

BILL ANALYSIS

Senate Research Center
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S.B. 671
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In Texas, cloud seeding and related techniques referred to as "weather modification" are used to encourage rain. Pursuant to Chapter 301 (Weather Modification and Control), Agriculture Code, anyone who participates in weather modification must obtain a license from the Texas Department of Licensing and Regulation (TDLR). However, the need for this licensing program has come into question.

Currently the licensed population of weather modification practitioners is extremely small at approximately 18 participants. In addition, TDLR has opened only two enforcement actions against weather modification practitioners over the program's history. Lastly, although the program allowed TDLR to apply for federal weather modification funding in the past, such funding has ceased, and if it were to begin again, could be diverted directly to local governments where weather modification occurs. Given these facts, the statewide licensing program applicable to weather modification is an inefficient use of state resources.

S.B. 671 repeals the statewide weather modification licensing program that is currently overseen by TDLR. In its stead, S.B. 671 allows local governmental bodies to coordinate weather modification initiatives in their jurisdictions. Because a rogue weather modification practitioner could create public welfare hazards for a neighboring environment, S.B. 671 limits weather modification activities to areas where the applicable local government has provided oversight of the activity.

Although S.B. 671 repeals TDLR's licensing program applicable to weather modification practitioners, it retains TDLR's ability to adopt rules, conduct studies, and "establish standards and instructions to govern the carrying out of research or projects in weather modification." These provisions are designed to ensure that TDLR can provide a minimum level of oversight with regard to weather modification standards throughout the state.

As proposed, S.B. 671 amends current law relating to the deregulation of weather modification operations.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Department of Licensing and Regulation (TDLR) is modified in SECTION 3 (Section 301.051, Agriculture Code) of this bill.

Rulemaking authority previously granted to TDLR is rescinded in SECTION 4 (Section 301.052, Agriculture Code), SECTION 6 (Section 301.302, Agriculture Code), and SECTION 7 (Sections 301.102, 301.151, 301.254, and 301.255, Agriculture Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 301.001, Agriculture Code, by amending Subdivisions (1) to define "department," adding Subdivision (1-a) to redefine "executive director," and amending Subdivision (5) to redefine "weather modification and control program."

SECTION 2. Amends Subchapter A, Chapter 301, Agriculture Code, by adding Sections 301.002 and 301.003, as follows:

Sec. 301.002. REGIONAL PLANNING OF WEATHER MODIFICATION. (a) Authorizes a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391 (Regional Planning Commissions), Local Government Code, to coordinate weather modification operations in the territory of the commission, council, or agency and with other commissions, councils, or agencies.

- (b) Requires a person who engages in activities for weather modification and control to be in compliance with any plans or recommendations adopted in accordance with Subsection (a) by the commission, council, or agency.
- (c) Prohibits a person from engaging in activities for weather modification and control in an area where the applicable commission, council, or agency has not coordinated weather modification operations as provided by Subsection (a).

Sec. 301.003. APPLICATION OF CERTAIN LAW. Provides that Section 51.202 (Fees), Occupations Code, does not apply to TDLR in the administration of this chapter.

SECTION 3. Amends Section 301.051, Agriculture Code, as follows:

Sec. 301.051. RULES. Authorizes the Texas Department of Licensing and Regulation (TDLR) to adopt rules necessary to exercise the powers and perform the duties under this chapter and establish standards and instructions to govern the carrying out of research or projects in weather modification and control that TDLR considers necessary or desirable to minimize danger to health or property. Deletes existing text authorizing TDLR to adopt rules necessary to establish procedures and conditions for the issuance of licenses and permits under this chapter.

SECTION 4. Amends Section 301.052, Agriculture Code, as follows:

Sec. 301.052. New heading: STUDIES. Authorizes TDLR to make any studies or investigations, obtain information necessary or proper to administer this chapter. Deletes existing text authorizing TDLR 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 chapter.

SECTION 5. Amends the heading to Subchapter G, Chapter 301, Agriculture Code, to read as follows:

SUBCHAPTER G. IMMUNITY

SECTION 6. Amends Section 301.302, Agriculture Code, as follows:

Sec. 301.302. PRIVATE LEGAL RELATIONSHIPS. Provides that this chapter does not affect private legal relationships, except that an operation conducted under this chapter, rather than under the license and permit requirements of this chapter, is not an ultrahazardous activity that makes the participants subject to liability without fault.

Deletes existing Subsection (a) designation and existing Subsection (b) prohibiting the fact that a person holds a license or permit under this chapter or that the person has complied with this chapter or the rules issued under this chapter from being admissible as evidence in any legal proceeding brought against the person.

SECTION 7. Repealer: Section 301.060 (Disposition of License and Permit Fees), Agriculture Code.

Repealers: Subchapters C (Licenses and Permits), D (Election for Approval of Permit that Includes Authorization for Hail Suppression), E (Sanctions), and F (Revocation and Suspension of Permit), Chapter 301, Agriculture Code.

SECTION 8. Prohibits TDLR from instituting a penalty under Section 301.201 (Penalties), Agriculture Code, on or after the effective date of this Act. Provides that if, on the effective date of this Act, a penalty under Section 301.201, Agriculture Code, is pending, the action is dismissed on that date. Provides, however, that a final decision or an order for a penalty under Section 301.201, Agriculture Code, that exists on the effective date of this Act is unaffected by this Act.

SECTION 9. Provides that the changes in made by this Act to Section 301.302, Agriculture Code, do not affect any suit, proceeding, or appeal pending on the effective date of this Act. Provides that a suit, proceeding, or appeal pending on the effective date of this Act is governed by the law in effect on the date of the suit, proceeding, or appeal was filed, and the former law is continued in effect for that purpose.

SECTION 10. Effective date: September 1, 2013.