

# AGRICULTURE CODE

## TITLE 7. SOIL AND WATER CONSERVATION

### CHAPTER 201. SOIL AND WATER CONSERVATION

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**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 201.001. Findings, Purpose, and Policy**

- (a) The legislature finds that the farm and grazing lands of the State of Texas are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the break of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by an occupier of land to conserve the soil and control erosion upon the land causes a washing and blowing of soil and water onto other lands and makes the conservation of soil and control of erosion on those other lands difficult or impossible.
- (b) The consequences of soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overflow of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water that causes destruction of food and cover for wildlife; a blowing and washing of soil into streams that silt over spawning beds and destroy waterplants, diminishing the food supply of fish; a diminishing of the underground water reserve that causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and vol-

ume of rainfall runoff, causing severe and increasing floods that bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydroelectric power, municipal water supply, irrigation development, farming, and grazing.

- (c) In order to conserve soil resources and control and prevent soil erosion, it is necessary that land-use practices contributing the soil waste and soil erosion may be discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out. Among the procedures necessary for widespread adoption are engineering operations such as the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and the like; the utilization of strip-cropping, lister furrowing, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops, retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.
- (d) It is the policy of the legislature to provide for the conservation of soil and related resources of this state and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state, and thus to carry out the mandate expressed in Article XVI, Section 59a, of the Texas Constitution. It is further declared as a matter of legislative intent and determination of policy that the State Soil and Water Conservation Board is the state agency responsible for implementing the constitutional provisions and state laws relating to the conservation and protection of soil resources.

Acts 1981, 67<sup>th</sup> Leg., p. 1458, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 1, eff. Sept. 1, 1985.

### **§201.002. Definitions.**

In this chapter:

- (1) "Conservation district" means a soil and water conservation district.
- (2) "Director" means a member of the governing board of a conservation district.
- (3) "Family farm corporation" means a farm corporation all shareholders of which are related to each other within the second degree by con-

sanguinity or affinity, as determined under Chapter 573, Government Code.

- (4) "Federal agency" includes the Natural Resources Conservation Service of the United States Department of Agriculture and any other agency or instrumentality of the federal government.
- (5) "Occupier" means a person who is in possession of land lying within a conservation district, either as lessee, tenant, or otherwise.
- (6) "State agency" includes a subdivision, agency, or instrumentality of the state.
- (7) "State board" means the State Soil and Water Conservation Board.
- (8) "State district" means a district established under Section 201.012 of this code.

Acts 1981, 67<sup>th</sup> Leg., p. 1460, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 2, eff. Sept. 1, 1985; Acts 1991, 72<sup>nd</sup> Leg., ch. 561, Sec. 5, eff. Aug. 26, 1991; Acts 1995, 74<sup>th</sup> Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

### **§201.003. Eligible Voter**

- (a) A person is eligible to vote in an election under this chapter if the person:
  - (1) is an individual who holds title to farmland or ranchland lying within a conservation district, a conservation district proposed by petition, or territory proposed by petition for inclusion within a conservation district, as applicable;
  - (2) is 18 years of age or older; and
  - (3) is a resident of a county all or part of which is included in the conservation district, the conservation district proposed by petition, or the territory proposed for inclusion, as applicable.
- (b) If a family farm corporation owns farmland or ranchland in a conservation district, in a proposed conservation district, or in territory proposed for inclusion in a conservation district, the corporation is entitled to one vote in each election under this chapter that would affect the land owned by the corporation. The corporation shall designate one corporate officer to vote for the corporation in the election. The designated officer must be:
  - (1) 18 years of age or older; and
  - (2) a resident of a county all or part of which is included in the conservation district, the proposed conservation district, or the territory proposed for inclusion in a conservation district.

Acts 1981, 67<sup>th</sup> Leg., p. 1460, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 2, eff. Sept. 1, 1985.

### **§201.004. Notice; Election Informalities**

- (a) If this chapter requires that notice of a hearing or an election be given, the entity responsible for giving notice shall:
  - (1) publish notice at least twice, with an interval of at least seven days between the

- publication dates, in a newspaper or other publication of general circulation within the appropriate area; and
- (2) post notice for at least two weeks at a reasonable number of conspicuous places within the appropriate area, including, if possible, public places where it is customary to post notices concerning county or municipal affairs generally.
- (b) A hearing for which notice is given under this section and which is held at the time and place designated in the notice may be adjourned from time to time without renewing notice for the adjourned dates.
  - (c) If notice of an election is given substantially in accordance with this section and the election is fairly conducted, an informality in the conduct of the election or in any matter relating to the election does not invalidate the election or its result.

Acts 1981, 67<sup>th</sup> Leg., p. 1460, ch. 388, Sec. 1, eff. Sept. 1, 1981.

**§201.005. Water Code Not Applicable.**

Section 12.081, Water Code, does not apply to a conservation district created under this chapter.

Added by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 2, eff. Sept. 1, 1985.

**§201.006. Confidentiality of Certain Information**

- (a) Except as provided by this section, information collected by the state board or a conservation district is not subject to Chapter 552, Government Code, and may not be disclosed if the information is collected in response to a specific request from a landowner or the landowner's agent or tenant for technical assistance relating to a water quality management plan or other conservation plan if the assistance is to be provided:
  - (1) under this code; and
  - (2) on private land that:
    - (A) is part of a conservation plan or water quality management plan developed cooperatively with the state board or conservation district; or
    - (B) is the subject of a report prepared by the state board or conservation district.
- (b) The state board or a conservation district may disclose information regarding a tract of land to:
  - (1) the owner of the tract or the owner's agent or tenant; and
  - (2) a person other than the owner or the owner's agent or tenant if:
    - (A) the owner or the agent or tenant consents in writing to full or specific partial disclosure of the information; and
    - (B) the consent is attached to each plan or report regarding the tract prepared by the state board or conservation district.

- (c) The state board or a conservation district may disclose, in a manner that prevents the identification of a particular tract of land, the owner of the tract, or the owner's agent or tenant, a summary of information collected by the state board or conservation district regarding:
  - (1) the number of acres of land that are in a particular conservation plan;
  - (2) the number of acres of land that are subject to a particular conservation practice; or
  - (3) other conservation program information.
- (d) The state board or a conservation district shall provide a person with notice regarding this section at the time the person requests technical assistance from the state board or conservation district.
- (e) The state board or a conservation district may disclose information to a law enforcement agency of this state or the United States in compliance with a subpoena for the information.
- (f) The state board or a conservation district may disclose information relating to water quality complaints or compliance failures to the Texas Natural Resource Conservation Commission under Section 201.026.
- (g) The state board or a conservation district may disclose to the attorney general information relating to a breach of contract.
- (h) The state board or a conservation district may not be held liable for damage caused by a violation of this section.
- (i) A reference in this section to the state board or a conservation district includes an officer, employee, or agent of the state board or conservation district.

Added by Acts 1997, 75<sup>th</sup> Leg., ch. 410, Sec. 1, eff. Sept. 1, 1997.

**§201.011. Composition**

The State Soil and Water Conservation Board is a state agency composed of seven members as follows:

- (1) one member elected from each of the state districts in accordance with this subchapter; and
- (2) two members appointed by the governor, each of whom is:
  - (A) actively engaged in the business of farming, animal husbandry, or other business related to agriculture and who wholly or partly owns or leases land used in connection with that business; and
  - (B) not a member of the board of directors of a conservation district.

Acts 1981, 67<sup>th</sup> Leg., p. 1461, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. 983, Sec. 1, eff. Sept 1, 2003.

**§201.012. State Districts**

- (a) For purposes of this chapter, the state is divided into five districts, each of which is composed as provided by this section.
- (b) State District No. 1 is composed of the following 51 counties: Dallam, Dawson, Sherman, Hansford, Ochiltree, Lipscomb, Hartley,

Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Hardeman, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Gaines, Borden, Scurry, Fisher, and Foard.

- (c) State District No. 2 is composed for the following 51 counties: Andrews, Martin, Howard, Mitchell, Nolan, Taylor, Runnels, Coke, Sterling, Glasscock, Midland, Ector, Winkler, Loving, Reeves, Culberson, Hudspeth, El Paso, Jeff Davis, Presidio, Brewster, Pecos, Terrell, Ward, Crane, Upton, Reagan, Irion, Tom Green, Concho, McCulloch, San Saba, Mason, Llano, Blanco, Gillespie, Crockett, Schleicher, Menard, Sutton, Kimble, Val Verde, Edwards, Real, Kerr, Kendall, Bandera, Uvalde, Medina, Kinney, and Maverick.
- (d) State District No. 3 is composed of the following 50 counties: Burleson, Lee, Bastrop, Travis, Hays, Comal, Guadalupe, Caldwell, Fayette, Washington, Austin, Colorado, Lavaca, Gonzales, Wilson, Bexar, DeWitt, Jackson, Wharton, Fort Bend, Brazoria, Matagorda, Calhoun, Refugio, Bee, Karnes, Live Oak, Atascosa, McMullen, LaSalle, Frio, Duval, Dimmit, Webb, Zapata, Jim Hogg, Starr, Brooks, Hidalgo, Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Jim Wells, Zavala, Goliad, and Victoria.
- (e) State District No. 4 is composed of the following 51 counties: Lamar, Red River, Bowie, Delta, Hopkins, Franklin, Titus, Morris, Cass, Marion, Camp, Upshur, Wood, Rains, Van Zandt, Smith, Gregg, Harrison, Henderson, Cherokee, Rusk, Panola, Shelby, Nacogdoches, Anderson, Freestone, Leon, Robertson, Brazos, Madison, Grimes, Waller, Houston, Walker, Trinity, Angelina, San Augustine, Sabine, Newton, Jasper, Tyler, Polk, San Jacinto, Montgomery, Harris, Liberty, Hardin, Orange, Jefferson, Chambers, and Galveston.
- (f) State District No. 5 is composed of the following 51 counties: Wilbarger, Wichita, Clay, Montague, Cooke, Grayson, Fannin, Hunt, Collin, Denton, Wise, Jack, Archer, Baylor, Knox, Haskell, Stephens, Throckmorton, Young, Jones, Shackelford, Palo Pinto, Rockwall, Kaufman, Ellis, Parker, Tarrant, Dallas, Johnson, Hood, Somervell, Erath, Eastland, Callahan, Coleman, Brown, Comanche, Mills, Hamilton, Bosque, Hill, Navarro, Limestone, McLennan, Falls, Milam, Bell, Williamson, Burnet, Lampasas, and Coryell.

Acts 1981, 67<sup>th</sup> Leg., p. 1461, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### §201.013. State District Conventions

- (a) For the purpose of electing a member to the state board, each state district shall conduct a

convention attended by delegates elected from each conservation district in the state district.

- (b) The state board shall notify the chairman and secretary of each board of directors of the location of the state district convention in the applicable state district. The state board shall give the notice at least 60 days before the date of the convention.
- (c) After receiving notice of the location of the convention, the chairman of each board of directors shall call a meeting for the purpose of electing a delegate and an alternate to the state district convention. In order to serve as a delegate or an alternate, a person must be an eligible voter of the conservation district and actively engaged in farming or ranching.
- (d) The chairman of a board of directors shall certify the name and address of the delegate and the alternate to the state board not later than the 30<sup>th</sup> day before the date of the convention.
- (e) Each delegate to a state district convention, or an alternate attending in the place of a delegate, is entitled to a per diem of \$30 a day for not more than two days and 18 cents a mile for travel each way between the county seat of the delegate's residence and the convention site. The state board shall pay the per diem and travel allowance.
- (f) A member of the state board is a qualified delegate to the convention of the state district from which the member was elected.
- (g) A majority of the delegates to a state district convention constitutes a quorum.

Acts 1981, 67<sup>th</sup> Leg., p. 1462, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 3, eff. Sept. 1, 1985.

#### §201.014. Election

- (a) The delegates at a state district convention by majority vote shall elect a member to the state board from among the qualified delegates. No later than the fifth day after the day of the election, the chairman of the convention shall certify to the state board and to the secretary of state the name and address of the person elected.
- (b) A state district convention shall conduct an election under this section on the first Tuesday in May of each year in which the term expires for the member of the state board representing that district.

Acts 1981, 67<sup>th</sup> Leg., p. 1462, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### §201.0141. Ineligibility to Serve on Board; Ineligibility for Certain Positions

- (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

- (b) A person may not be a member of the state board or act as the general counsel to the state board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the state board.
- (c) A person may not be a member of the state board and may not be a state board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:
  - (1) the person is an officer, employee, or paid consultant of a Texas trade association whose primary purpose is the promotion of soil and water conservation; or
  - (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association whose primary purpose is the promotion of soil and water conservation.

Added Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 10, eff. Sept. 1, 1985. Amended by Acts 1987, 70<sup>th</sup> Leg., ch. 167, Sec. 2.19(11), eff. Sept. 1, 1987; Acts 2001, 77<sup>th</sup> Leg., ch. 1095, Sec. 2, eff. Sept. 1, 2001.

**§201.0142. Training Program for Members of State Board**

- (a) A person who is elected and qualifies for office as a member of the state board may not vote, deliberate, or be counted as a member in attendance at a meeting of the state board until the person completes a training program that complies with this section.
- (b) The training program must provide the person with information regarding:
  - (1) the legislation that created the state board;
  - (2) the programs operated by the state board;
  - (3) the role and functions of the state board;
  - (4) the rules of the state board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
  - (5) the current budget for the state board;
  - (6) the results of the most recent formal audit of the state board;
  - (7) the requirements of:
    - (A) the open meetings law, Chapter 551, Government Code;
    - (B) the public information law, Chapter 552, Government Code;
    - (C) the administrative procedure law, Chapter 2001, Government Code; and
    - (D) other laws relating to public officials, including conflict-of-interest laws; and
  - (8) any applicable ethics policies adopted by the state board or the Texas Ethics Commission.
- (c) A person elected to the state board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses in-

curred in attending the training program, regardless of whether attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1095, Sec. 3, eff. Sept. 1, 2001.

**§201.015. Terms**

- (c) Members of the state board serve for staggered terms of two years. The terms of the members elected from State Districts No. 1, No. 3, and No. 5 expire in odd-numbered years. The terms of the members elected from State Districts No. 2 and No. 4 expire in even-numbered years.
- (d) The term of office of an elected member of the state board begins on the day after the day on which the member was elected. The term of one member appointed by the governor expires February 1 of each odd-numbered year, and the term of the other member appointed by the governor expires February 1 of each even-numbered year.

Acts 1981, 67<sup>th</sup> Leg., p. 1462, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 11, eff. Sept. 1, 1985. Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. 983, Sec. 2, eff. Sept. 1, 2003.

**§201.0151. Removal from Board**

- (a) It is a ground for removal from the state board that a member:
  - (1) does not have at the time of election the qualifications required by Subsection (c) of Section 201.013 of this code.
  - (2) does not maintain during service on the state board the qualifications required by Subsection (c) of Section 201.013 of this code;
  - (3) is ineligible for membership under Section 201.0141 of this code;
  - (4) cannot, because of illness or disability, discharge the member's duties for a substantial portion of the member's term; or
  - (5) is absent from more than half of the regularly scheduled state board meetings that the member is eligible to attend during a calendar year, without an excuse approved by a majority vote of the state board.
- (b) The validity of an action of the state board is not affected by the fact that the action was taken when a ground for removal of a state board member exists.
- (c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the state board. The chairman shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the chairman, the executive director shall notify the next highest ranking officer of the state board, who shall

then notify the governor and the attorney general that a potential ground for removal exists.  
Added by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 12, eff. Sept. 1, 1985.  
Amended by Acts 2001, 77<sup>th</sup> Leg., ch. 109 Sec. 4, eff. Sept. 1, 2001.

**§201.0152. APPLICATION**

Sections 201.0141, 201.0142, and 201.0151 apply to the governor's appointees under this chapter.  
Added by Acts 2003, 78<sup>th</sup> R. Leg., ch 983, Sec. 3, eff. Sept. 1, 2003

**§201.016. Vacancy**

Vacancies in the state district positions on the state board are filled by elections in the manner provided by this subchapter for an unexpired term or for a full term.

Acts 1981, 67<sup>th</sup> Leg., p. 1462, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. 983, Sec. 4, eff. Sept. 1, 2003.

**§201.017. Oath; Compensation**

- (a) Each member of the state board shall take the constitutional oath of office.
- (b) Each member of the state board is entitled to compensation in an amount not to exceed \$100 for each day of actual service rendered. In addition, each member of the state board is entitled to reimbursement for expenses, including traveling expenses, necessarily incurred in the discharge of official duties.

Acts 1981, 67<sup>th</sup> Leg., p. 1462, ch. 388, Sec. 1, eff. Sept. 1, 1981.

**§201.018. Majority Vote Requirement**

The concurrence of a majority of the members of the state board is required for the determination of any matter within the board's duties.

Acts 1981, 67<sup>th</sup> Leg., p. 1463, ch. 388, Sec. 1, eff. Sept. 1, 1981.

**§201.019. Officers and Employees**

- (a) The state board shall designate one of its members of chairman.
- (b) The state board may employ an executive director and other agents and employees, temporary or permanent, as it may require, and shall determine their qualifications, duties, and compensation according to the terms and amounts specified in the General Appropriations Act.
- ~~(c) The state board shall provide for the execution of surety bonds for each officer or employee who is entrusted with funds or property. The bonds must be executed by a solvent company authorized to transact business as a surety in this state.~~
- (d) The state board may delegate any power or duty under this chapter to its chairman, one or more of its members, or one or more of its agents or employees.
- (e) The state board may employ a counsel and legal staff or call on the attorney general for required legal services.
- (f) The executive director or the executive director's designee shall provide to members of the state board and state board employees, as often as necessary, information regarding the re-

quirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers and employees.

- (g) The executive director shall develop an intra-agency career ladder program, one part of which shall require the intra-agency posting of all nonentry level positions concurrently with any public posting.
- (h) The executive director shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for employees of the state board must be based on the system established under this subsection.
- (i) The agency shall develop and implement policies which clearly separate the respective responsibilities of the state board and the staff of the board.

Acts 1981, 67<sup>th</sup> Leg., p. 1463, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 13, eff. Sept. 1, 1985;  
Acts 2001, 77<sup>th</sup> Leg., ch. 1095, Sec. 5, eff. Sept. 1, 2001. Amended by  
Acts 2003 78<sup>th</sup> R. Leg., ch. 285, Sec. 31, eff. Sept. 1, 2003.

**§201.0191. Equal Opportunity Employment**

- (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.
- (b) The policy statement must include:
  - (1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the state board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and
  - (2) an analysis of the extent to which the composition of the state board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.
- (c) The policy statement must:
  - (1) be filed with the governor's office;
  - (2) be updated annually; and
  - (3) be reviewed by the Commission on Human Rights for compliance with Subsection (b)(1).

Added by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 14, eff. Sept. 1, 1985.  
Amended by Acts 2001, 77<sup>th</sup> Leg., ch. 109, Sec. 6, eff. Sept. 1, 2001.

**§201.0192. State Employee Incentive Information**

The executive director or the executive director's designee shall provide to state board employees information and training on the benefits and methods of participating in the state employee incentive program under Subchapter B, Chapter 2108, Government Code.

Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1095, Sec. 7, eff. Sept. 1, 2001.

**§201.020. Records; Hearings; Rules**

- (a) The state board shall keep a complete record of all of its official actions, may hold public hearings at times and places in this state as determined by the board, and may adopt rules as necessary for the performance of its functions under this chapter.
- (b) The state board shall develop and implement policies which will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Acts 1981, 67<sup>th</sup> Leg., p. 1463, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 15, eff. Sept. 1, 1985.

**§201.021. Office**

The board may select the location of its office.

Acts 1981, 67<sup>th</sup> Leg., p. 1463, ch. 388, Sec. 1, eff. Sept. 1, 1981.

**§201.022. General Powers and Duties**

- (a) In addition to other powers and duties provided by this chapter, the state board shall:
  - (1) offer appropriate assistance to the directors of conservation districts in carrying out programs and powers under this chapter;
  - (2) coordinate the programs of the conservation districts to the extent possible through advice and consultation;
  - (3) secure the cooperation and assistance of the federal government, federal agencies, and state agencies;
  - (4) disseminate information throughout this state concerning the activities and programs of the conservation districts;
  - (5) encourage the formation of a conservation district in each area in which the organization of a conservation district is desirable; and
  - (6) prepare information of public interest describing the functions of the board and make the information available to the general public and to appropriate state agencies.
- (b) The state board may cooperate with the governing boards of wind erosion conservation districts in putting into operation in those districts the provisions of this chapter that do not conflict with Chapter 202 of this code.

Acts 1981, 67<sup>th</sup> Leg., p. 1463, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 16, eff. Sept. 1, 1985.

**§201.023. Funds Management**

- (a) Except as provided by Section 201.081, the state board shall deposit all money and securities received by it in the state treasury to the credit of a special fund known as the state soil conservation fund. That fund shall be appropriated to the state board for use in the administration of this chapter and is subject to the same care and control while in the state treasury as other funds of the state.
- (b) The financial transactions of the state board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report that accounts for all funds received and disbursed by the board during the preceding year. The form of the annual report and the time for the report shall be prescribed in the General Appropriations Act.

- (c) The state board by resolution may authorize the chairman of the board or the administrative officer to approve claims and accounts payable by the board. That approval is sufficient to authorize the comptroller of public accounts to issue a warrant drawn on the funds appropriated to the board for payment of the claim and is sufficient to authorize the comptroller to honor payment of the warrant.
- (d) The state board may accept any donation or contribution in any form, including money, materials, or services, and from any source for the purpose of carrying out this chapter, including the cost of conducting the annual meeting of conservation district directors under Section 201.081 of this code.

Acts 1981, 67<sup>th</sup> Leg., p. 1463, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Secs. 4, 17, eff. Sept. 1, 1985; Acts 1989, 71<sup>st</sup> Leg., ch. 584, Sec. 75, eff. Sept. 1, 1989; Acts 1991, 72<sup>nd</sup> Leg., ch. 55, Sec. 2, eff. Aug. 26, 1991. Acts 1997, 75<sup>th</sup> Leg., ch. 1423, Sec. 2.14, eff. Sept. 1, 1997.

**§201.0231. Complaints**

- (a) The state board shall maintain a file on each written complaint filed with the state board.
- (b) The file must include:
  - (1) the name of the person who filed the complaint;
  - (2) the date the complaint is received by the state board;
  - (3) the subject matter of the complaint;
  - (4) the name of each person contacted in relation to the complaint;
  - (5) a summary of the results of the review or investigation of the complaint; and
  - (6) an explanation of the reason the file was closed, if the state board closed the file without taking action other than to investigate the complaint.
- (c) The state board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the state board's policies and procedures relating to complaint investigation and resolution.
- (d) The state board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 18, eff. Sept. 1, 1985. Amended by Acts 2001, 77<sup>th</sup> Leg., ch. 109, Sec. 9, eff. Sept. 1, 2001.

**§201.024. Contracts for Watershed Protection and Flood Control Plans**

The state board may contract with one or more state or federal agencies or with one or more private firms for the development of plans necessary for securing detailed information and developing work plans for the location, design, installation, and construction of structures and other improvements for the reduction and prevention of floods in state-approved watershed protection and flood prevention projects of 250,000 acres or less.

Acts 1981, 67<sup>th</sup> Leg., p. 1464, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.025. Sunset Provision**

The State Soil and Water Conservation Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2013.

Acts 1981, 67<sup>th</sup> Leg., p. 1464, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 479, Sec. 189, eff. Sept. 1, 1985; Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 19, eff. Sept. 1, 1985; Acts 1991, 72<sup>nd</sup> Leg., 1<sup>st</sup> C.S., ch. 17, Sec. 5.23(a), eff. Nov. 12, 1991; Acts 2001, 77<sup>th</sup> Leg., ch. 1095, Sec. 10, eff. Sept. 1, 2001.

#### **§201.026. Nonpoint Source Pollution**

- (a) The state board is the lead agency in this state for activity relating to abating agricultural and silvicultural nonpoint source pollution.
- (b) As the lead agency, the state board shall:
  - (1) plan, implement, and manage programs and practices for abating agricultural and silvicultural nonpoint source pollution.
  - (2) have as a goal:
    - (A) setting priorities among voluntary efforts to reduce nonpoint source pollution and promoting those efforts in a manner consistent with the priorities; and
    - (B) assisting landowners to prevent regulatory enforcement actions related to nonpoint source pollution; and
  - (3) provide to the agricultural community information regarding the jurisdictions of the state board and the Texas Natural Resource Conservation Commission related to nonpoint source pollution.
- (c) Except as required by Subchapter L, Chapter 26, Water Code, a permit or other authorization is not required under that chapter as a prerequisite for the land application of animal waste for beneficial use at agronomic rates to property that is not owned or controlled by the owner or operator of a facility that Chapter 26, Water Code, requires to hold a permit or other authorization. This section does not affect the authority of the Texas Natural Resources Conservation Commission to investigate or take enforcement action against a point source discharge under Section 26.121, Water Code.
- (d) On the request of the owner of land on which animal waste is applied for agricultural purposes, the state board may create and certify a water quality management plan for the land.

*Text of subsec. (e) as added by Acts 2001, 77<sup>th</sup> Leg., ch. 1095, Sec. 11. (HB2310).*

- (e) Other state agencies with responsibility for abating agricultural and silvicultural nonpoint source pollution shall coordinate any abatement programs and activities with the state board.

*Text of subsec. (e) as added by Acts 2001, 77<sup>th</sup> Leg., ch. 1189, Sec. 11. (HB3355).*

- (e) At the request of the landowner, the state board may develop and certify a water quality management plan for any agricultural or silvicultural land in the state.

*Text of subsec. (f) as added by Acts 2001, 77<sup>th</sup> Leg., ch. 1095, Sec. 11. (HB2310)*

- (f) The state board shall represent the state before the federal Environmental Protection Agency or other federal agencies on a matter relating to agricultural or silvicultural nonpoint source pollution. Nothing herein shall impair the ability of:

- (1) the General Land Office to represent the state before any federal agency in matters relating to the state's participation in the federal coastal zone management program.
- (2) the Texas Natural Resource Conservation Commission to represent the state before any federal agency in matters relating to the state's overall participation in the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); or
- (3) the Texas Department of Agriculture to represent the state before any federal agency in matters relating to the state's overall participation in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.).

*Text of subsec (f) as added by Acts 2001, 77<sup>th</sup> Leg., ch. 1189, Sec. 1. (HB3355).*

- (f) A water quality management plan developed under this section that covers land on which animal carcasses will be buried must include:
  - (1) disposal management practices for the carcasses, including a requirement that poultry carcasses may be buried on site only in the event of a major die-off that exceeds the capacity of a poultry facility to handle and dispose of poultry carcasses by the normal means used by the facility; and
  - (2) burial site requirements that identify suitable locations for burial based on site-specific factors including:
    - (A) land use;
    - (B) soil conditions; and
    - (C) proximity to groundwater or surface water supplies.

*Text of subsec. (g) as added by Acts 2001, 77<sup>th</sup> Leg., ch. 1095, Sec. 11. (HB2310).*

- (g) In an area that the state board identifies as having or having the potential to develop agricultural or silvicultural nonpoint source water

quality problems or an area within the "coastal zone" designated by the Coastal Coordination Council, the state board shall establish a water quality management plan certification program that provides, through local soil and water conservation districts, for the development, supervision, and monitoring of individual water quality management plans for agricultural and silvicultural lands. Each plan must be developed, maintained, and implemented under rules and criteria adopted by the state board and comply with state water quality standards established by the Texas Natural Resource Conservation Commission. The state board shall certify a plan that satisfies the state board's rules and criteria and complies with state water quality standards established by the Texas Natural Resource Conservation Commission under the commission's exclusive authority to set water quality standards for all water in the state.

*Text of subsec (g) as added by Acts 2001, 77<sup>th</sup> Leg., ch. 1189, Sec. 1. (HB3355).*

- (g) The commission may not require a landowner who requests and complies with a water quality management plan under Subsection (f) to record the burial of animal carcasses in the county deed records.
- (h) The state board shall notify the Texas Natural Resource Conservation Commission not later than the 10<sup>th</sup> business day after the date the state board decertifies a water quality management plan for an animal feeding operation.
- (i) The state board shall update the state board's identification of priority areas for the control of nonpoint source pollution at least every 10th years. The state board, in considering changes to the identified priority areas, shall consider:
  - (1) bodies of water the Texas Natural Resource Conservation Commission has identified as impaired through the state water quality assessment process;
  - (2) threatened areas in which action is necessary to prevent nonpoint source pollution; and
  - (3) other areas of concern, including groundwater concerns.
- (j) Complaints concerning a violation of a water quality management plan or a violation of a law or rule relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the state board shall be referred to the state board. The state board, in cooperation with the local soil and water conservation district, shall investigate the complaint. On completion of the investigation, the state board, in consultation with the soil and water conservation district, either shall determine that further action is not warranted or shall develop and implement a corrective action plan to address the complaint. If the person about whom the complaint has been made fails or refuses to take corrective action, the state board shall re-

fer the complaint to the Texas Natural Resource Conservation Commission

Added by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 5, eff. Sept. 1, 1985; Amended by Acts 1993, 73<sup>rd</sup> Leg., ch. 54, Sec. 1, eff. April 29, 1993; Acts 2001, 77<sup>th</sup> Leg., ch. 1095, Sec. 11, eff. Sept. 1, 2001; Acts 2001, 77<sup>th</sup> Leg., ch. 1189, Sec. 1, eff. Sept. 1, 2001.

**§201.027. Enforcement Referral Records**

- (a) The state board shall maintain detailed records about each state board referral of an agricultural or silvicultural operation to the Texas Natural Resource Conservation Commission for enforcement.
- (b) Records maintained under Subsection (a) must include information regarding the final disposition of the referral by the Texas Natural Resource Conservation Commission, including any enforcement action taken against the agricultural or silvicultural operation.

Added by Acts 2001, 77<sup>th</sup> Leg., ch. 1095, Sec. 12, eff. Sept. 1, 2001.

**§201.028. SEMIANNUAL REPORT.**

Not later than January 1 and June 1 of each year, the state board shall prepare and deliver to the governor, the lieutenant governor, and the speaker of the house of representatives a report relating to the status of the budget areas of responsibility assigned to the board, including outreach programs, grants made and received, federal funding applied for and received, special projects, and oversight of water conservation district activities.

Added by Acts 2003, 78<sup>th</sup> R. Leg., ch 983, Sec 5, eff. Sept. 1, 2003.

**§201.029. MANAGEMENT AUDIT.**

(a) Not later than March 1, 2004, the state auditor, in coordination with the Legislative Budget Board, shall conduct a management audit of the State Soil and Water Conservation Board and deliver the audit report to the governor, the lieutenant governor, and the speaker of the house of representatives. The audit report must include an evaluation of the administrative budget for the board.

(b) This section expires April 1, 2004.

Added by Acts 2003, 78<sup>th</sup> R. Leg., ch 983, Sec. 5, eff. Sept. 1, 2003.

**SUBCHAPTER C. CREATION, BOUNDARY CHANGES, AND DISSOLUTION OF SOIL AND WATER CONSERVATION DISTRICTS**

**§201.041. Petition**

- (a) The eligible voters of any territory may petition the state board for the organization of a soil and water conservation district. The petition must be signed by at least 50 persons eligible to vote in an election to create the conservation district unless the territory contains fewer than 100 eligible voters, in which case the petition must be signed by a majority of the eligible voters in the territory.
- (b) The petition must contain:
  - (1) a proposed name for the conservation district;
  - (2) a description of the territory proposed to be organized as a conservation district;
  - (3) a statement that there is need for a conservation district to function in the described

- territory in the interest of the public health, safety, and welfare; and
- (4) a request that:
    - (A) the state board define the boundaries of the conservation district;
    - (B) an election be held within the defined territory on the question of creation of a conservation district in that territory; and
    - (C) the state board determine that the conservation district be created.
  - (c) The petition is not required to describe the territory by metes and bounds or by legal subdivisions, but must be generally accurate in order to be sufficient.
  - (d) If more than one petition is filed covering parts of the same territory, the state board may consolidate any or all of the petitions.
- Acts 1981, 67<sup>th</sup> Leg., p. 1464, ch. 388, Sec. 1, eff. Sept. 1, 1981.

**§201.042. Hearing**

- (a) Not later than the 30<sup>th</sup> day after the day on which a petition is filed with the stated board, the state board shall give notice of a hearing on:
  - (1) the question of the desirability and necessity of the creation of a conservation district in the interest of the public health, safety, and welfare;
  - (2) the question of the appropriate boundaries to be assigned to the conservation district;
  - (3) the propriety of the petitions and other proceedings taken under this chapter; and
  - (4) all questions relevant to those matters.
- (b) Following notice, the state board shall conduct a hearing on the petition. Any interested person, including a person who is an eligible voter in the territory described in the petition or in the territory that is considered for addition to the described territory, is entitled to attend the hearing and be heard.
- (c) If it appears at the hearing that it may be desirable to include within the conservation district territory that is outside the area within which notice has been given, the state board shall adjourn the hearing and give notice of further hearings throughout the entire area considered for inclusion in the conservation district. Following that notice, the board shall reconvene the hearing.
- (d) After the hearing, if the state board, on the basis of the facts presented at the hearing and other available information, determines that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory considered at the hearing, the board shall record that determination, define the boundaries of the conservation district by metes and bounds or by legal subdivisions, and conduct an election in accordance with Section 201.043 of this code. The board may not include within the defined

- boundaries any territory that is within the boundaries of another conservation district.
- (e) In making the determination of need and defining the boundaries of the conservation district, the state board shall give due weight and consideration to:
    - (1) the topography of the area considered and of the state;
    - (2) the soil composition of the area considered and of the state;
    - (3) the distribution of erosion, the prevailing land-use practices, and the desirability and necessity of including within the conservation district the area under consideration;
    - (4) the benefits the area under consideration may receive from being included within the boundaries of the conservation district;
    - (5) the relation of the area considered to existing watersheds and agricultural regions and to other conservation districts in existence or proposed to be created; and
    - (6) other relevant physical, geographical, and economic factors, having due regard to the legislative determinations made in Section 201.001 of this code.
  - (f) After the hearing and consideration of the relevant facts, if the state board determines that there is no need for a conservation district to function in the territory considered at the hearing, it shall record that determination and deny the petition.
  - (g) The state board shall pay all expenses for the issuance of notices of the public hearings. The board shall supervise the conduct of those hearings and may adopt rules governing the conduct of the hearings.

Acts 1981, 67<sup>th</sup> Leg., p. 1465, ch. 388, Sec. 1, eff. Sept. 1, 1981.

**§201.043. Election**

- (a) Within a reasonable time after determining the need for a conservation district and defining the boundaries of the proposed conservation district, the state board shall conduct an election within the proposed conservation district on the proposition of the creation of the conservation district.
- (b) The state board shall give notice of the election and the notice must state the boundaries of the proposed conservation district.
- (c) The ballot for the election shall be printed to provide for voting for or against the proposition: "The creation of a soil and water conservation district from the land below described in general terms and lying in the county (or counties) for \_\_\_\_\_."
- (d) Each eligible voter in the proposed conservation district, as determined by the state board, is entitled to vote in the election. If part of a county is included within a proposed conservation district and the polling place of an eligible voter within the county is not included within the conservation district, the voter is entitled to

vote at the polling place for the voter's land in the conservation district.

- (e) Except as otherwise provided by this chapter, the election shall be conducted in conformity with the general laws relating to elections.
- (f) The state board shall adopt rules for the conducting of elections, including rules providing for the registration of all eligible voters prior to the date of the election or prescribing eligibility to vote.

Acts 1981, 67<sup>th</sup> Leg., p. 1466, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.044. State Board Determination of Administrative Practicability and Feasibility**

- (a) After announcing the results of an election, the state board shall consider, determine, and record its determination of whether the operation of the conservation district within the defined boundaries is administratively practicable and feasible. In making that determination, the state board shall give due regard and consideration to:
  - (1) the attitude of eligible voters in the defined boundaries;
  - (2) the number of persons eligible to vote in the election who voted;
  - (3) the number of votes cast in the election favoring creation of the conservation district in proportion to the total number of votes cast;
  - (4) the approximate wealth and income of the eligible voters of the proposed conservation district;
  - (5) the probable expense of carrying on erosion control operations within the proposed conservation district; and
  - (6) other relevant social and economic factors, having due regard for the legislative determinations made in Section 201.001 of this code.
- (b) The state board may proceed with the organization of the conservation district only if:
  - (1) the board determines that the operation of the conservation district is administratively practicable and feasible; and
  - (2) at least two-thirds of the votes cast in the election were in favor of creation of the conservation district.
- (c) If the state board determines that the operation of the conservation district is not administratively practicable and feasible, the state board shall deny the petition.

Acts 1981, 67<sup>th</sup> Leg., p. 1466, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.045. Subsequent Petitions.**

If the state board denies a petition under this subchapter, a subsequent petition covering the same or substantially the same territory may not be filed with the board until six months have expired following the date of denial.

Acts 1981, 67<sup>th</sup> Leg., p. 1467, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.046. Establishment of District Subdivisions; Appointment of Initial Directors**

After determining that the operation of the conservation district is administratively practicable and feasible, the state board shall divide the conservation district into five numbered subdivisions that are as nearly equal in area as practicable. The board shall appoint one director each from the subdivisions numbered two and four. Those directors shall perform the duties required by this subchapter and shall serve on the initial governing board of the conservation district until the regular election for those subdivisions.

Acts 1981, 67<sup>th</sup> Leg., p. 1467, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.047. Application for Certificate of Organization**

- (a) The two appointed directors shall present to the secretary of state an application for a certificate of organization for the conservation district containing the information prescribed by Subsection (b) of this section and a statement from the state board containing the information prescribed by Subsection (c) of this section. The application and the statement are not required to contain any detail other than a recital of the information required by this section.
- (b) The application for the certificate must contain:
  - (1) a statement that:
    - (A) a petition for the creation of the conservation district was filed with the state board in accordance with this chapter;
    - (B) the proceedings specified in this chapter were taken relative to that petition;
    - (C) the application is being filed in order to complete the organization of the conservation district as a governmental subdivision and a public body corporate and politic under this chapter; and
    - (D) the state board has appointed the applicants as directors;
  - (2) the name and official residence of each of the appointed directors;
  - (3) a certified copy of the appointment of the directors evidencing their right to office;
  - (4) the term of office of each of the appointed directors;
  - (5) the name that is proposed for the conservation district;
  - (6) the location of the principal office of the appointed directors.
- (c) The statement of the state board must set forth the boundaries of the conservation district and certify that:
  - (1) a petition was filed, notice issued, and a hearing held as required by this chapter;
  - (2) the board did determine that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the proposed territory;

- (3) the board did define the boundaries of the conservation district;
  - (4) notice was given and an election held on the question of the creation of the conservation district;
  - (5) the result of the election showed a two-thirds majority of the votes cast in the election to be in favor of the creation of the conservation district; and
  - (6) the board did determine that the operation of the conservation district is administratively practicable and feasible.
- (d) The directors shall subscribe and swear to the application before an officer authorized by law to take and certify oaths. That officer shall certify on the application that the officer personally knows the directors, that the officer knows them to be the directors as affirmed in the application, and that each director has subscribed to the application in the officer's presence.

Acts 1981, 67<sup>th</sup> Leg., p. 1467, ch. 388, Sec. 1, eff. Sept. 1, 1981.

**§201.048. Issuance of Certificate**

- (a) The secretary of state shall examine the application for a certificate of organization and the statement of the state board. If the secretary of state finds that the name proposed for the conservation district is not identical to that of another conservation district or so nearly similar as to lead to confusion or uncertainty, the secretary shall receive the application and statement, file them, and record them in an appropriate book of record in the secretary's office.
- (b) If the secretary of state finds that the name proposed for the conservation district is identical to that of another conservation district or so nearly similar as to lead to confusion or uncertainty, the secretary shall certify that fact to the state board and the state board shall submit to the secretary a new name for the conservation district that is free of that defect. After receipt of a name that is free of that defect, the secretary shall record the application and statement, with the modified name, in an appropriate book of record in the secretary's office.
- (c) When the application and statement are filed and recorded as provided by this section, the conservation district constitutes a governmental subdivision and a public body corporate and politic.
- (d) The secretary of state shall make and issue to the directors a certificate, under the state seal, of the due organization of the conservation district. The secretary shall record the certificate with the application and statement.

Acts 1981, 67<sup>th</sup> Leg., p. 1468, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1993, 73<sup>rd</sup> Leg., ch. 300, Sec. 24, eff. Aug. 30, 1993.

**§201.049. Effect of Certificate; Admissibility**

In a suit, action, or proceeding involving the validity or enforcement of, or relating to, a contract, proceeding, or action of a conservation district, the conservation district is considered to have been estab-

lished in accordance with this chapter on proof of the issuance of a certificate of organization by the secretary of state. A copy of the certificate certified by the secretary of state is admissible in evidence in the suit, action, or proceeding and is proof of the filing of the certificate and the contents of the certificate.

Acts 1981, 67<sup>th</sup> Leg., p. 1468, ch. 388, Sec. 1, eff. Sept. 1, 1981.

**§201.050. Change in Conservation District or Subdivision Boundaries**

- (a) A group of eligible voters may petition the state board for the inclusion of additional territory in an existing conservation district. Except as provided by Subsection (b) of this section, the petition is governed by, and the state board shall conduct proceedings on the petition in accordance with, the provisions of this subchapter relating to petitions for the creation of a conservation district. The state board shall prescribe the form for the petition, which must be as similar as practicable to the form provided for petitions for the creation of a conservation district.
- (b) If there are fewer than 100 eligible voters in the area proposed for inclusion in the conservation district, and the petition is signed by two-thirds of those persons, the area may be included in the conservation district without an election. A person is eligible to vote at an election for including territory in an existing conservation district only if the person owns land in the territory to be included.
- (c) The board of directors of one or more conservation districts may submit a petition to the state board requesting a division of the conservation district, a combination of two or more conservation districts, or a transfer of land from one conservation district to another. The petition must be signed by a majority of the directors of each conservation district affected. The state board shall determine the practicability and feasibility of the proposed change. If the state board determines that the change is not administratively practicable and feasible, it shall record that determination and deny the petition. If the board determines that the change is administratively practicable and feasible, it shall record that determination and reorganize the conservation districts in the manner set out in the petition.
- (d) The state board, in cooperation with the landowners of a conservation district, may change the boundaries of the subdivisions of the conservation district as may be necessary or desirable because of additions of territory to the conservation district.

Acts 1981, 67<sup>th</sup> Leg., p. 1469, ch. 388, Sec. 1, eff. Sept. 1, 1981.

**§201.051. Dissolution of Conservation District**

- (a) A conservation district may be dissolved by majority vote of the eligible voters in an election conducted in the manner provided by this subchapter for its creation. The board of direc-

tors of the conservation district shall notify the state board of the outcome of an election under this section.

- (b) On receiving notice of a vote to dissolve a conservation district, the state board shall determine whether the conservation district should continue to operate. If the state board determines that continuing the operation of the conservation district is not administratively practicable and feasible, the state board shall deliver to the secretary of state certification of the district's dissolution.
- (c) Certification by the state board to the secretary of state is sufficient notice of the dissolution of a conservation district. The secretary of state shall issue to the directors of the dissolved district a certificate of dissolution and shall record the fact of dissolution in the appropriate records of the secretary's office.
- (d) On receiving a certificate of dissolution, the board of directors of the dissolved district shall terminate the affairs of the conservation district. The board shall transfer to the state board all property owned by the conservation district. The state board may:
  - (1) sell the property at a public auction and deposit the net proceeds of the sale in the State Treasury; or
  - (2) make the property available for use by other conservation districts.
- (e) If the dissolution of a conservation district is for the purpose of adjusting the boundaries and the conservation district is immediately reorganized, the funds and equipment of the dissolved conservation district pass to the reorganized conservation district. If more than one conservation district is created under the reorganization, the funds and equipment of the dissolved conservation district shall be divided under terms satisfactory to the directors of the reorganized conservation districts.
- (f) The state board may not conduct an election under this section for a conservation district before the end of the fifth year after the date of the last election under this section for that district.

Acts 1981, 67<sup>th</sup> Leg., p. 1469, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 6, eff. Sept. 1, 1985.

#### **§201.0511. Effect of Dissolution**

- (a) On issuance of a certificate of dissolution under Section 201.051 of this code, the ordinances and regulations adopted by the dissolved district cease to be in effect.
- (b) A contract to which a dissolved district was a party remains in effect according to the terms of the contract. The state board is substituted for the dissolved district for purposes of performance of a contract. Under a contract of the dissolved district, the state board has all the rights and liabilities under the contract that the board of directors of the dissolved district had

under the contract, including the right to sue and the liability to be sued.

- (c) The dissolution of a conservation district does not affect a lien on a judgment obtained or an action pending under Section 201.128 of this code. The state board has all the rights and obligations with respect to a lien or an action under Section 201.128 as the board of directors of the dissolved district had under that section.

Added by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 6, eff. Sept. 1, 1985.

### **SUBCHAPTER D. SOIL AND WATER CONSERVATION DISTRICT ADMINISTRATION**

#### **§201.071. Composition of Board of Directors**

- (a) Except as provided for the initial board, the board of directors of a conservation district is composed of five persons, with one director elected from each of the five numbered subdivisions created by the state board under Section 201.046 of this code.
- (b) The initial board of directors is composed of the two directors appointed by the state board and three elected directors.

Acts 1981, 67<sup>th</sup> Leg., p. 1470, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.072. Qualifications of Directors**

In order to serve as a director, a person must be an eligible voter who owns land within the numbered subdivision from which the person is appointed or elected and must be actively engaged in the business of farming or animal husbandry.

Acts 1981, 67<sup>th</sup> Leg., p. 1470, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.073. Election of Directors**

- (a) Except as provided for the initial election of directors, the persons who are eligible voters and own land in a conservation district are entitled to elect the directors for the district. For that purpose, the eligible voters shall meet each year on a date and at a time and place designated by the existing board of directors. The directors shall designate for the election a date that is after September 30 and before October 16. Before July 15 of each year, the directors shall designate a date, time, and place for that year's election of directors.
- (b) To be eligible for election under this section, an individual must file a written notice of the individual's candidacy. The individual must file the notice:
  - (1) during established business hours in the month of August at a location designated by the district; and
  - (2) in accordance with district rules.
- (c) The district shall post a notice stating the requirements of Subsection (b) in a prominent public place.
- (d) If only one individual files a notice of candidacy for a director's office during the period specified by Subsection (b)(1):

- (1) an election to fill that position is not required; and
- (2) on the established election date, the directors shall;
  - (A) declare the single candidate as the director for that office; and
  - (B) certify the selection of the individual as director in the manner provided by Subsection (f) for an elected director.
- (e) If more than one individual files a notice of candidacy for a director's office during the period specified by Subsection (b)(1), the election shall be held at a meeting of eligible voters scheduled under Subsection (a). The district shall print ballots with the names of the candidates for each director's office to be filled. The district by rule shall provide for allowing eligible voters by personal appearance to cast votes on printed ballots at a location designated by the district instead of at the meeting. The rules must provide for votes to be accepted at the designated location during establish business hours for a period beginning on the 17<sup>th</sup> day before the date of the meeting and continuing through the fourth day before the date of the meeting, including at least one Saturday during that period. If, because of the date scheduled for the meeting, it is not possible to begin early voting by personal appearance on the prescribed date, the early voting period shall begin on the earliest practicable date as set by the district. Each eligible voter present at the scheduled meeting shall cast a vote by ballots printed under this subsection. If after tabulation by the district of the votes cast before the meeting at the designated location and the votes cast at the meeting no nominee has received a majority of the votes, the two candidates receiving the largest number of votes shall be voted on in a second ballot, and the candidate receiving the largest number of votes among those cast before the meeting at the designated location and those cast at the meeting in the second ballot is elected. The district by rule shall provide for certifying eligible voters voting at the designated location and at the meeting:
- (f) The directors shall:
  - (1) record the proceedings of the meeting; and
  - (2) not later than the fifth day after the date of the election, certify to the state board the name and the proper address of the person elected.
- (g) The Election Code does not apply to elections under this section.

Acts 1981, 67<sup>th</sup> Leg., p. 1470, ch. 388, Sec. 11, eff. Sept. 1, 1981. Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 7, eff. Sept. 1, 1985; Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 7, eff. Sept. 1, 1985; Acts 2001, 77<sup>th</sup> Leg., ch. 1095, Sec. 13, eff. Sept. 1, 2001. Amended by Acts 2003, 78<sup>th</sup> R. Leg., ch. 1040, Sec. 1, eff. Sept. 1, 2003.

#### **§201.074. Election of Initial Directors**

- (a) Not later than the 30<sup>th</sup> day after the date of issuance of a certificate of organization by the secretary of state, the state board shall designate a time and place for an election of directors in the subdivisions of the conservation districts numbered one, three, and five and shall give notice of that election.
- (b) The persons who are eligible voters and own land in a conservation district are entitled to elect the directors for the district. The eligible voters shall meet and elect the directors in the manner provided by Section 201.073 of this code, except that the state board shall designate the date, time, and place for the election.
- (c) The Election Code does not apply to elections under this section.

Acts 1981, 67<sup>th</sup> Leg., p. 1470, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 8, eff. Sept. 1, 1985.

#### **§201.075. Terms of Directors**

- (a) Except as provided for the initial directors, directors serve for staggered terms of four years with the term of one or two members expiring each year.
- (b) The term of office of a director begins on the day after the director's election.

Acts 1981, 67<sup>th</sup> Leg., p. 1471, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 20, eff. Sept. 1, 1985.

#### **§201.076. Vacancy; Removal**

- (a) If a vacancy occurs in the office of director, the remaining directors by majority vote shall appoint a director for the unexpired term. The appointee must be approved by the state board before taking office.
- (b) If a vacancy occurs in the office of director and the vacancy is not filled by appointment by the remaining directors as required by this section within six months after the vacancy occurs, the state board may call for an election to be held for the purpose of electing a director to complete the term.
- (c) If the number of qualified directors is less than the number required to conduct business as required by Section 201.078 of this code, the state board may call for an election to be held for the purpose of electing directors for each vacant subdivision to complete the unexpired term.
- (d) An election under this section must be conducted in the manner provided by Section 201.073 of this code, except that the state board shall designate the date, time, and place of the election.
- (e) Following notice and a hearing, the state board may remove a director, but only if the director:
  - (1) neglects the duty of the office;
  - (2) is guilty of malfeasance in office; or
  - (3) is disqualified as a voter in the conservation district.

Acts 1981, 67<sup>th</sup> Leg., p. 1471, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1991, 72<sup>nd</sup> Leg., ch. 9, Sec. 1, eff. Aug. 26, 1991.

#### **§201.077. Compensation and Mileage Allowance**

- (a) A director may receive compensation in an amount not to exceed \$30 for each day the director attends meetings of the board of directors, plus 18 cents a mile for travel each way between the residence of the director and a designated meeting place within the boundaries of the conservation district.
- (b) A director is entitled to be paid quarterly, but may not receive the compensation and mileage allowance for more than five days in any three-month period except as provided for attending an annual meeting or a state district convention.
- (c) Two directors are entitled to receive \$30 a day for not more than two days, and one director is entitled to receive 18 cents a mile for travel, while attending the annual statewide meeting of directors.

Acts 1981, 67<sup>th</sup> Leg., p. 1471, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.078. Majority Vote Requirement**

The concurrence of a majority of the directors is required for the determination of any matter within their duties.

Acts 1981, 67<sup>th</sup> Leg., p. 1471, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.079. Officers and Employees; Surety Bonds**

- (a) The directors shall designate from among themselves a chairman, vice-chairman, and secretary and may change those designations from time to time.
- (b) The directors may employ officers, agents, and employees, temporary or permanent, as the board of directors may require and shall determine their qualifications, duties, and compensation.
- (c) The directors may delegate any power or duty under this chapter to the chairman, one or more of the directors, or one or more of their agents or employees.
- (d) The directors shall provide that all officers and employees who are entrusted with funds or property of the conservation district be bonded in accordance with Chapter 653, Government Code.

Acts 1981, 67<sup>th</sup> Leg., p. 1472, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74<sup>th</sup> Leg., ch. 76, Sec. 5.95(29), eff. Sept. 1, 1995.

#### **§201.080. Records, Reports, Accounts and Audits**

- (a) The directors shall provide for keeping full and accurate accounts and for keeping records of proceedings conducted and resolutions, regulations, and orders issued or adopted.
- (b) The directors shall furnish to the state board on request copies of ordinances, rules, regulations, orders, contracts, forms, other documents that the directors adopt or employ, and other information concerning the directors' activities that the state board requires in the performance of its duties under this chapter. The state board may demand at any time and pay the costs of an audit of a conservation district's accounts.

- (c) The directors shall deposit all funds with state or national banks or in savings and loan associations. The directors shall either deposit the funds in demand or time accounts, including interest-bearing accounts, or purchase certificates of deposit. The funds may be withdrawn only on approval of the directors and only by check or order signed by the chairman and the secretary.
- (d) The directors shall provide for an audit of the conservation district's accounts. The audit must be performed subject to rules adopted by the state board.
- (e) The conservation district may pay the cost for keeping accounts and making audits out of any available funds of the conservation district.
- (f) The preservation, microfilming, destruction, or other disposition of the records of the conservation district is subject to the requirements of Subtitle C, Title 6, Local Government Code, and rules adopted under that subtitle.

Acts 1981, 67<sup>th</sup> Leg., p. 1472, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69<sup>th</sup> Leg., ch. 611, Sec. 9, eff. Sept. 1, 1985; Acts 1989, 71<sup>st</sup> Leg., ch. 1248, Sec. 25, eff. Sept. 1, 1989; Acts 1991, 72<sup>nd</sup> Leg., ch. 8, Sec. 1, eff. Aug. 26, 1991.

#### **§201.081. Annual Meeting of Directors**

- (a) The state board shall provide for an annual meeting of conservation district directors to be held at a time and place determined by the state board.
- (b) The state board may charge each person attending an annual meeting registration and other fees to defray the cost of conducting the annual meeting.
- (c) The state board may maintain an account in a local depository bank for the purpose of depositing fees collected under Subsection (b) of this section or for depositing donations or grants made for the purpose of funding the annual meeting of the conservation district directors. Money in the account shall be held in trust for persons attending the annual meeting and shall be used exclusively for paying the costs of the meeting. The state board may select any state or national bank as the depository. An account maintained under this subsection is subject to audit by the State Auditor.

Acts 1981, 67<sup>th</sup> Leg., p. 1472, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68<sup>th</sup> Leg., p. 3851, ch. 605, Sec. 1, eff. Aug. 29, 1983; Acts 1991, 72<sup>nd</sup> Leg., ch. 55, Sec. 1, eff. Aug. 26, 1991.

### **SUBCHAPTER E. GENERAL POWERS AND DUTIES OF SOIL AND WATER CONSERVATION DISTRICTS**

#### **§201.101. Corporate Powers**

- (a) A conservation district is a governmental subdivision of this state and a public body corporate and politic. A conservation district may:
  - (1) sue and be sued in the name of the conservation district;
  - (2) have a seal, which shall be judicially noticed;

- (3) make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and
- (4) adopt rules consistent with this chapter to carry into effect its purposes and powers.
- (b) A conservation district may execute notes on the faith and credit of the conservation district for the purpose of making repairs, additions, or improvements to any property or equipment owned by the conservation district. The notes may be issued payable from current funds or reasonably contemplated revenues, but the conservation district may not issue notes payable from funds derived from the state.
- (c) Any note issued by a conservation district may be secured by a lien on the property or equipment to which the repairs, additions, or improvements are to be made if the property or equipment was not acquired from the state or with funds derived from the state. A note executed in connection with the purchase of real property may be secured only the purchased real property.
- (d) A conservation district may not levy taxes.
- (e) Debts incurred by a conservation district may not create a lien on the land of owners or occupiers of land in the district.
- (f) As a condition to extending benefits to, or performing any work on, land in the conservation district not owned or controlled by the state or a state agency, a conservation district may:
  - (1) require contributions to the operation in services, materials, or another form; and
  - (2) require owners or occupiers of land to enter into and perform an agreement or covenant as to the permanent use of land that will tend to prevent or control soil erosion on the land.

Acts 1981, 67<sup>th</sup> Leg., p. 1472, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1989, 71<sup>st</sup> Leg., ch. 46, Sec. 1, eff. April 27, 1989.

#### **§201.102. Preventive and Control Measures**

A conservation district may carry out preventive and control measures within its boundaries, including engineering operations, methods of cultivation, growing of vegetation, changes in the use of land, and measures listed in Section 201.001(c) of this code. The conservation district may carry out the measures on any land that is owned by the state or a state agency with the cooperation of the agency administering and having jurisdiction of the land. If the land is owned by another person, the conservation district may carry out the measures on obtaining the consent of the owner or occupier or the necessary rights or interests in the land.

Acts 1981, 67<sup>th</sup> Leg., p. 1473, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.103. Cooperation and Agreements With Other Entities**

- (a) A conservation district may cooperate or enter into an agreement with any other entity, including a state or federal agency or an owner or occupier of land within the conservation district, in the carrying on of erosion control

and prevention operations in the conservation district as the directors consider necessary to advance the purposes of this chapter. Within the limits of appropriations made available to the conservation district by law, the conservation district may furnish financial or other aid in accordance with the cooperative program or agreement.

- (b) The directors of two or more conservation districts may cooperate with one another in the exercise of any power conferred by this chapter.
- (c) The directors of a conservation district may invite the legislative body of a municipality or county located within or near the conservation district to designate a representative to advise and consult with the directors on all questions of program and policy that may affect the property, water supply, or other interests of the municipality or county.
- (d) A state agency that has jurisdiction over or administers state-owned land in a conservation district, or a county or other subdivision of this state that has jurisdiction over or administers other publicly owned land in a conservation district, shall cooperate to the fullest extent with the directors of the conservation district in the effectuation of programs and operations undertaken by the conservation district under this chapter. The state agency, county, or subdivision shall provide that directors free access to enter and perform work on that land, and a land-use regulation adopted under Subchapter F of this chapter has the force and effect of law over that land and shall be observed by the entity administering the land.

Acts 1981, 67<sup>th</sup> Leg., p. 1473, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.104. Acquisition, Administration, and Sale of Real or Personal Property**

A conservation district may obtain options on or acquire in any manner, including purchase, exchange, lease, gift, grant, bequest, or devise, any real or personal property or rights or interests in real or personal property. In addition, the conservation district may:

- (1) maintain, administer, or improve the property;
- (2) receive income from the property and expend that income in carrying out this chapter; or
- (3) sell, lease, or otherwise dispose of the property or interests in the property in furtherance of this chapter.

Acts 1981, 67<sup>th</sup> Leg., p. 1474, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.105. Acquisition, Administration, and Sale of Materials and Equipment**

- (a) A conservation district may purchase machinery, equipment, seed, seedlings, fertilizer, fish for stocking farm ponds, or other supplies or conservation materials essential for the purposes of a conservation district program and make them available to owners and occupiers of land in the conservation district. The conservation district shall provide for maintaining, insuring,

storing, and repairing the machinery and equipment.

- (b) The district may charge a fee for the use of machinery and equipment owned by the district that is calculated to pay the costs of deterioration and replacement of the machinery and equipment.
- (c) A conservation district may make any purchase of machinery or equipment through the State Purchasing and General Services Commission under the terms and rules provided by law for purchases by the state or political subdivisions.
- (d) A conservation district may charge persons who own or occupy small amounts of land nominal amounts for projects benefiting them if the directors determine it to be in the interest of the general welfare.
- (e) A conservation district may sell on open bids any machinery or equipment considered obsolete or having served its purpose. The funds earned or acquired by a conservation district from a source other than the state or earned or acquired from the operation or sale of machinery or equipment acquired from a source other than the state shall be deposited in a trust fund account of the conservation district and used for purposes considered by the directors to be in the best interest of the conservation district.
- (f) A conservation district shall use proceeds from the sale of any fertilizer, seed, seedlings, fish for stocking farm ponds, or other supplies or conservation materials to reimburse the conservation district for the costs of the materials and administration of the program and may fix the sale prices accordingly.

Acts 1981, 67<sup>th</sup> Leg., p. 1474, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1935, 68<sup>th</sup> Leg., p. 575, ch. 118, Sec. 1, eff. May 17, 1983.

#### **§201.106. Construction and Maintenance of Structures**

A conservation district may construct, improve, and maintain any structure necessary or convenient for the performance of an operation authorized by this chapter.

Acts 1981, 67<sup>th</sup> Leg., p. 1475, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.107. Conservation Plans and Information**

- (a) A conservation district may develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the conservation district. In as much detail as possible, the plans shall specify the acts, procedures, performances, and avoidance's that are necessary or desirable for the effectuation of the plans, including the specification of engineering operations, methods of cultivation, growing of vegetation, cropping programs, tillage practices, and changes in the use of land.
- (b) A conservation district may publish the comprehensive plans and bring them to the attention of owners and occupiers of land in the

conservation district and may demonstrate, publish, or otherwise make available to those owners and occupiers any pertinent information relating to legumes, cover crops, seeding, tillage, land preparation, and management of grasses, seed, legumes, and cover crops, and the eradication of noxious growth under good conservation practices.

Acts 1981, 67<sup>th</sup> Leg., p. 1475, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.108. Assumption of Government Projects: Acceptance of Government Grants**

- (a) A conservation district may take over, by purchase, lease, or other method, and administer any soil conservation, erosion control, or erosion prevention project located within its boundaries and undertaken by the federal government, the state, or a state or federal agency.
- (b) A conservation district may act as agent for the federal government, the state, or a state or federal agency in:
  - (1) managing a soil conservation, erosion control, or erosion prevention project within the boundaries of the conservation district; or
  - (2) acquiring, constructing, operating, or administering a soil conservation, erosion control, or erosion prevention project within the boundaries of the conservation district.
- (c) A conservation district may accept a donation, gift, or contribution in money, materials, services, or other form from the federal government, the state, or a state or federal agency and use and expend the donation, gift, or contribution in carrying out its operations.

Acts 1981, 67<sup>th</sup> Leg., p. 1475, ch. 388, Sec. 1, eff. Sept. 1, 1981.

### **SUBCHAPTER F. LAND-USE REGULATION**

#### **§201.121. Regulatory Powers; Petition for Adoption**

- (a) If petitioned by 50 or more eligible voters in the conservation district, the directors of a conservation district may propose an ordinance governing the use of land within the conservation district in the interest of conserving soil and soil resources and preventing and controlling soil erosion.
- (b) An ordinance adopted under this subchapter may:
  - (1) require the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures;
  - (2) require observance of particular methods of cultivation including:
    - (A) contour cultivating, contour furrowing, lister furrowing, or strip cropping;
    - (B) planting, sowing, or seeding land with water-conserving and erosion-

- preventing plants, trees, or grasses; and
- (C) forestations and reforestations;
- (3) specify cropping programs and tillage practices to be observed;
- (4) require the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on; or
- (5) provide other means, measures, operations, or programs that may assist conservation of soil resources or prevent or control soil erosion in the conservation district, having due regard for the legislative determinations made in Section 201.001 of this code.
- (c) Land-use regulations must be uniform throughout the conservation district, except that the directors may classify land in the conservation district according to relevant factors, including soil type, degree of slope, degree of erosion threatened or existing, or cropping or tillage practices in use. The land-use regulations may vary with the type or class of land affected, but must be uniform as to all land within the type or class.

Acts 1981, 67<sup>th</sup> Leg., p. 1476, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.122. Hearing.**

The directors of a conservation district may conduct public hearings and public meetings on proposed land-use regulations as necessary to assist the directors in the adoption of an ordinance.

Acts 1981, 67<sup>th</sup> Leg., p. 1476, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.123. Election**

- (a) The directors may not adopt an ordinance prescribing land-use regulations unless adoption of the ordinance is approved by at least 90 percent of the eligible voters voting in an election under this section. If the voters approve the ordinance by that percentage, the directors shall adopt the ordinance.
- (b) The directors shall give notice of the election that either recites the contents of the proposed ordinance or states where copies of the proposed ordinance may be examined. The directors shall make copies of the proposed ordinance available for public inspection during the period between publication of notice and the election.
- (c) The ballot for the election shall be printed to provide for voting for or against the proposition: "Approval of the proposed Ordinance No. \_\_\_\_\_, prescribing land-use regulations for conservation of soil and prevention of erosion."
- (d) The directors shall adopt rules governing the conduct of the election, supervise the election, and announce the result.

Acts 1981, 67<sup>th</sup> Leg., p. 1476, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.124. Effect of Ordinance**

An ordinance adopted under this subchapter has the force and effect of law in the conservation district and is binding on all owners or occupiers of land in the conservation district.

Acts 1981, 67<sup>th</sup> Leg., p. 1477, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.125. Distribution of Copies of Ordinance**

The directors shall print copies of each ordinance prescribing land-use regulations and make those copies available to owners and occupiers of land in the conservation district.

Acts 1981, 67<sup>th</sup> Leg., p. 1477, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.126. Amendment or Repeal of Ordinance**

- (a) An owner or occupier of land in a conservation district may at any time file a petition with the directors requesting the amendment, supplementation, or repeal of land-use regulations prescribed by ordinance.
- (b) Land-use regulations prescribed by ordinance may be amended, supplemented, or repealed in accordance with the procedure prescribed by this subchapter for adoption of an ordinance, except that an ordinance may be suspended or repealed on majority vote of the eligible voters voting in the election.

Acts 1981, 67<sup>th</sup> Leg., p. 1477, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.127. Frequency of Elections**

An election on the adoption, amendment, supplementation, or repeal of land-use regulations may not be held more often than once every six months.

Acts 1981, 67<sup>th</sup> Leg., p. 1477, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.128. Enforcement**

- (a) The directors are entitled to go upon any land in the conservation district to determine if land-use regulations adopted this subchapter are being observed.
- (b) If the directors find that provisions of land-use regulations prescribed by ordinance are not being observed on particular land and that the nonobservance tends to increase erosion on that land and is interfering with the prevention or control of erosion on other land in the conservation district, the directors may bring suit in a court of competent jurisdiction against the occupier of the land. If the occupier of the land is not the owner, the owner shall be joined as a party defendant. The petition to the court may request that the court:
  - (1) require the defendant to perform the work, operations, or avoidances within a reasonable time;
  - (2) order that if the defendant fails to perform, the directors may go upon the land and perform the work or other operations or otherwise bring the condition of the land into conformity with the land-use regulations; and

- (3) order that the directors recover their costs and expenses, with interest, from the defendant.
- (c) The petition to the court must be verified and must:
  - (1) set forth the adoption of the ordinance prescribing the land-use regulations;
  - (2) set forth the failure of the defendant to observe the regulations and to perform the particular work, operations, or avoidances required by the regulations; and
  - (3) state that the nonobservance tends to increase erosion on that land and is interfering with the prevention or control of erosion on other land in the conservation district.
- (d) On presentation of the petition, the court shall cause process to be issued against the defendant and shall hear the case. If it appears to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as the court directs and to report the evidence to the court with findings of fact and conclusions of law. The findings and conclusions of a referee constitute part of the proceedings on which the court may make its determination. The court may dismiss the petition or may:
  - (1) require the defendant to perform the work, operations, or avoidances;
  - (2) order that, on the failure of the defendant to initiate performance within a time specified in the order of the court and to perform to completion with reasonable diligence, the directors may enter on the land involved and perform the work or operation or otherwise bring the condition of the land into conformity with the regulations; and
  - (3) order that the directors recover their costs and expenses, with interest.
- (e) The court shall retain jurisdiction of the case until after the work has been completed. If the work is performed by the directors under the order of the court, the directors, after completion of the work, may file a petition with the court stating the costs and expenses sustained by them in the performance of the work and seeding judgment for those costs and amount of the costs and expenses, with interest, and for the costs of suit, including a reasonable attorney's fee fixed by the court, but the total charge to a defendant for work done by the directors or anyone under the directors may not exceed in any one year an amount equal to 10 percent of the assessed valuation of the land for state and county purposes.
- (f) A judgment under Subsection (e) of this section shall be collected in the same manner provided by Chapter 202 of this code for the collection of assessments in wind erosion conservation districts.

Acts 1981, 67<sup>th</sup> Leg., p. 1477, ch. 388, Sec. 1, eff. Sept. 1, 1981.

### **§201.129. Board of Adjustment**

- (a) If the directors of a conservation district adopt an ordinance prescribing land-use regulations, the directors by ordinance shall provide for the establishment of a board of adjustment organized in accordance with this section.
- (b) A board of adjustment is composed of three members appointed by the state board with the advice and approval of the directors of the conservation district for which they are appointed.
- (c) Except as provided for the initial board, members of a board of adjustment serve for staggered terms of two years with the terms of one or two members expiring every other year. In making initial appointments to a board of adjustment, the state board shall designate one or two members to serve a term of one year with the remaining member or members serving for a term of two years.
- (d) Following notice and a hearing, a member of a board of adjustment may be removed, but only for neglect of duty or malfeasance in office. The state board and the directors of the conservation district for which the board is appointed shall conduct removal hearings jointly.
- (e) A vacancy on a board of adjustment is filled for the unexpired term in the manner provided for the original appointment.
- (f) A member of the state board or a director of the conservation district for which a board of adjustment is appointed is ineligible for appointment to the board of adjustment for that conservation district during the member's or director's tenure in office.
- (g) Members of a board of adjustment are entitled to compensation for services of \$3 a day for time spent on work of the board. The state board shall pay that compensation from appropriations made for that purpose for not more than 10 days each year.
- (h) The directors of the conservation district for which the board of adjustment is appointed shall pay the necessary administrative and other expenses of operation incurred by the board on presentation of a certificate of the chairman of the board of adjustment.

Acts 1981, 67<sup>th</sup> Leg., p. 1478, ch. 388, Sec. 1, eff. Sept. 1, 1981.

### **§201.130. Procedures of Board of Adjustment**

- (a) A board of adjustment shall adopt rules to govern its proceedings that are consistent with this chapter and the land-use regulations adopted for the conservation district.
- (b) A board of adjustment shall designate a chairman from among its members and may change that designation from time to time.
- (c) A board of adjustment shall meet at the call of the chairman and at other times determined by the board.
- (d) The chairman of the board of adjustment, or the chairman's designee as acting chairman

from among the board's members, may administer oaths and compel the attendance of witnesses.

- (e) All meetings of a board of adjustment are open to the public.
- (f) A board of adjustment shall keep a full and accurate record of all proceedings, or all documents filed with the board, and of all orders entered. The record is public information and shall be filed in the office of the board of adjustment.

Acts 1981, 67<sup>th</sup> Leg., p. 1479, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.131. Petition for Variance**

- (a) An owner or occupier of land within a conservation district may petition the board of adjustment of that conservation district to authorize a variance from the terms of land-use regulations in the application of those regulations to land owned or occupied by the petitioner.
- (b) A petition for a variance must allege that there are great practical difficulties or unnecessary hardships in the manner in which the land-use regulations require the petitioner to carry out the strict letter of those regulations.
- (c) A petitioner for a variance shall serve copies of the petition on the chairman of the directors of the conservation district in which the petitioner's land is located and on the chairman of the state board.

Acts 1981, 67<sup>th</sup> Leg., p. 1479, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.132. Hearing on Variance Petition**

- (a) After receiving a petition for a variance, a board of adjustment shall schedule a hearing on the petition and give notice of that hearing.
- (b) The directors of the conservation district and the members of the state board are entitled to appear and be heard at a hearing on a petition for a variance.
- (c) Any owner or occupier of land within the conservation district who objects to the granting of the variance sought may intervene and become a party to the proceedings.
- (d) A party to a hearing on a petition for a variance may appear in person or by agent or attorney.

Acts 1981, 67<sup>th</sup> Leg., p. 1479, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.133. Granting of Variance.**

- (a) If, on the basis of the facts presented at a hearing on a petition for a variance, the board of adjustment determines that there are great practical difficulties or unnecessary hardships in the manner of applying the strict letter of any land-use regulation on the land of the petitioner, the board shall record that determination and make and record findings of fact as to the specific conditions that establish the difficulties or hardships.
- (b) On the basis of the board's determination and findings under Subsection (a) of this section, the board of adjustment by order may autho-

alize a variance from the land-use regulations that will:

- (1) relieve the great practical difficulties or unnecessary hardships;
- (2) not be contrary to the public interest;
- (3) observe the spirit of the land-use regulations;
- (4) secure the public health, safety, and welfare; and
- (5) do substantial justice.

Acts 1981, 67<sup>th</sup> Leg., p. 1480, ch. 388, Sec. 1, eff. Sept. 1, 1981.

### **SUBCHAPTER G. POWERS AND DUTIES OF OTHER GOVERNMENTAL SUBDIVISIONS**

#### **§201.151. Use of County Machinery and Equipment**

- (a) A county may employ or permit to be employed in soil conservation and the prevention of soil waste through erosion, and county machinery, including road machinery or county road equipment. Before employing the machinery or equipment or permitting it to be employed, the commissioners court must determine that the machinery or equipment is not demanded for building or maintaining the roads of the county and must enter that determination in the minutes of the court. The commissioners court shall provide for compensation to be paid for employment of the machinery or equipment and for that compensation to be paid into the county road fund or the road fund of a defined conservation district or authorized subdivision in the county.
- (b) In the public service of conserving the soil fertility of the land of the county, the commissioners court may cooperate with the landowners and taxpayers of the county in all judicious efforts for the preservation of the productivity of the soil from avoidable waste and loss of productivity of agricultural crops necessary to the public welfare. In doing that, the county may permit the use of available machinery or equipment for those purposes by written contract, under which the county is to receive compensation from the landowner or taxpayer.
- (c) The compensation under a contract under Subsection (b) of this section must be paid on a uniform basis considered equitable and proper by the commissioners court. The compensation shall be paid into the road and bridge fund of the county. The commissioners court may provide for the payments from landowners or taxpayers to be paid in equitable amounts and intervals when county taxes are collected.
- (d) The commissioners court or a representative of the commissioners court may not go on the land of any landowner to improve, terrace, protect, or ditch the land until requested to do so in writing by the owner of the land. The commissioners court may not be required to do that work unless the court determines that the

work is of public benefit and elects to do the work.

- (e) In any county with a population of not less than 22,000 or more than 23,000, not less than 60,000 nor more than 80,000, or not less than 290,000 nor more than 360,000, the commissioners court by order entered in its minutes may rent or let directly to a landowner in the county any machinery or equipment, including a tractor or a grader, for use on land situated in the county in the construction of terraces, dikes, ditches for the purpose of soil conservation or soil erosion prevention or for the purpose of constructing water tanks and reservoirs. The landowner and the commissioners court shall agree on the amount to be paid by the landowner to the county for the use of the machinery or equipment and that amount shall be specified in the order renting or letting the machinery or equipment.

Acts 1981, 67<sup>th</sup> Leg., p. 1480, ch. 388, Sec. 1, eff. Sept. 1, 1981.

#### **§201.152. Contracts for Flood Control and Drainage**

- (a) A county, city, water control and improvement district, drainage district, or other political subdivision may contract with a conservation district for the joint acquisition of rights-of-way or for joint construction or maintenance of dams, flood retention structures, canals, drains, levees, or other improvements for flood control and drainage related to flood control or for making the necessary outlets and maintaining them. The contracts and agreements may contain terms, provisions, and details that the governing bodies of the respective political subdivisions determine to be necessary under the facts and circumstances.
- (b) A county, city, water control and improvement district, drainage district, or other political subdivision may contribute funds to a conservation district for the construction or maintenance of canals, dams, flood retention structures, drains, levees, and other improvements for flood control and drainage related to flood control or for making the necessary outlets and maintaining them. The political subdivisions may contribute the funds regardless of whether title to the property is vested in the State of Texas or a conservation district if the work to be accomplished is for the mutual benefit for the donor and the agency or political subdivision having title to the property on which the improvements are located.
- (c) A county, city, water control and improvement district, drainage district, or other political subdivision may contribute funds to a conservation district for a specific purpose authorized by this chapter or for use in the exercise of any chapter that will benefit the contributing district or political subdivision. All or part of any funds contributed by a county, city, water control and improvement district, drainage district,

or other political subdivision to a conservation district may be used by the conservation district to match funds received from the state.

- (d) For the purposes of this section, a county may expend permanent improvement funds or flood control funds levied in accordance with Article VIII, Section 1-a, of the Texas Constitution and Chapter 464, Acts of the 51<sup>st</sup> Legislature, Regular Session, 1949 (Article 7048a, Vernon's Texas Civil Statutes). A political subdivision other than a county may expend the appropriate funds for the subdivision for the purposes of this section.

Acts 1981, 67<sup>th</sup> Leg., p. 1480, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74<sup>th</sup> Leg., ch. 198, Sec. 1, eff. Sept. 1, 1995.

### **SUBCHAPTER H. TECHNICAL ASSISTANCE PROGRAM FOR SOIL AND WATER CONSERVATION LAND IMPROVEMENT MEASURES §201.201. Creation of Program**

A technical assistance program for soil and water conservation land improvement measures is created and shall be administered by the State Soil and Water Conservation Board.

Acts 1985, 69<sup>th</sup> Leg., ch. 133, Sec. 3.02.

#### **§201.202. Use of Funds**

- (a) The State Soil and Water Conservation Board shall use money from the agricultural soil and water conservation fund for providing technical assistance to landowners and operators for soil and water conservation land improvement measures and soil and water conservation plans developed jointly by landowners and operators and local soil and water conservation districts.
- (b) The board shall designate priorities among the various land improvement measures, including:
  - (1) brush control;
  - (2) forest improvement measures;
  - (3) returning erosive cropland to pasture and other practices that maximize water conservation;
  - (4) increasing water use efficiency;
  - (5) increasing water quality;
  - (6) reducing erosion; and
  - (7) maximizing public benefits.

Added by Acts 1985, 69<sup>th</sup> Leg., ch. 133, Sec. 3.02.

#### **§201.203. Designation of Local Districts**

- (a) The State Soil and Water Conservation Board shall designate particular soil and water conservation districts to administer certain programs.
- (b) Before a local soil and water conservation district is designated by the State Soil and Water Conservation Board, the district must provide evidence to the State Soil and Water Conservation Board that it is able to provide and to supervise necessary technical assistance to landowners and operators within its jurisdiction.

Added by Acts 1985, 69<sup>th</sup> Leg., ch. 133, Sec. 3.02.

#### **§201.204. Rules**

The State Soil and Water Conservation Board may adopt necessary rules to carry out this subchapter. Added by Acts 1985, 69<sup>th</sup> Leg., ch. 133, Sec. 3.02.

### **SUBCHAPTER I. COST-SHARE ASSISTANCE PROGRAM FOR SOIL AND WATER**

#### **CONSERVATION LAND IMPROVEMENT MEASURES**

##### **§201.301. Creation of Program**

The state board shall administer a cost-share assistance program for soil and water conservation land improvement measures.

Added by Acts 1993, 73<sup>rd</sup> Leg., ch. 54, Sec. 2, eff. April 29, 1993.

##### **§201.302. Use of Funds**

- (a) The state board may provide cost-share assistance to landowners or operators for the installation of soil and water conservation land improvement measures consistent with the purpose of controlling erosion, conserving water, or protecting water quality.
- (b) The state board may employ and contract with and provide for the compensation of personnel and may take any other action necessary to implement this subchapter.
- (c) The state board may reimburse a conservation district for the reasonable costs the district incurs in administering this subchapter.

Added by Acts 1993, 73<sup>rd</sup> Leg., ch. 54, Sec. 2, eff. April 29, 1993.

##### **§201.303. Allocation of Funds**

- (a) The state board may allocate funds under this subchapter among particular soil and water conservation land improvement measures or among areas of the state for each of the purposes provided by Section 201.302 of this code.
- (b) The state board may allocate funds among conservation districts to pay the state's share of the costs of installing eligible soil and water conservation land improvement measures on agricultural lands within the districts any may adjust allocations as needs change in order to achieve the most efficient use of funds.
- (c) A conservation district may submit a request for an allocation of cost-share assistance funds to the state board. A request must be submitted in the manner provided by the state board.
- (d) The state board shall set priorities for allocation of cost share assistance funds consistent with the purposes provided by Section 201.302 of this code. The state board may consider local priorities and needs in establishing priorities. The state board shall:
  - (1) give greater weight among the priorities set under this subsection to allocation of funds to owners of land in the priority areas identified under Section 201.026(g); and
  - (2) keep records of financial incentive disbursements to owners of land in the prior-

ity areas identified under Section 201.026 (f).

Added by Acts 1993, 73<sup>rd</sup> Leg., ch. 54, Sec. 2, eff. April 29, 1993. Amended by Acts 2001, 77<sup>th</sup> Leg., ch. 109, Sec. 14, eff. Sept. 1, 2001.

##### **§201.304. Eligibility for Cost-Share Assistance**

As a condition for assistance under this subchapter, the state board may require that a person:

- (1) own or operate agricultural land within the boundaries of the conservation district providing cost-share assistance;
- (2) have a conservation plan approved by the conservation district covering the land for which a soil and water conservation land improvement measures is proposed; and
- (3) include in the conservation plan practices for which cost-share assistance is proposed.

Added by Acts 1993, 73<sup>rd</sup> Leg., ch. 54, Sec. 2, eff. April 29, 1993.

##### **§201.305. Eligible Soil and Water Conservation Land Improvement Measures**

- (a) Soil and water conservation land improvement measures eligible for cost-share assistance shall be determined by the state board and must be consistent with the purposes provided by Section 201.302 of this code. The state board may consider local priorities and needs in determining eligible measures.
- (b) Each conservation district receiving an allocation of cost-share assistance funds shall designate the soil and water conservation land improvement measures that are eligible for cost-share assistance within its boundaries, subject to approval by the state board.

Added by Acts 1993, 73<sup>rd</sup> Leg., ch. 54, Sec. 2, eff. April 29, 1993.

##### **§201.306. Application for Cost-Share Assistance**

An application for cost-share assistance may be made on forms provided by the state board or by other means approved by the state board.

Added by Acts 1993, 73<sup>rd</sup> Leg., Ch. 54, Sec. 2, eff. April 29, 1993.

##### **§201.307. Approval of Application**

- (a) A conservation district may approve an application for cost-share assistance if the soil and water conservation land improvement measure is consistent with the purposes provided by Section 201.302 of this code and the priorities established by the state board under Section 201.303 of this code.
- (b) A conservation district may not approve applications for cost-share assistance funds in excess of the funds allocated to the conservation district by the state board.

Added by Acts 1993, 73<sup>rd</sup> Leg., Ch. 54, Sec. 2, eff. April 29, 1993.

##### **§201.308. Cost-Share Rates**

- (a) The state board shall establish the cost-share rates for all eligible soil and water conservation land improvement measures.
- (b) The state board may not bear more than 75 percent of the cost of a soil and water conservation land improvement measure.

- (c) A person may not receive cost-share assistance for a soil and water conservation land improvement measure if the person is simultaneously receiving cost-share assistance for the measure from another source.
- (d) The state board may grant an exception to Subsection (b) of this section if the state board finds the higher share is necessary to obtain adequate implementation of a certain soil and water conservation land improvement measure.
- (e) The state board may grant an exception to Subsection (c) of this section if the state board finds that participation with another cost-share assistance program will
  - (1) enhance the efficiency and effectiveness of a soil and water conservation land improvement measure; and
  - (2) lessen the state's financial commitment to the soil and water conservation land improvement measure.

Added by Acts 1993, 73<sup>rd</sup> Leg., Ch. 54, Sec. 2, eff. April 29, 1993.

#### **§201.309. Standards and Specifications**

The state board shall establish standards and specifications for soil and water conservation land improvement measures eligible for cost-share assistance.

Added by Acts 1993, 73<sup>rd</sup> Leg., Ch. 54, Sec. 2, eff. April 29, 1993.

#### **§201.310. Cost-Share Payments**

- (a) The state board shall make each cost-share assistance payment directly to an eligible person.
- (b) Before making a payment to an eligible person for a soil and water conservation land improvement measure, the state board may require certification by the conservation district in which the measure has been installed to determine if the measure has been completely installed and satisfies the standards and specifications established by the state board.

Added by Acts 1993, 73<sup>rd</sup> Leg., Ch. 54, Sec. 2, eff. April 29, 1993.

#### **§201.311. Designation of Local Districts.**

The state board may designate one or more conservation districts to administer this subchapter locally.

Added by Acts 1993, 73<sup>rd</sup> Leg., Ch. 54, Sec. 2, eff. April 29, 1993.