

# AGRICULTURE CODE

## TITLE 7. SOIL AND WATER CONSERVATION

### CHAPTER 203. BRUSH CONTROL

#### SUBCHAPTER A. GENERAL PROVISIONS

##### §203.001. Definitions

In this chapter:

- (1) "Board" means the State Soil and Water Conservation Board.
- (2) "District" means a soil and water conservation district created under Chapter 201 of this code.
- (3) "District board" means the board of directors of a soil and water conservation district created under Chapter 201 of this code.
- (4) "Brush control" means:
  - (A) the selective control, removal, or reduction of noxious brush such as mesquite, prickly pear, salt cedar, or other phreatophytes that consume water to a degree that is detrimental to water conservation; and
  - (B) the revegetation of land on which this brush has been controlled.
- (5) "Critical area" means an area of critical need designated by the board under the plan for the brush control program.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.

##### §203.002. Creation of Program

The Texas Brush Control Program is created and shall be implemented, administered, operated, and financed as provided by this chapter.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

##### §203.011. Authority of Board

The board has jurisdiction over and, with the assistance of local districts, shall administer the brush control program under this chapter.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept. 1, 2003.

##### §203.012. Rules

The board, after consulting with local districts, shall adopt reasonable rules that are necessary to carry out this chapter.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept. 1, 2003.

##### §203.013. Authority of Districts

Each district may carry out the responsibilities provided by Subchapter (d) as delegated by the board.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept. 1, 2003.

##### §203.014. Personnel

The board may employ or contract with any person necessary to assist the board or a district to carry out this chapter.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.

##### §203.015. Expenditures

In addition to any other expenditures authorized by this subchapter, the board may make expenditures provided by the General Appropriations Act.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.

##### §203.016. Consultation

The State Soil and Water Conservation Board shall consult with:

- (1) the Texas Water Development Board in regard to the effects of the brush control program on water quantity;
- (2) the department in regard to the effects of the brush control program on agriculture; and
- (3) the Parks and Wildlife Department in regard to the effects of the brush control program on fish and wildlife.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept. 1, 2003.

#### SUBCHAPTER C. GENERAL POWERS AND DUTIES OF BOARD

##### §203.051. State Plan

The board shall prepared and adopt a state brush control plan that shall:

- (1) include a comprehensive strategy for managing brush in all areas of the state where brush is contributing to a substantial water conservation problem; and
- (2) rank areas of the state in need of a brush control program, as provided by Section 203.053.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept. 1, 2003.

##### §203.052. Notice and Hearing

- (a) Before the board adopts the plan under Section 203.051 of this code, the board shall call and hold a hearing to consider a proposed plan.
- (b) Not less than 30 days before the date the hearing is to be held, the board shall mail written notice of the hearing to each district in the state. The notice must:

- (1) include the date and place for holding the hearing;
- (2) state the purpose for holding the hearing; and
- (3) include instructions for each district to submit written comments on the plan.

- (a) At the hearing, representatives of a district and any other person may appear and present testimony including information and suggestions for any changes in the proposed plan. The board shall enter into the record any written comments received on the proposed plan and shall consider all written comments and

testimony before taking final action on the plan.

- (b) After the conclusion of the hearing, the board shall consider the testimony including the information and suggestions made at the hearing and in written comments, and, after making any changes in the proposed plan that it finds necessary, the board shall adopt the plan.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.  
Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept. 1, 2003.

#### **§203.053. Criteria for Designating Critical Areas**

- (a) In ranking areas under the plan, the board shall consider:
  - (1) the location of various brush infestations;
  - (2) the type and severity of brush infestations;
  - (3) the various management methods that may be used to control brush;
  - (4) the amount of water produced by a project and the severity of water shortage in the project area; and
  - (5) any other criteria that the board considers relevant to assure that the brush control program can be most effectively, efficiently, and economically implemented.
- (b) In ranking areas, the board shall give priority to areas with the most critical water conservation needs and in which brush control and revegetation projects will be most likely to produce substantial water conservation.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.  
Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept. 1, 2003.

#### **§203.054. Amending Plan**

At least every two years the board shall review and may amend the plan to take into consideration changed conditions. Amendments to the plan shall be made in the manner provided by this chapter for adopting the original plan.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.

#### **§203.055. Approved Methods for Brush Control**

- (a) The board shall study and must approve all methods used to control brush control under this chapter considering the overall impact of the project.
- (b) The board may approve a method for use under the cost-sharing program provided by Subchapter E if the board finds that the proposed method:
  - (1) has proven to be an effective and efficient method for controlling brush;
  - (2) is cost efficient;
  - (3) will have a beneficial impact on the wildlife habitat;
  - (4) will maintain topsoil to prevent erosion or silting of any river or stream; and
  - (5) will allow the revegetation of the area after the brush is removed with plants that

are beneficial stream flows, groundwater levels, and livestock and wildlife.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.  
Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept. 1, 2003.

#### **§203.056. Report**

- (a) Before January 31 of each year, the board shall submit to the governor, the speaker of the house, and the lieutenant governor a report of the activities of the brush control program during the immediately preceding calendar year.
- (b) The board may make copies of this report available on request to any person and may charge a fee for each report that will allow the board to recover its costs for printing and distribution.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.

### **SUBCHAPTER D. POWERS AND DUTIES OF DISTRICTS**

#### **§203.101. General Authority**

Each district may administer the aspects of the brush control program within the jurisdiction of that district.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.  
Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept. 1, 2003.

#### **§203.102. Provide Information Relating to Program**

The board shall prepare and distribute information to each district relating generally to the brush control program and concerning the procedures for preparing, filing, and obtaining approval of an application for cost sharing under Subchapter E of this chapter.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.

#### **§203.103. Acceptance and Comment on Application**

- (a) Each district may accept for transmission to the board applications for cost sharing under Subchapter E of this chapter and may examine and assist the applicant in assembling the application in proper form before the application is submitted to the board.
- (b) Before a district submits an application to the board, it shall examine the application to assure that it complies with rules of the board and that it includes all information and exhibits necessary for the board to pass on the application.
- (c) At the time that the district examines the application, it shall prepare comments and recommendations relating to the application and the district board may provide comments and recommendations before they are submitted to the board.
- (d) After reviewing the application, the district board shall submit to the board the application and the comments and recommendations.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.

#### **§203.104. Supervision of Projects**

- (a) Each district on behalf of the board may inspect and supervise projects within its jurisdiction in which state money is provided under Subchapter E of this chapter.
- (b) Each district board exercising the duties under Subsection (a) of this section shall periodically report to the board relating to this inspection and supervision in the manner provided by board rules.
- (c) The board may direct a district to manage any problem that arises under a cost-sharing contract for brush control in that district and to report to the board.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.

**SUBCHAPTER E. COST-SHARING FOR BRUSH CONTROL**

**§203.151. Creation of Cost-Sharing Program**

As part of the brush control program, a cost-sharing program is created to be administered under this chapter and rules adopted by the board.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.

**§203.152. Brush Control Fund**

- (a) The brush control fund is a special fund created in the State Treasury to be used as provided by this subchapter.
- (b) The brush control fund consists of legislative appropriations, money transferred to that fund from other funds by law, and other money required by law to be deposited in the brush control fund.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.

**§203.153. Use of Money in Brush Control Fund**

Money deposited to the credit of the brush control fund shall be used by the board to provide the state's share of the cost of brush control projects approved under this subchapter and other necessary expenditures as provided by the General Appropriations Act.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.

**§203.154. Limit on Cost-Sharing Participation**

- (a) Not more than 70 percent of the total cost of a single brush control project may be made available as the state's share in cost sharing.
- (b) A person is not eligible to participate in the state brush control program or to receive money from the state brush control program if the person is simultaneously receiving any cost-share money for brush control on the same acreage from a federal government program.
- (c) The board may grant an exception to Subsection (b) if the board finds that joint participation of the state brush control program and any federal brush control program will:
  - (1) enhance the efficiency and effectiveness of a project;
  - (2) lessen the state's financial commitment to the project; and
  - (3) not exceed 80 percent of the total cost of the project.
- (d) A political subdivision is eligible for cost

sharing under the brush control program, provided that the state's share may not exceed 50 percent of the total cost of a single project.

- (e) Notwithstanding any other provision of this Section, 100 percent of the total cost of a single project on public lands may be made available as the state's share in cost sharing.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985A-  
 Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept 1, 2003.

**§203.155. Limit to Critical Areas and Approved Methods**

~~—Cost sharing under this subchapter is available only for projects that:~~

- (1) ~~are implemented in critical areas as designated use a method of brush control approved under by the board; and~~
- (2) ~~Section 203.055 of this code.~~

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.  
 Repealed by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept. 1, 2003.

**203.156. Application for Cost Sharing**

A person, including a political subdivision, that desires to participate with the state in a brush control project and to obtain cost-sharing participation by the state shall file an application with the district board in the district in which the land on which the project is to be accomplished is located. The application must be in the form provided by board rules.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.  
 Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept. 1, 2003.

**§203.157. Considerations in Passing on Application**

In passing on an application for cost sharing, the board shall consider:

- (1) the location of the project;
- (2) the method of control that is to be used by the project applicant;
- (3) the plans for revegetation;
- (4) the total cost of the project;
- (5) the amount of land to be included in the project;
- (6) whether the applicant for the project is financially able to provide his share of the money for the project;
- (7) the cost-share percentage, if an applicant agrees to a higher degree of financial commitment;
- (8) any comments and recommendations submitted by a local district, the department, the Texas Water Development Board, or the Parks and Wildlife Department; and
- (9) any other pertinent information considered necessary by the board.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.  
 Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept. 1, 2003.

**§203.158. Approval of Application**

The board may approve an application if, after considering the factors listed in Section 203.157 and any other relevant factors, the board finds:

- (1) the owner of the land fully agrees to cooperate in the project;
- (2) the method of eradication is a method approved by the board under Section 203.055; and
- (3) the project is a higher priority than other projects submitted in accordance with the board's plan.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.  
Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept. 1, 2003.

**§203.159. Priority of Projects**

- (a) If the demand for funds under the cost-sharing program is greater than funds available, the board shall establish priorities favoring the areas with the most critical water conservation needs and projects that will be most likely to produce substantial water conservation.
- (b) The board shall give more favorable consideration to a particular project if the applicants individually or collectively agree to increase the percentage share of costs under the cost-share arrangement.
- (c) The quantity of stream flows or groundwater or water conservation from the eradication of brush is a consideration in assigning priority.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.  
Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. , Sec. , eff. Sept. 1, 2003.

**§203.160. Contract for Cost Sharing**

- (a) On approval of an application by the board, the board or the governing board of the designated district shall negotiate contracts with the successful applicants in the project area.
- (b) The board or designated district board shall negotiate a contract with the successful applicant subject to:
  - (1) the conditions established by the board in approving the application;
  - (2) any specified instructions provided by the board; and
  - (3) board rules.
- (c) On completion of the negotiations by the district board, it shall submit the proposed contract to the board for approval.
- (d) The board shall examine the contract and if the board finds that the contract meets all the conditions of the board's resolution, instructions, and rules, it shall approve the contract and provide to the individual on completion of the project the money that constitutes the state's share of the project.
- (e) The board may develop guidelines to allow partial payment of the state's share of a brush control project as certain portions or percentages of contracted work are completed, but state money may not be provided in advance for work remaining to be done.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.

**§203.161. Administration of Expenditures**

The district board may administer expenditure of the state's share of the money required by a cost-shar-

ing contract and shall report periodically to the board on the expenditure of those funds in the manner required by the board.

Added by Acts 1985, 69<sup>th</sup> Leg., Ch. 655, Sec. 1, eff. Aug. 26, 1985.