 (6) being indebted to the county [~~state~~] for a fee,
8 payment of a penalty, or a tax imposed by a law within the county's
9 jurisdiction [~~of the Texas Department of Licensing and Regulation~~];
10 or

11 (7) failing to continue to possess qualifications
12 necessary for the issuance of the license.

13 Sec. 301.254. PROCEDURES FOR NOTICE AND HEARINGS. The
14 commissioners court [~~Texas Department of Licensing and Regulation~~
15 ~~by rule~~] shall establish procedures for public notice and any
16 public hearing under this subchapter.

17 Sec. 301.257. OTHER RELIEF. A proceeding brought by a
18 county [~~the Texas Department of Licensing and Regulation~~] under
19 this subchapter does not affect the authority of the appropriate
20 county official [~~the Texas Department of Licensing and Regulation~~]
21 to bring suit for injunctive relief or other relief to which the
22 county may be entitled [~~a penalty, or both,~~] under this chapter.

23 Sec. 301.301. IMMUNITY OF STATE. A county [~~The state~~] and
24 its officers and employees are immune from liability for all
25 weather modification and control activities conducted by private
26 persons or groups.

27 SECTION 14. Section 301.302(b), Agriculture Code, is

1 amended to read as follows:

2 (b) The fact that a person holds a license or permit under
3 this chapter or that the person has complied with this chapter or an
4 order [~~the rules~~] issued under this chapter is not admissible as
5 evidence in any legal proceeding brought against the person.

6 SECTION 15. The following provisions of the Agriculture
7 Code are repealed:

- 8 (1) Sections 301.001(1) and (5);
- 9 (2) Section 301.053;
- 10 (3) Section 301.054;
- 11 (4) Section 301.055;
- 12 (5) Section 301.056;
- 13 (6) Section 301.057(c);
- 14 (7) Section 301.058(a);
- 15 (8) Section 301.059;
- 16 (9) Section 301.060;
- 17 (10) Section 301.156(d);
- 18 (11) Section 301.162(d);
- 19 (12) Section 301.255;
- 20 (13) Section 301.256; and
- 21 (14) Chapter 302.

22 SECTION 16. (a) The changes in law made by this Act to
23 Chapter 301, Agriculture Code, apply only to a license or permit
24 issued on or after the effective date of this Act.

25 (b) A county that requires a license and permit under
26 Chapter 301, Agriculture Code, as amended by this Act, may review a
27 license or permit that was issued by the Texas Department of

1 Licensing and Regulation before the effective date of this Act. A
2 county that reviews a license or permit under this section must
3 allow the license or permit holder to apply for a license or permit
4 from the county before the county revokes the holder's state-issued
5 license or permit.

6 (c) A license or permit issued before the effective date of
7 this Act is governed by the law in effect on the date the license or
8 permit is issued, and the former law is continued in effect for that
9 purpose until the license or permit expires or is revoked under
10 Subsection (b) of this section.

11 SECTION 17. This Act takes effect September 1, 2011.