

WEATHER MODIFICATION and CONTROL
Agriculture Code, Title 9, Weather and Climate
Chapters 301 and 302
Administered by the Texas Department of Licensing and Regulation
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TABLE OF CONTENTS

CHAPTER 301. WEATHER MOFICATION AND CONTROL	1
SUBCHAPTER A. GENERAL PROVISIONS	1
SECTION 301.001. DEFINITIONS.....	1
SECTION 301.002. APPLICABILITY OF OTHER LAW.....	1
SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT.....	1
SECTION 301.051. RULES.	1
SECTION 301.052. STUDIES; INVESTIGATIONS; HEARINGS.....	1
SECTION 301.053. ADVISORY COMMITTEES.	2
SECTION 301.054. PERSONNEL.	2
SECTION 301.055. MATERIALS AND EQUIPMENT.	2
SECTION 301.056. INTERSTATE COMPACTS.	2
SECTION 301.057. CONTRACTS AND COOPERATIVE AGREEMENTS.	2
SECTION 301.058. PROMOTION OF RESEARCH AND DEVELOPMENT.....	2
SECTION 301.059. GRANTS AND GIFTS.....	3
SECTION 301.060. DISPOSITION OF LICENSE AND PERMIT FEES.....	3
SUBCHAPTER C. LICENSES AND PERMITS	3
SECTION 301.101. LICENSE AND PERMIT REQUIRED.....	3
SECTION 301.102. EXEMPTIONS.	3
SECTION 301.103. ISSUANCE OF LICENSE.	3
SECTION 301.105. EXPIRATION DATE.....	4
SECTION 301.106. RENEWAL LICENSE.....	4
SECTION 301.107. ISSUANCE OF PERMIT.....	4
SECTION 301.109. SCOPE OF PERMIT.	4
SECTION 301.110. APPLICATION AND NOTICE OF INTENTION.	4
SECTION 301.111. CONTENT OF NOTICE.	4
SECTION 301.112. PUBLICATION OF NOTICE.....	5
SECTION 301.113. PROOF OF PUBLICATION; AFFIDAVIT.	5
SECTION 301.114. PROOF OF FINANCIAL RESPONSIBILITY.....	5
SECTION 301.115. MODIFICATION OF PERMIT.	5
SECTION 301.116. SCOPE OF ACTIVITY.....	5
SECTION 301.117. RECORDS AND REPORTS.	5
SUBCHAPTER D. ELECTION FOR APPROVAL OF PERMIT THAT INCLUDES AUTHORIZATION FOR HAIL SUPPRESSION	6
SECTION 301.151. DEFINITIONS.....	6
SECTION 301.152. OPERATIONAL AREA.	6
SECTION 301.153. DATE OF PERMIT ISSUANCE; PERMIT AREA.	6
SECTION 301.154. ELIGIBLE VOTERS.....	6
SECTION 301.155. APPLICATION FOR PETITION SEEKING ELECTION.....	7
SECTION 301.156. ELECTION ON PETITION.	7
SECTION 301.157. PETITION REQUIREMENTS.....	7
SECTION 301.158. CERTIFICATION OF PETITION.	8
SECTION 301.159. DEPOSIT REQUIRED.	8
SECTION 301.160. FORM OF BALLOT.	8
SECTION 301.161. ELECTION ORDER.	8
SECTION 301.162. RESULTS OF ELECTION.	9
SECTION 301.163. ISSUANCE OR DENIAL OF PERMIT FOLLOWING ELECTION.....	9

SECTION 301.164. PERMIT FOR HAIL SUPPRESSION PROHIBITED OUTSIDE TARGET AREA OR IN AREA EXCLUDED BY ELECTION..	9
SECTION 301.165. MONITOR OF PROGRAM.....	9
SECTION 301.166. PETITION IN ADJACENT COUNTY.....	9
SECTION 301.167. INCLUSION OF CERTAIN COUNTIES AND PARTS OF COUNTIES.....	10
SUBCHAPTER E. SANCTIONS.....	10
SECTION 301.201. PENALTIES.....	10
SECTION 301.202. ACT OF GOD.....	10
SECTION 301.203. DEFENSE EXCLUDED.....	10
SUBCHAPTER F. REVOCATION AND SUSPENSION OF PERMIT.....	10
SECTION 301.251. DEFINITION.....	10
SECTION 301.252. GROUNDS FOR REVOCATION OR SUSPENSION OF PERMIT.....	10
SECTION 301.253. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE.....	11
SECTION 301.254. PROCEDURES FOR NOTICE AND HEARINGS.....	11
SECTION 301.255. HEARINGS.....	12
SECTION 301.256. REVOCATION OR SUSPENSION BY CONSENT.....	12
SECTION 301.257. OTHER RELIEF.....	12
SUBCHAPTER G. IMMUNITY; CERTAIN LEGAL RELATIONSHIPS.....	12
SECTION 301.301. IMMUNITY OF STATE.....	12
SECTION 301.302. PRIVATE LEGAL RELATIONSHIPS.....	12
CHAPTER 302. WEATHER MODIFICATION AND CONTROL GRANT PROGRAM.....	12
SECTION 302.001. FINDINGS.....	12
SECTION 302.002. DEFINITION.....	12
SECTION 302.003. WEATHER MODIFICATION AND CONTROL GRANT PROGRAM.....	13
SECTION 302.004. RULES.....	13
SECTION 302.005. CONTRACTS.....	13
SECTION 302.006. FUNDING.....	13

CHAPTER 301. WEATHER MODIFICATION AND CONTROL
SUBCHAPTER A. GENERAL PROVISIONS

Section 301.001. Definitions.

In this chapter:

- (1) "Commission" has the meaning assigned by Section 51.001, Occupations Code.
- (2) "Department" has the meaning assigned by Section 51.001, Occupations Code.
- (2-a) "Executive Director" means the executive director of the department.
- (3) "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval not exceeding four years.
- (4) "Research and development" means theoretical analysis, exploration, experimentation, and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.
- (5) "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods the natural development of atmospheric cloud forms or precipitation forms that occur in the troposphere.
- (6) "Weather modification and control program" means the research, development, licensing, and permitting and other associated activities to be administered by the Texas Department of Licensing and Regulation.

Section 301.002. Applicability of Other Law.

Sections 51.404 and 51.405, Occupations Code do not apply to this chapter.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

Section 301.051. Rules.

The commission may adopt rules necessary to:

- (1) exercise the powers and perform the duties under this chapter;
- (2) establish procedures and conditions for the issuance of licenses and permits under this chapter; and
- (3) establish standards and instructions to govern the carrying out of research or projects in weather modification and control that the commission considers necessary or desirable to minimize danger to health or property.

Section 301.052. Studies; Investigations; Hearings.

The department may make any studies or investigations, obtain any information, and hold any hearings necessary or

proper to administer or enforce this chapter or any rules or orders issued under this chapter.

Section 301.053. Advisory Committees.

The commission may establish advisory committees to advise the commission and to make recommendations to the commission concerning legislation, policies, administration, research, and other matters related to the duties, powers, or functions of the department under this chapter. If the commission establishes an advisory committee under this section, the presiding officer of the commission, with the commission's approval, shall appoint a member of the committee to serve as the presiding officer of the committee for a two-year term.

Section 301.054. Personnel.

The executive director may, as provided by the General Appropriations Act, appoint and fix the compensation of any personnel, including specialists and consultants, necessary to perform duties and functions under this chapter.

Section 301.055. Materials and Equipment.

The department may acquire in the manner provided by law any materials, equipment, and facilities necessary to the performance of its duties and functions under this chapter.

Section 301.056. Interstate Compacts.

The commission may represent the state in matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control.

Section 301.057. Contracts and Cooperative Agreements.

- (a) The department may cooperate with public or private agencies to promote the purposes of this chapter.
- (b) The department may enter into cooperative agreements with the United States or any of its agencies, with counties and municipalities of this state, or with any private or public agencies for conducting weather modification or cloud-seeding operations.
- (c) The department may represent the state, counties, municipalities, and public and private agencies in contracting with private concerns for the performance of weather modification or cloud-seeding operations.

Section 301.058. Promotion of Research and Development.

- (a) In order to assist in expanding the theoretical and practical knowledge of weather modification and control, the department shall promote continuous research and development in:
 - (1) the theory and development of methods of weather modification and control, including processes, materials, and devices related to these methods;
 - (2) the use of weather modification and control for agricultural, industrial, commercial, and other purposes; and
 - (3) the protection of life and property during research and operational activities.
- (b) The department with approval of the commission may conduct and may contract for research and development activities relating to the purposes of this section.

Section 301.059. Grants and Gifts.

Subject to any limitations imposed by law, the department may accept federal grants, private gifts, and donations from any other source. Unless the use of the money is restricted or subject to any limitations provided by law, the department may spend the money for the administration of this chapter.

Section 301.060. Disposition of License and Permit Fees.

The department shall deposit all license and permit fees in the state treasury.

SUBCHAPTER C. LICENSES AND PERMITS

Section 301.101. License and Permit Required.

Except as provided by rule of the commission under Section 301.102, a person may not engage in activities for weather modification and control:

- (1) without a weather modification license and weather modification permit issued by the department; or
- (2) in violation of any term or condition of the license or permit.

Section 301.102. Exemptions.

- (a) The commission by rule, to the extent it considers exemptions practical, shall provide for exempting the following activities from the license and permit requirements of this chapter:
 - (1) research, development, and experiments conducted by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations;
 - (2) laboratory research and experiments;
 - (3) activities of an emergent nature for protection against fire, frost, sleet, or fog; and
 - (4) activities normally conducted for purposes other than inducing, increasing, decreasing, or preventing precipitation or hail.
- (b) The commission by rule may modify or revoke an exemption.

Section 301.103. Issuance of License.

- (a) The department, in accordance with the rules adopted under this chapter, shall issue a weather modification license to each applicant who:
 - (1) pays the license fee; and
 - (2) demonstrates, to the satisfaction of the department, competence in the field of meteorology that is reasonably necessary to engage in weather modification and control activities.
- (b) If the applicant is an organization, the competence must be demonstrated by the individual or individuals who are to be in control and in charge of the operation for the applicant.

Section 301.105. Expiration Date.

Each original or renewal license expires at the end of the state fiscal year for which it was issued.

Section 301.106. Renewal License.

At the expiration of the license period, the department shall issue a renewal license to each applicant who pays the license fee and who has the qualifications necessary for issuance of an original license.

Section 301.107. Issuance of Permit.

- (a) The department, in accordance with the rules adopted under this chapter and on a finding that the weather modification and control operation as proposed in the permit application will not significantly dissipate the clouds and prevent their natural course of developing rain in the area in which the operation is to be conducted to the material detriment of persons or property in that area, and after approval at an election if governed by Subchapter D, may issue a weather modification permit to each applicant who:
- (1) holds a valid weather modification license;
 - (2) pays the permit fee;
 - (3) publishes a notice of intention and submits proof of publication as required by this chapter; and
 - (4) furnishes proof of financial responsibility.
- (b) The department shall, if requested by at least 25 persons, hold at least one public hearing in the area where the operation is to be conducted prior to the issuance of a permit.

Section 301.109. Scope of Permit.

A separate permit is required for each operation. If an operation is to be conducted under contract, a permit is required for each separate contract. The department may not issue a permit for a contracted operation unless it covers a continuous period not to exceed four years.

Section 301.110. Application and Notice of Intention.

Before undertaking any operation, a license holder must file an application for a permit and have a notice of intention published as required by this chapter.

Section 301.111. Content of Notice.

In the notice of intention, the applicant must include:

- (1) the name and address of the license holder;
- (2) the nature and object of the intended operation and the person or organization on whose behalf it is to be conducted;
- (3) the area in which and the approximate time during which the operation is to be conducted;
- (4) the area that is intended to be affected by the operation; and

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

Section 301.112. Publication of Notice.

The notice of intention required under Section 301.110 must be published at least once a week for three consecutive weeks in a newspaper of general circulation in each county in which the operation is to be conducted.

Section 301.113. Proof of Publication; Affidavit.

The applicant shall file proof of the publication, together with the publishers' affidavits, with the department during the 15-day period immediately after the date of the last publication.

Section 301.114. Proof of Financial Responsibility.

Proof of financial responsibility is made by showing to the satisfaction of the department that the license holder has the ability to respond in damages for liability that might reasonably result from the operation for which the permit is sought.

Section 301.115. Modification of Permit.

The department may modify the terms and conditions of a permit if:

- (1) the license holder is first given notice and a reasonable opportunity for a hearing on the need for a modification; and
- (2) it appears to the department that a modification is necessary to protect the health or property of any person.

Section 301.116. Scope of Activity.

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

Section 301.117. Records and Reports.

- (a) A license holder shall keep a record of each operation conducted under a permit, showing:
 - (1) the method employed;
 - (2) the type of equipment used;
 - (3) the kind and amount of each material used;
 - (4) the times and places the equipment is operated;
 - (5) the name and mailing address of each individual, other than the license holder, who participates or assists in the operation; and
 - (6) other information required by the department.
- (b) The department shall require written reports covering each operation, whether the operation is exempt or

conducted under a permit. A license holder shall submit a written report at the time and in the manner required by the department.

- (c) All information on an operation shall be submitted to the department before it is released to the public.
- (d) The reports and records in the custody of the department shall be kept open for public inspection.

SUBCHAPTER D. ELECTION FOR APPROVAL OF PERMIT THAT INCLUDES AUTHORIZATION FOR HAIL SUPPRESSION

Section 301.151. Definitions.

- (a) In this subchapter:
 - (1) “Operational area” means that area that joins the target area and is reasonably necessary to use in order to effectuate the purposes over the target area without affecting the land or land owners in the operational area.
 - (2) “Target area” means that area described by metes and bounds or other specific bounded description set out in the application for a permit.
- (b) The commission by rule shall define hail suppression as used in this subchapter, using the most current scientifically accepted technological concepts.

Section 301.152. Operational Area.

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

Section 301.153. Date of Permit Issuance; Permit Area.

A permit may not be issued by the department before the end of the 30-day period immediately following the first publication of notice and then only in:

- (1) those counties or parts of counties in the target area or operational area in which the majority of the qualified voters voting have approved or have not disapproved the issuance of a permit if an election has been held; or
- (2) any county or part of a county in the target area or operational area if no petition for an election has been filed.

Section 301.154. Eligible Voters.

- (a) Persons eligible to vote in elections held under this subchapter shall include qualified voters in counties or parts of counties included in the target area or operational area.

- (b) If the target area or operational area for a permit including authorization for hail suppression includes only part of a county, an election held under this subchapter may be held only in the election precincts that are included entirely within or are partially included in those areas, and only those qualified voters residing in an election precinct or precincts of the county included in the target area of operational area are eligible to sign a petition and to vote at an election under this subchapter. In computing the vote, only a majority of qualified voters residing in those areas and voting in the election is necessary to carry the proposition in that county.

Section 301.155. Application for Petition Seeking Election.

- (a) On written request of at least 25 qualified voters residing in the target area or operational area mentioned in the notice requesting an election accompanied by unsigned petitions, the county clerk of each county within the target area or operational area shall certify and mark for identification petitions for circulation.
- (b) An application for a petition seeking an election to disapprove the issuance of a permit must:
 - (1) be headed "Application for Election to Disapprove a Weather Modification Permit"; and
 - (2) contain the following statement just ahead of the signatures of the applicants: "It is the hope, purpose, and intent of the applicants whose signatures appear on this application to see disapproved the issuance of a permit for weather modification, including hail suppression."
- (c) An application for a petition seeking an election to approve the issuance of a permit must:
 - (1) be headed "Application for Election to Approve a Weather Modification Permit"; and
 - (2) contain the following statement just ahead of the signatures of the applicants: "It is the hope, purpose, and intent of the applicants whose signatures appear on this application to see approved the issuance of a permit for weather modification, including hail suppression."

Section 301.156. Election on Petition.

- (a) On the return to the county clerks of petitions signed by at least 10 percent of the qualified voters residing in each county within the target area or operational area in the notice requesting an election, the commissioners court of each county shall call and hold an election. Notice under Chapter 111, Local Government Code, of the commissioners court meeting to call and hold the election is not required. The date of the election shall be determined by the commissioners court in accordance with this subchapter, notwithstanding Sections 41.004 and 41.0041, Election Code.
- (b) A petition under this subchapter must be filed with the clerk of each county within 30 days immediately following the date of the first publication of notice.
- (c) An election under this subchapter must be held within 45 days after the date the petition is received to determine whether or not the qualified voters in the target area or operational area approve the issuance of the permit.
- (d) Immediately on calling the election, the clerk of each county within the target area or operational area shall notify the executive director of the date of the election.
- (e) Except as otherwise provided by this chapter, elections must be held in accordance with the Election Code.

Section 301.157. Petition Requirements.

- (a) The petition for an election under this subchapter must read substantially as follows: "The following qualified

voters of _____ County request the Commissioners Court of _____ County to call an election at which the qualified voters shall be asked to vote on the proposition of whether or not they approve of the issuance of a weather modification permit that includes authorization for hail suppression (description of area)."

- (b) Each qualified voter signing the petition must give the voter's full name and address and voter registration number.

Section 301.158. Certification of Petition.

- (a) Within five days after the date of receiving a petition under this subchapter, the commissioners court shall have the county clerk of the county check the names on the petition against the voter registration lists of the county and certify to the commissioners court the number of qualified voters signing the petition as reflected by checking the county's voter registration lists. If only a part of a county is included in the target area or operational area, the county clerk shall also certify that those signing the petition reside in an election precinct in the county totally or partially included in the target area or operational area.
- (b) On certification by the county clerk, the petition must be filed with the official records of the county and be made available for public inspection.

Section 301.159. Deposit Required.

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

Section 301.160. Form of Ballot.

The ballots for an election under this subchapter must be printed to provide for voting for or against the proposition: "The issuance of a permit providing for weather modification, including authorization for hail suppression and control in (description of area)."

Section 301.161. Election Order.

- (a) The order calling the election shall provide for:
 - (1) the time and place or places for holding the election;
 - (2) the form of the ballots, and
 - (3) the presiding judge for each voting place.
- (b) The commissioners court shall publish a copy of the election order in a newspaper of general circulation in the county or in the part of the county within the target area or operational area at least 30 days preceding the day of the election.

Section 301.162. Results of Election.

- (a) The presiding judge of each voting place shall supervise the counting of all votes cast and shall certify the results to the commissioners court not later than the fifth day after the date of the election.
- (b) A copy of the results must be filed with the county clerk and is a public record.
- (c) Not later than the fifth day after the results are filed, the commissioners court shall declare the results.
- (d) The commissioners court of each county holding an election shall send certified copies of the results of the election to the executive director not later than 24 hours after the results are declared under Subsection (a).

Section 301.163. Issuance or Denial of Permit Following Election.

- (a) If a majority of the qualified voters voting in the election precincts any part of which are located in the target area vote against issuance of the permit, a permit may not be issued.
- (b) If a majority of the qualified voters voting in the election precincts any part of which are located within the target area vote in favor of issuance of the permit, the department may issue the permit as provided in this subchapter, except that if a majority of the qualified voters voting in any of the following areas vote against issuance of the permit, that area is excluded from the coverage of the permit:
 - (1) any election precinct any part of which is located in the operational area; or
 - (2) any election precinct located wholly within the target area and contiguous with its outer boundary.
- (c) If the department finds that a weather modification and control operation is still feasible, a permit may be issued covering areas in which no election is requested or areas in which the voters give their approval as provided by this subchapter.
- (d) If a permit is denied under Subsection (a), an application for a permit covering all or part of the same target area or operational area that was denied may not be considered, and for a period of two years following the date of the election, a permit under that application may not be issued by the department and an election may not be held under this chapter.

Section 301.164. Permit for Hail Suppression Prohibited outside Target Area or in Area Excluded by Election.

- (a) A permit may not be issued that provides for or allows the seeding of clouds for hail suppression outside the target area or within those counties or parts of counties located in any operational or target areas that were excluded from the coverage of the permit by an election under Section 301.163(a) or (b). Seeding may be done in those counties or parts of counties located in the operational or target area that were not excluded from the coverage of the permit by an election under Section 301.163(a) or (b), provided the seeding is reasonably calculated to take effect only within the target area.
- (b) This section does not prohibit the observation of cloud and cloud formations.

Section 301.165. Monitor of Program.

The department may monitor any program under conditions the department determines advisable.

Section 301.166. Petition in Adjacent County.

- (a) On petition as provided in this subchapter, the commissioners court of any county outside but adjacent to a county included in the operational area of an existing or proposed permit shall call and hold an election on the proposition of whether or not the qualified voters of the county approve of the issuance of any permit authorizing hail suppression in the county.
- (b) If the county voters voting in the election disapprove the issuance of permits authorizing hail suppression, the department may not issue a permit covering the county until the proposition has been approved at a subsequent election.

Section 301.167. Inclusion of Certain Counties and Parts of Counties.

- (a) If any county or part of a county has disapproved the issuance of a permit at the previous election held under this subchapter, that county or part of a county may not be included in any permit issued by the department until the voters of that county or part of a county have participated in a subsequent election at which a permit is approved.
- (b) The applicant for a permit that includes that county or part of a county has the burden of petitioning for an election and depositing costs in the manner provided by this subchapter for the original election to approve or disapprove a permit.

SUBCHAPTER E. SANCTIONS

Section 301.201. Penalties.

A person who violates this chapter is subject to Subchapters F and G, Chapter 51, Occupations Code, in the same manner as a person regulated by the department under other law is subject to those subchapters.

Section 301.202. Act of God.

If a person can establish that an event that would otherwise be a violation of this chapter or a rule adopted or order or permit issued under this chapter was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of this chapter or a rule, order, or permit issued under this chapter.

Section 301.203. Defense Excluded.

Unless otherwise provided by this chapter, the fact that a person holds a permit issued by the department does not relieve that person from liability for the violation of this chapter or a rule adopted or order or permit issued under this chapter.

SUBCHAPTER F. REVOCATION AND SUSPENSION OF PERMIT

Section 301.251. Definition.

In this subchapter, "permit holder" includes each member of a partnership or association that is a permit holder and, with respect to a corporation that is a permit holder, each officer and the owner or owners of a majority of the corporate stock, provided that the member or owner controls at least 20 percent of the permit holder.

Section 301.252. Grounds For Revocation or Suspension of Permit.

After notice and hearing, the department may revoke or suspend a permit issued under this chapter on any of the following grounds:

- (1) violating any term or condition of the permit, and revocation or suspension is necessary to maintain the quality of water or the quality of air in the state, or to otherwise protect human health and the environment consistent with the objectives of the law within the jurisdiction of the department;
- (2) having a record of environmental violations in the preceding five years at the permitted site;
- (3) causing a discharge, release, or emission contravening a pollution control standard set by the department or contravening the intent of a law within the jurisdiction of the department;
- (4) misrepresenting or failing to disclose fully all relevant facts in obtaining the permit or misrepresenting to the department any relevant fact at any time;
- (5) being indebted to the state for fees, payment of penalties, or taxes imposed by the law within the department's jurisdiction;
- (6) failing to ensure that the management of the permitted facility conforms or will conform to the law within the jurisdiction of the department;
- (7) abandoning the permit or operations under the permit;
- (8) the finding by the department that a change in conditions requires elimination of the discharge authorized by the permit; or
- (9) failing to continue to possess qualifications necessary for the issuance of the permit.

Section 301.253. Grounds for Revocation or Suspension of License.

- (a) This section applies to a license issued under this chapter or under a rule adopted under this chapter.
- (b) After notice and hearing, the department may suspend or revoke a license, place on probation a person whose license has been suspended, reprimand a license holder, or refuse to renew or reissue a license on any of the following grounds:
 - (1) having a record of environmental violations in the preceding five years at a permit site;
 - (2) committing fraud or deceit in obtaining the license;
 - (3) demonstrating gross negligence, incompetency, or misconduct while acting as license holder;
 - (4) making an intentional misstatement or misrepresentation of fact in information required to be maintained or submitted to the department by the license holder;
 - (5) failing to keep and transmit records as required by a law within the jurisdiction of the department;
 - (6) being indebted to the state for a fee, payment of a penalty, or a tax imposed by a law within the jurisdiction of the department; or
 - (7) failing to continue to possess qualifications necessary for the issuance of the license.

Section 301.254. Procedures for Notice and Hearings.

The commission by rule shall establish procedures for public notice and any public hearing under this subchapter.

Section 301.255. Hearings.

A hearing under this chapter shall be conducted in accordance with the hearing rules adopted by the commission and the applicable provisions of Chapter 51, Occupations Code, and Chapter 2001, Government Code.

Section 301.256. Revocation or Suspension By Consent.

If a permit holder or license holder requests or consents to the revocation or suspension of the permit or license, the commission may revoke or suspend the permit or license without a hearing.

Section 301.257. Other Relief.

A proceeding brought by the department under this subchapter does not affect the authority of the department to bring suit for injunctive relief or a penalty, or both, under this chapter.

SUBCHAPTER G. IMMUNITY; CERTAIN LEGAL RELATIONSHIPS

Section 301.301. Immunity of State.

The state and its officers and employees are immune from liability for all weather modification and control activities conducted by private persons or groups.

Section 301.302. Private Legal Relationships.

- (a) This chapter does not affect private legal relationships, except that an operation conducted under the license and permit requirements of this chapter is not an ultrahazardous activity that makes the participants subject to liability without fault.
- (b) The fact that a person holds a license or permit under this chapter or that the person has complied with this chapter or the rules issued under this chapter is not admissible as evidence in any legal proceeding brought against the person.

CHAPTER 302. WEATHER MODIFICATION AND CONTROL GRANT PROGRAM

Section 302.001. Findings.

The legislature finds that weather modification and control activities may have a significant impact on Texas agriculture. The legislature further finds that the Texas Department of Licensing and Regulation is the proper state agency to administer grants to political subdivisions for weather modification and control activities.

Section 302.002. Definition.

In this chapter:

- (1) "Commission" means the Texas Commission of Licensing and Regulation.
- (2) "Department" means the Texas Department of Licensing and Regulation.
- (3) "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods the natural development of atmospheric cloud forms or precipitation forms that occur in the troposphere.

Section 302.003. Weather Modification and Control Grant Program.

The department shall develop and administer a program awarding matching grants to political subdivisions of this state for weather modification and control.

Section 302.004. Rules.

The commission may adopt rules necessary to administer this chapter.

Section 302.005. Contracts.

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

Section 302.006. Funding.

The department may accept appropriations and may solicit and accept gifts, grants, and other donations from any source to administer the weather modification and control grant program.